REVISOR'S REPORT

A NONSUBSTANTIVE REVISION
OF THE TEXAS PROBATE CODE

Submitted to the 81st Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas
2009
The Texas Legislative Council is required by law (Section 323.007, Government Code) to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable. The stated purpose of this process is to make the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law.

Under the classification scheme adopted by the council, the statutes will eventually consist of 27 codes. To date, the council has produced and the legislature has enacted the Agriculture Code, Alcoholic Beverage Code, Business & Commerce Code, Civil Practice and Remedies Code, Education Code, Election Code (which was a substantive revision), Estates Code, Finance Code, Government Code, Health and Safety Code, Human Resources Code, Insurance Code, Labor Code, Local Government Code, Natural Resources Code, Occupations Code, Parks and Wildlife Code, Property Code, Special District Local Laws Code, Tax Code (Title 1 of which was a substantive revision), Transportation Code, Utilities Code, and Water Code. The council staff also assisted the state bar in the Business Organizations Code, Penal Code, and Family Code projects, which were substantive revisions, and revised miscellaneous criminal procedure provisions as Title 2 of the Code of Criminal Procedure.

The Estates Code represents a nonsubstantive revision and redesignation of the operative provisions of the existing Texas Probate Code. Titles 1 and 2, Estates Code, represent a nonsubstantive revision of the general provisions of the Texas Probate Code and the provisions relating to decedents' estates, with the exception of statutes governing jurisdiction and venue in probate proceedings and independent administration of decedents' estates. Those statutes are redesignated, respectively, as Subtitles X and Y, Title 2, of the Estates Code, but are not revised. Also, Chapter XII, Texas Probate Code, which is the Durable Power of Attorney Act, has been redesignated as Subtitle Z, Title 2, of the Estates Code, and Chapter XIII, Texas Probate Code, which is the guardianship portion of that code, has been redesignated as Title 25 of the Estates Code. Neither of those portions has been revised.

The council plans to revise in a subsequent statutory revision project the portions of the Estates Code that were redesignated from the Texas Probate Code but not revised. When the Estates Code is complete, the code will be divided into titles, subtitles, chapters, subchapters, and sections. Sections will be numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Note that gaps in chapter and section numbering are for future expansion.

The revisor's report reflects the statutes revised in Titles 1 and 2, Estates Code, as enacted by the passage of H.B. 2502, Acts
of the 81st Legislature, Regular Session, 2009. The revisor's report states the Revised Law, which is the text of the new law, and then provides the Source Law, which is the text of the former law from which the revised law is derived. If further explanation of either the revised law or the source law is required, a Revisor's Note is included after the source law. All substance in the source law is revised in the revised law or the reason for its omission is explained in a revisor's note.

Note that, to provide all affected parties adequate time to more closely review the revision, the Estates Code will not take effect until January 1, 2014.

Because of the extensive reorganization of many statutes, and even sentences within a statute, it may be helpful to refer to the source law as printed in the Texas Probate Code as it existed before the revision (so that the quoted source law may be seen in its former context) and to the disposition table (showing where the former statutes appear, as revised or redesignated, in the code). The disposition table is printed as Appendix D to the revisor's report.

As noted, various Texas Probate Code provisions were redesignated as provisions of the Estates Code but were not revised. These redesignations were enacted into law by the passage of H.B. 2502. The relevant sections of that bill are printed in Appendix A to the revisor's report.

The revision required conforming amendments to several statutes. These conforming amendments, which were also enacted into law by the passage of H.B. 2502, are printed in Appendix B to the revisor's report. Appendix B also includes a section listing the laws repealed effective January 1, 2014, and a section stating the legislature's intent that the code be a nonsubstantive revision.

In reviewing the revisor's report to the Estates Code, the reader should keep in mind the following:

(1) Except as provided by Section 22.027, Estates Code, as added by H.B. 2502, the Code Construction Act (Chapter 311, Government Code) applies to Title 1 and Subtitles A-M, Title 2, of the code. That act sets out certain principles of statutory construction applicable to new codes and also provides some definitions. The act is printed as Appendix C to the revisor's report.

(2) The proposed code is written in modern American English. Where possible, the present tense is used; the active rather than the passive voice is preferred; and the singular is used in preference to the plural.

(3) This is a nonsubstantive revision. The staff's authority does not include improving the substance of law. The sole purpose of this project was to compile all the relevant law, arrange it in a logical fashion, and rewrite it without altering its meaning or legal effect. If a particular source statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity was preserved.

This project was under the direction of Maria Breitschopf, Legislative Counsel, of the council staff. Questions may be directed to her at P.O. Box 12128, Capitol Station, Austin, Texas 78711, or at telephone number (512) 463-1155.
ESTATES CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 21. PURPOSE AND CONSTRUCTION

CHAPTER 22. DEFINITIONS

[Chapters 23-30 reserved for expansion]

TITLE 2. ESTATES OF DECEDENTS

SUBTITLE A. SCOPE, JURISDICTION, AND COURTS

[Chapters 31-50 reserved for expansion]

SUBTITLE B. PROCEDURAL MATTERS

CHAPTER 51. NOTICES AND PROCESS IN PROBATE PROCEEDINGS IN GENERAL

CHAPTER 52. FILING AND RECORDKEEPING

CHAPTER 53. OTHER COURT DUTIES AND PROCEDURES

CHAPTER 54. PLEADINGS AND EVIDENCE IN GENERAL

CHAPTER 55. COMPLAINTS AND CONTESTS

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

[Chapters 57-100 reserved for expansion]

SUBTITLE C. PASSAGE OF TITLE AND DISTRIBUTION OF DECEDE NT'S PROPERTY IN GENERAL

CHAPTER 101. ESTATE ASSETS IN GENERAL

CHAPTER 102. PROBATE ASSETS: DECEDE NT'S HOMESTEAD

[Chapters 103-110 reserved for expansion]

CHAPTER 111. NONPROBATE ASSETS IN GENERAL

CHAPTER 112. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

CHAPTER 113. MULTIPLE-PARTY ACCOUNTS

[Chapters 114-120 reserved for expansion]

CHAPTER 121. SURVIVAL REQUIREMENTS

CHAPTER 122. DISCLAIMER S AND ASSIGNMENTS

CHAPTER 123. DISSOLUTION OF MARRIAGE

CHAPTER 124. VALUATION AND TAXATION OF ESTATE PROPERTY

[Chapters 125-150 reserved for expansion]

SUBTITLE D. PROCEEDINGS BEFORE ADMINISTRATION OF ESTATE

CHAPTER 151. EXAMINATION OF DOCUMENTS AND SAFE DEPOSIT BOXES
CHAPTER 503. RECORDING OF FOREIGN TESTAMENTARY INSTRUMENT
CHAPTER 504. CONTEST OF OR OTHER CHALLENGE TO FOREIGN TESTAMENTARY INSTRUMENT
CHAPTER 505. FOREIGN PERSONAL REPRESENTATIVES, TRUSTEES, AND FIDUCIARIES
   [Chapters 506-550 reserved for expansion]
SUBTITLE L. PAYMENT OF ESTATES INTO TREASURY
CHAPTER 551. PAYMENT OF CERTAIN ESTATES TO STATE
   [Chapters 552-600 reserved for expansion]
SUBTITLE M. DURABLE POWERS OF ATTORNEY
   [Chapters 601-650 reserved for expansion]
   [Subtitles N-W reserved for expansion]
SUBTITLE X. TEXAS PROBATE CODE: SCOPE, JURISDICTION, AND COURTS
   CHAPTER I. GENERAL PROVISIONS
      [Reserved for expansion]
SUBTITLE Y. TEXAS PROBATE CODE: INDEPENDENT ADMINISTRATION
   CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION
      PART 4. INDEPENDENT ADMINISTRATION
      [Reserved for expansion]
SUBTITLE Z. TEXAS PROBATE CODE: DURABLE POWERS OF ATTORNEY
      [Reserved for expansion]
      [Titles 3-24 reserved for expansion]
TITLE 25. TEXAS PROBATE CODE: GUARDIANSHIP
      [Reserved for expansion]
Sec. 21.001. PURPOSE OF CODE. (a) This title and Subtitles A through M, Title 2, are 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 title and Subtitles A through M, Title 2, is to make the law encompassed by this title and Subtitles A through M, Title 2, 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 Subtitles X, Y, and Z of Title 2 and
Title 25 are transferred from the Texas Probate Code and redesignated as part of this code, but are not revised as part of the state's continuing statutory revision program. (New.)

Revised Law

Sec. 21.002. CONSTRUCTION. Except as provided by Section 22.027, Chapter 311, Government Code (Code Construction Act), applies to the construction of a provision of this title or Subtitle A, B, C, D, E, F, G, H, I, J, K, L, or M, Title 2. That chapter does not apply to the construction of a provision of Subtitle X, Y, or Z of Title 2 or Title 25. (New.)

Revisor's Note

(1) Section 311.005(2), Government Code (Code Construction Act), defines "person" to include a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." Section 3(x), Texas Probate Code, revised as Section 22.027 of this code, provides that "person" includes natural persons and corporations. To ensure that no substantive change is made by applying Chapter 311, Government Code, to the portions of this code listed in this section, the revised law adds an exception to the application of Chapter 311 for the definition of "person" revised as Section 22.027.

(2) Section 2(d), Texas Probate Code, provides for the severability of the provisions of that code. The revised law omits Section 2(d) as substantively identical to Section 311.032(c), Government Code (Code Construction Act), made applicable to the revised portions of this code by this section and to the transferred and redesignated, but not revised, portions of this code by Section 21.005 of this chapter. The omitted law reads:

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

Revised Law
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, Y, or Z, Title 2, or Title 25
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, Y, or Z, Title 2, or
Title 25 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, Y, or Z, Title 2, or
Title 25 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 of the corresponding chapter, part, subpart, section,
or portion of a section of the Texas Probate Code and any
reenactments or amendments. (New.)
Revisor's Note
This section is added to clarify the effect of a
reference in law to a statute revised by, or
redesignated as part of, this code.
Revised Law
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. (Tex. Prob. Code, Sec. 2(c); New.)

Source Law

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

Revisor's Note

Section 2(c), Texas Probate Code, provides that the division of that code into "Chapters, Parts, Sections, Subsections, and Paragraphs" does not have a legal effect. The revised law adds references to titles, subtitles, subchapters, subparts, subdivisions, and subparagraphs to reflect the organization of this code and the terminology used to refer to the parts of this code.

Revised Law

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

(1) Section 311.032(c), Government Code, applies to Subtitles X, Y, and Z of Title 2 and Title 25; and

(2) Sections 311.005(4) and 311.012(b) and (c), Government Code, apply to Subtitles X, Y, and Z of Title 2. (New.)

Revisor's Note

This chapter contains provisions necessary to reflect the revision, in accordance with this state's continuing statutory revision program, of the Texas Probate Code, as enacted effective January 1, 1956, and as subsequently amended, as the Estates Code. In conjunction with this revision, a portion of the Texas Probate Code is transferred to and redesignated as part of the Estates Code, but not revised. Because Section 2(d), Texas Probate Code, concerning
severability of provisions of the code, is omitted by
Revisor's Note (2) to Section 21.002 of this chapter,
the revised law also adds Subdivision (1) of this
section to state that Section 311.032(c), Government
Code (Code Construction Act), concerning the
severability of statutes, applies to that unrevised
portion of the law.

In addition, because Sections 3(cc), (gg), and
(hh), Texas Probate Code, concerning the definition of
"property" and certain principles of statutory
construction, are omitted by the revisor's notes to the
end of Chapter 22 of this code, the revised law adds
Subdivision (2) of this section to state that Sections
311.005(4) and 311.012(b) and (c), Government Code
(Code Construction Act), apply to the unrevised
portion of the law redesignated as Subtitles X, Y, and
Z, Title 2, Estates Code. However, the revised law
does not apply Sections 311.005(4) and 311.012(b) and
(c), Government Code (Code Construction Act), to the
unrevised portion of the law redesignated as Title 25,
Estates Code. That title, which consists of
provisions redesignated from Chapter XIII, Texas
Probate Code, contains parallel provisions that apply
to that title. See Sections 601(26), (32), and (33),
Texas Probate Code, redesignated as Sections 601(26),
(32), and (33), Estates Code.

Revised Law
Sec. 21.006. APPLICABILITY TO PROBATE PROCEEDINGS. The
procedure prescribed by Title 2 governs all probate proceedings.
(Tex. Prob. Code, Sec. 2(a) (part).)

Source Law
(a) ... The procedure herein prescribed shall
govern all probate proceedings in county and probate
courts ...
Revisor's Note

Section 2(a), Texas Probate Code, provides, in part, that the procedure prescribed "herein," meaning in the Texas Probate Code, governs all probate proceedings "in county and probate courts." The revised law substitutes a reference to "Title 2" for "herein" and does not reference provisions revised or redesignated in other titles of this code for the reasons that follow.

The Texas Probate Code consists of general provisions, provisions relating to the estate of a decedent, the Durable Power of Attorney Act, and provisions relating to guardianships. Title 2 of this code contains the revision of certain general provisions, the provisions relating to the estate of a decedent, and the Durable Power of Attorney Act. The other general provisions are revised in Title 1 of this code, of which this chapter is a part, and provisions relating to guardianships are redesignated as Title 25 of this code. The substance of the portion of Section 2(a) that is revised as this section is inapplicable to the provisions revised in this title because no procedures governing probate proceedings are prescribed by this title. To the extent that this portion of Section 2(a) applies to guardianship proceedings, it continues to apply because Section 603, Texas Probate Code, redesignated as Section 603 of this code, provides that the laws and rules governing the estates of decedents apply to guardianships to the extent those laws and rules are applicable and not inconsistent with other provisions of the code.

In addition, the revised law omits "in county and probate courts" as unnecessary because a probate
proceeding is necessarily held in a court.

Revisor's Note
(End of Chapter)

(1) The Texas Probate Code was enacted in 1955 by the 54th Legislature to be effective January 1, 1956. Section 2(a), Texas Probate Code, in part states the effective date of that code and specifies that the code applies to probate proceedings brought after the effective date of the code and to pending proceedings "except to the extent that in the opinion of the court, . . . its application in particular proceedings or parts thereof would not be feasible or would work injustice . . . ." The revised law omits this portion of Section 2(a) as executed and obsolete. To the extent that Section 2(a) authorized a court to apply a different rule in certain proceedings pending on January 1, 1956, after the passage of more than 50 years, no proceedings remain pending that are subject to that authority. The omitted law reads:

Sec. 2. (a) Effective Date. This Code shall take effect and be in force on and after January 1, 1956. [The procedure . . . shall govern all probate proceedings] . . . brought after the effective date of this Act, and also all further procedure in proceedings in probate then pending, except to the extent that in the opinion of the court, with respect to proceedings in probate then pending, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

(2) Section 2(b), Texas Probate Code, states the effect of the enactment of the Texas Probate Code on acts done and rights accrued before the 1956 effective date of that code, validates things properly done under prior statute, and specifies the effect of process served in compliance with prior statute. The revised law omits Section 2(b) as executed. The omitted law reads:
(b) Rights Not Affected. No act done in any proceeding commenced before this Code takes effect, and no accrued right, shall be impaired by the provisions of this Code. When a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be deemed a part of this Code with respect to such right. All things properly done under any previously existing statute prior to the taking effect of this Code shall be treated as valid. Where citation or other process or notice is issued and served in compliance with existing statutes prior to the taking effect of this Code, the party upon whom such citation or other process has been served shall have the time provided for under such previously existing statutes in which to comply therewith.

CHAPTER 22. DEFINITIONS

Sec. 22.001. APPLICABILITY OF DEFINITIONS
Sec. 22.002. AUTHORIZED CORPORATE SURETY
Sec. 22.003. CHARITABLE ORGANIZATION
Sec. 22.004. CHILD
Sec. 22.005. CLAIMS
Sec. 22.006. CORPORATE FIDUCIARY
Sec. 22.007. COURT; COUNTY COURT, PROBATE COURT, AND STATUTORY PROBATE COURT
Sec. 22.008. DEVISE
Sec. 22.009. DEVISEE
Sec. 22.010. DISTRIBUTEE
Sec. 22.011. DOCKET
Sec. 22.012. ESTATE
Sec. 22.013. EXEMPT PROPERTY
Sec. 22.014. GOVERNMENTAL AGENCY OF THE STATE
Sec. 22.015. HEIR
Sec. 22.016. INCAPACITATED PERSON
Sec. 22.017. INDEPENDENT EXECUTOR
Sec. 22.018. INTERESTED PERSON; PERSON INTERESTED
Sec. 22.019. JUDGE
Sec. 22.020. LEGACY
Sec. 22.021. LEGATEE
Chapter 22. Definitions

Revised Law

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 Chapter XIII provides a definition for a term that is different from the definition provided by this chapter, the definition for the term provided by Chapter XIII applies in that chapter. (Tex. Prob. Code, Sec. 3 (part).)

Source Law

Sec. 3. Except as otherwise provided by Chapter XIII of this Code, when used in this Code, unless otherwise apparent from the context:

Revisor's Note

Section 3, Texas Probate Code, refers to "Chapter XIII of this Code," meaning Chapter XIII, Texas Probate Code. That chapter has been redesignated in the Estates Code as Chapter XIII, Title 25, and the
revised law therefore retains the reference to Chapter XIII. However, the revised law omits the reference to "of this Code" as unnecessary because the revised law is also part of the Estates Code, and Section 311.006(1), Government Code (Code Construction Act), applicable to the revised law, provides in part that a reference to a chapter in a code without further identification is a reference to a chapter of that code.

**Revised Law**

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. (Tex. Prob. Code, Sec. 3(a).)

**Source Law**

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

**Revised Law**

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

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(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. (Tex. Prob. Code, Sec. 3(kk).)

Source Law

(kk) "Charitable organization" means:

(1) a nonprofit corporation, trust, community chest, fund, foundation, or other entity that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 because the entity is organized and operated exclusively for religious, charitable, scientific, educational, or literary purposes, testing for public safety, prevention of cruelty to children or animals, or promotion of amateur sports competition; or

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

Revisor's Note

(1) Section 3(kk)(1), Texas Probate Code, provides in part that "charitable organization" means an entity that is "exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986." Section 501(a), Internal Revenue Code of 1986, provides the exemption from federal income tax for entities that meet specific criteria, including criteria described by Section 501(c)(3) of that code. The revised law substitutes for the quoted phrase a reference to an entity that is "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" for clarity and accuracy.

(2) Section 3(kk)(2), Texas Probate Code, refers to an "entity or organization." The revised law omits "organization" because the meaning of that term is included in the meaning of "entity."

Revised Law

Sec. 22.004. CHILD. (a) "Child" includes an adopted child, regardless of whether the adoption occurred through:
an existing or former statutory procedure; or
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.
(Tex. Prob. Code, Sec. 3(b).)

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

Revisor's Note
Section 3(b), Texas Probate Code, provides in
part that the term "child" does not include a child who
does not have a presumed father unless "expressly so
stated herein." It is clear that the quoted phrase,
when read in conjunction with the introductory
language to Section 3, allows the express language of
any other provision of the code to include within the
meaning of "child" a child who does not have a presumed
father, and the revised law is drafted accordingly.

Revised Law
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. (Tex. Prob. Code, Sec.
3(c).)

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

Revised Law
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.

(Tex. Prob. Code, Sec. 3(d).)

Source Law

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

Revised Law
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. (Tex. Prob. Code, Secs. 3(e), (g),
(ii).)

Source Law

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

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

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

Revised Law

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. (Tex. Prob. Code, Sec. 3(h).)

Source Law

(h) "Devise," when used as a noun, includes a
testamentary disposition of real or personal property,
or of both. When used as a verb, "devise" means to
dispose of real or personal property, or of both, by
will.
Revised Law
Sec. 22.009. DEVISEE. "Devisee" includes a legatee. (Tex. Prob. Code, Sec. 3(i).)

Source Law
(i) "Devisee" includes legatee.

Revised Law
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. (Tex. Prob. Code, Sec. 3(j).)

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

Revisor's Note
Section 3(j), Texas Probate Code, defines "distributee" as a person entitled to "the estate of a decedent." It is clear from the context of the substantive provisions of the Texas Probate Code in which the term is used that a person is considered a distributee even when the person is entitled to only a part of the estate property. See, for example, Section 50, Texas Probate Code, revised in this code as Subchapter B, Chapter 202, requiring notice in an heirship proceeding to all distributees of estate property who are at least 12 years of age. See also Section 70, Texas Probate Code, revised in this code as Section 255.201, referring to "each of the several distributees" of certain property under a will. For clarity and accuracy, the revised law substitutes "a part of the estate of a decedent" for "the estate of a decedent."

Revised Law
Sec. 22.011. DOCKET. "Docket" means the probate docket. (Tex. Prob. Code, Sec. 3(k).)
Source Law

(k) "Docket" means the probate docket.

Revised Law

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. (Tex. Prob. Code, Sec. 3(l).)

Revisor's Note

(1) Section 3(l), Texas Probate Code, refers to "real and personal property of a decedent, both as such property originally existed and as from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions thereto (including any property to be distributed to the representative of the decedent by the trustee of a trust which terminates upon the decedent's death) and substitutions therefor, and as diminished by any decreases therein and distributions therefrom.

Revised Law

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. (Tex. Prob. Code, Sec.
3(m).)

Source Law

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

Revisor's Note

Section 3(m), Texas Probate Code, defines exempt
property to include "the allowance" in lieu of
property of a decedent's estate that is exempt from
execution or forced sale. The revised law refers to
any allowance "paid" for consistency with the
terminology used in Section 273, Texas Probate Code,
revised in this code as Section 353.053, which
provides for an allowance to be paid to a decedent's
surviving spouse and children under certain
circumstances.

Revised Law

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;
(9) the State Bar of Texas. (Tex. Prob. Code, Sec. 3(11).)

Source Law

(11) "Governmental agency of the state" means:
(1) an incorporated city or town, a county, a public school district, a special-purpose district or authority, or a district, county, or justice of the peace court;
(2) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003, Education Code;
(3) the legislature or a legislative agency; and
(4) the supreme court, the court of criminal appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction.

Revisor's Note
Section 3(11)(1), Texas Probate Code, refers to an "incorporated city or town." The revised law omits the reference to "incorporated" because under the Local Government Code all cities must be incorporated. The revised law substitutes "municipality" for "city or town" because the meaning of "municipality" includes both cities and towns, and "municipality" is the term used in the Local Government Code.

Revised Law
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. (Tex. Prob. Code, Sec. 3(o).)

Source Law

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

Revisor's Note
Section 3(o), Texas Probate Code, defines "heir" as a person who is entitled to "the estate of a decedent." It is clear from the context of the
The substantive provisions of the Texas Probate Code in which the term is used that a person is considered an heir even when the person is entitled to only a part of the estate property in accordance with the statutes of descent and distribution. See the portion of Section 37, Texas Probate Code, revised in this code as Section 101.001, addressing the passage of a decedent's property to the decedent's "heirs." For clarity and accuracy, the revised law substitutes "a part of the estate of a decedent" for "the estate of a decedent."

Revised Law
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. (Tex. Prob. Code, Sec. 3(p).)

Source Law
(p) "Incapacitated" or "Incapacitated person" means:
   (1) a minor;
   (2) an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs; or
   (3) a person who must have a guardian appointed to receive funds due the person from any governmental source.

Revised Law
Sec. 22.017. INDEPENDENT EXECUTOR. "Independent executor" means the personal representative of an estate under independent administration as provided by Section 145. The term includes an
independent administrator. (Tex. Prob. Code, Sec. 3(q).)

Source Law

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

Revised Law

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. (Tex. Prob. Code, Sec. 3(r).)

Source Law

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

Revised Law

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. (Tex. Prob. Code, Sec. 3(f).)

Source Law

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

Section 3(f), Texas Probate Code, defines "county judge," "probate judge," and "judge" as the presiding judge of a court having original jurisdiction over probate proceedings, regardless of whether the court is a county court, a court created by statute, or a district court. Section 3(f) was originally enacted by Chapter 55, Acts of the 54th Legislature, Regular Session, 1955. That act defined "county judge," "probate judge," and "judge" to mean the presiding judge of a court having original jurisdiction over probate proceedings, regardless of whether the court was a county court exercising probate jurisdiction or a court created and organized for the sole purpose of exercising probate jurisdiction. At that time, the definition did not include the presiding judge of a district court because Section 5, Texas Probate Code, in part provided that district courts had only appellate jurisdiction and general control over the county court in probate matters. Because the district courts did not have original jurisdiction over probate matters, the terms "county judge," "probate judge," and "judge" were assigned a single definition and could be used interchangeably to mean the constitutional or statutory county court with original probate jurisdiction.

The jurisdiction of district courts with respect to probate matters was changed by the 63rd and 64th Legislatures. Section 5 was amended by Chapter 610, Acts of the 63rd Legislature, Regular Session, 1973, and Chapter 701, Acts of the 64th Legislature, Regular Session, 1975, to grant district courts in certain counties jurisdiction to hear contested probate matters. To reflect this change in the jurisdiction of
district courts, Chapter 701, Acts of the 64th Legislature, Regular Session, 1975, also amended Section 3(f) to include the presiding judge of a district court within the definition of "judge," "county judge," and "probate judge."

The revised law omits the terms "county judge" and "probate judge" from the definition because the term "judge," which is assigned the same meaning by Section 3(f), can be substituted for either of those terms, and defining "county judge" to mean, in part, a "district judge" is misleading. Accordingly, the revised law throughout this code substitutes the term "judge" for other provisions of the Texas Probate Code that reference "county judge" or "probate judge."

Revised Law
Sec. 22.020. LEGACY. "Legacy" includes a gift or devise of real or personal property made by a will. (Tex. Prob. Code, Sec. 3(s) (part).)

Source Law
(s) "Legacy" includes any gift or devise by will, whether of personality or realty. . . .

Revised Law
Sec. 22.021. LEGATEE. "Legatee" includes a person who is entitled to a legacy under a will. (Tex. Prob. Code, Sec. 3(s) (part).)

Source Law
(s) . . . "Legatee" includes any person entitled to a legacy under a will.

Revised Law
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. (Tex. Prob. Code, Sec. 3(t).)
"Minors" are all persons under eighteen years of age who have never been married or who have not had disabilities of minority removed for general purposes.

Sec. 22.023. MINUTES. "Minutes" means the probate minutes. (Tex. Prob. Code, Sec. 3(u).)

"Minutes" means the probate minutes.

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. (Tex. Prob. Code, Sec. 3(v).)

"Mortgage" or "Lien" includes deed of trust, vendor's lien, chattel mortgage, mechanic's, materialman's or laborer's lien, judgment, attachment or garnishment lien, pledge by hypothecation, and Federal or State tax liens.

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. (Tex. Prob. Code, Sec. 3(w).)

"Net estate" means the real and personal property of a decedent, exclusive of homestead rights, exempt property, the family allowance and enforceable
claims against the estate.

Revisor's Note
Section 3(w), Texas Probate Code, refers to "real and personal property." The revised law omits "real and personal" as unnecessary for the reason stated in Revisor's Note (1) to Section 22.012 of this chapter.

Revised Law
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. (Tex. Prob. Code, Sec. 3(jj).)

Source Law
(jj) "Next of kin" includes an adopted child or his or her descendents and the adoptive parent of the adopted child.

Revised Law
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. (Tex. Prob. Code, Sec. 3(x); New.)

Source Law
(x) "Person" includes natural persons and corporations.

Revisor's Note
Section 311.005(2), Government Code (Code Construction Act), defines "person" to include a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." To ensure that no substantive change is made by revision of the definition of "person" in this code, the revised law adds a provision stating that the definition in Section 311.005, Government Code, does not apply to any provision in the Estates Code.
Revised Law
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. (Tex. Prob. Code, Sec. 3(z).)

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

Revised Law
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. (Tex. Prob. Code, Sec.
3(bb).)

Source Law
(bb) "Probate matter," "Probate proceedings,"
"Proceeding in probate," and "Proceedings for probate"
are synonymous and include a matter or proceeding
relating to the estate of a decedent.

Revised Law
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.
(Tex. Prob. Code, Sec. 3(dd).)

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

Revised Law
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. (Tex. Prob. Code,
Sec. 3(aa).)

Source Law

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

Revisor's Note

Section 3(aa), Texas Probate Code, provides in
part that the inclusion of independent executors
"herein" does not subject those representatives to the
control of the courts in probate matters with respect
to settlement of estates. That portion of Section
3(aa) was added in 1957 by Section 2(a), Chapter 31,
Acts of the 55th Legislature, Regular Session.
Section 2(b) of that act amended Section 145, Texas
Probate Code, redesignated in relevant part as Section
145 of this code, to clarify that after a will is
probated and certain documents are filed by an
independent executor, no further action in the court
is required of the independent executor, except as
otherwise explicitly provided by the code. It is clear
from the amendment to Section 145 by Chapter 31, Acts
of the 55th Legislature, Regular Session, 1957, that
the intent of the legislature was to clarify that the
administration of an estate by an independent executor
is subject to court oversight only to the extent the
code explicitly provides for that oversight. Furthermore, the addition of the second sentence in Section 3(aa) was intended to clarify that the inclusion of an independent executor in the definition of "representative" and "personal representative" in the first sentence of the section did not constitute an explicit statement necessary to subject an independent executor to additional court oversight. For that reason, it is clear that the reference to "herein" in Section 3(aa) referred to the first sentence of that section, and the revised law is drafted accordingly.

Revised Law Sec. 22.032. SURETY. "Surety" includes a personal surety and a corporate surety. (Tex. Prob. Code, Sec. 3(ee).)

Source Law (ee) "Surety" includes both personal and corporate sureties.

Revised Law Sec. 22.033. WARD. "Ward" means a person for whom a guardian has been appointed. (Tex. Prob. Code, Sec. 3(mm).)

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

Revised Law 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. (Tex. Prob. Code, Sec. 3(ff).)

Source Law (ff) "Will" includes codicil; it also includes a testamentary instrument which merely:
(1) appoints an executor or guardian;
(2) directs how property may not be
disposed of; or

(3) revokes another will.

Revisor's Note

(End of Chapter)

(1) Section 3(cc), Texas Probate Code, defines "property" as including both real and personal property. The revised law omits the definition as unnecessary because, as explained in Revisor's Note (1) to Section 22.012 of this chapter, Section 311.005(4), Government Code (Code Construction Act), contains a substantively identical definition of "property." That definition is made applicable to the revised law in this code by Section 21.002 of this code, and to portions of the redesignated but unrevised law in this code by Section 21.005(2) of this code. See the revisor's note to Section 21.005 of this code for an explanation regarding the inapplicability of the definition to Title 25 of this code, which contains the provisions redesignated from Chapter XIII, Texas Probate Code. The omitted law reads:

(cc) "Property" includes both real and personal property.

(2) Sections 3(gg) and (hh), Texas Probate Code, provide general rules of construction with respect to certain terms used in that code. The revised law omits the provisions as unnecessary because Sections 311.012(b) and (c), Government Code (Code Construction Act), contain substantively identical provisions. Those sections are made applicable to the revised law in this code by Section 21.002 of this code, and to portions of the redesignated but unrevised law in this code by Section 21.005(2) of this code. See the revisor's note to Section 21.005 of this code for an explanation regarding the inapplicability of the provisions to Title 25 of this code, which contains the provisions redesignated from Chapter XIII, Texas
Probate Code. The omitted law reads:

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

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

[Chapters 23-30 reserved for expansion]

TITLE 2. ESTATES OF DECEDENTS

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SUBTITLE B. PROCEDURAL MATTERS

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CHAPTER 51. NOTICES AND PROCESS IN PROBATE PROCEEDINGS IN GENERAL

SUBCHAPTER A. ISSUANCE AND FORM OF NOTICE OR PROCESS

Revised Law

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. (Tex. Prob. Code, Secs. 33(a), (b).)

Source Law

Sec. 33. (a) When Citation or Notice Necessary. No person need be cited or otherwise given notice except in situations in which this Code expressly provides for citation or the giving of notice, provided, however, that even though this Code does not expressly provide for citation, or the issuance or return of notice in any probate matter, the court may, in its discretion, require that notice be given, and prescribe the form and manner of service and return thereof.

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

Revisor's Note

Section 33(a), Texas Probate Code, refers to a situation for which "this Code," meaning the Texas Probate Code, expressly provides for citation or the giving of notice and to a probate matter for which "this Code" does not expressly provide for citation or the issuance or return of notice. Section 33(b), Texas Probate Code, refers to a court order required by "this Code" with respect to notices and process in probate matters. Throughout this chapter, the revised law substitutes references to "this title" for references to "this Code" with respect to citation and the giving or issuing of notice and does not reference provisions revised or redesignated in other titles of this code for the reasons that follow.

The Texas Probate Code consists of general provisions, provisions relating to the estate of a decedent, the Durable Power of Attorney Act, and provisions relating to guardianships. Title 2 of this code, of which this chapter is a part, contains the revision of certain general provisions, the provisions relating to the estate of a decedent, and the Durable Power of Attorney Act. The other general provisions are revised in Title 1 of this code, and provisions relating to guardianships are redesignated as Title 25 of this code. The substance of Sections 33(a) and (b), revised as this section, is inapplicable to the provisions revised in Title 1 because no probate matter requiring citation or notice could arise under that title. Section 632, Texas Probate Code, redesignated as Section 632 of this code, consists of provisions relating to citation or the giving or
issuing of notice in guardianship matters that are virtually identical to the provisions of Section 33, Texas Probate Code, revised in this chapter, which govern probate matters. To the extent that Sections 33(a) and (b) apply to guardianship proceedings, those sections continue to apply because Section 603, Texas Probate Code, redesignated as Section 603 of this code, provides that the laws and rules governing the estates of decedents apply to guardianships to the extent those laws and rules are applicable and not inconsistent with other provisions of the code.

Revised Law
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. (Tex. Prob. Code, Sec. 33(c) (part).)

Source Law
(c) ... All writs and other process except citations and notices shall be directed "To any sheriff or constable within the State of Texas," but shall not be held defective because directed to the sheriff or any constable of a specific county if properly served within the named county by such officer.

Revised Law
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
(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. (Tex. Prob. Code, Sec. 33(c) (part).)

Source Law
(c) Contents of Citation, Writ, and Notice. Citation and notices issued by the clerk shall be signed and sealed by him, and shall be styled "The State of Texas." Notices required to be given by a personal representative shall be in writing and shall be signed by the representative in his official capacity. All citations and notices shall be directed to the person or persons to be cited or notified, shall be dated, and shall state the style and number of the proceeding, the court in which it is pending, and shall describe generally the nature of the proceeding or matter to which the citation or notice relates. No precept directed to an officer is necessary. A citation or notice shall direct the person or persons cited or notified to appear by filing a written contest or answer, or to perform other acts required of him or them and shall state when and where such appearance or performance is required. No citation or notice shall be held to be defective because it contains a precept directed to an officer authorized to serve it. . . .

[Sections 51.004-51.050 reserved for expansion]

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

Revised Law
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.
(Tex. Prob. Code, Sec. 33(f)(1) (part).)

Source Law

(f) Methods of Serving Citations and
Notices. (1) Personal Service. Where it is provided
that personal service shall be had with respect to a
citation or notice, any such citation or notice must be
served upon the attorney of record for the person to be
cited. Notwithstanding the requirement of personal
service, service may be made upon such attorney by any
of the methods hereinafter specified for service upon
an attorney. If there is no attorney of record in the
proceeding for such person, or if an attempt to make
service upon the attorney was unsuccessful, a citation
or notice directed to a person within this State must
be served by the sheriff or constable upon the person
to be cited or notified, in person, by delivering to
him a true copy of such citation or notice at least ten
(10) days before the return day thereof, exclusive of
the date of service. Where the person to be cited or notified is absent from the State, or is a nonresident, such citation or notice may be served by any disinterested person competent to make oath of the fact. Said citation or notice shall be returnable at least ten (10) days after the date of service, exclusive of the date of service. . . . If in either case such citation or notice is returned with the notation that the person sought to be served, whether within or without this State, cannot be found, the clerk shall issue a new citation or notice directed to the person or persons sought to be served and service shall be by publication.

Revisor's Note

(1) Section 33(f)(1), Texas Probate Code, states that personal service of a citation or notice may be made on the attorney of record for the person to be cited or notified by "any of the methods hereinafter specified" for service on an attorney. At the time Section 33(f)(1) was enacted by Chapter 55, Acts of the 54th Legislature, Regular Session, 1955, that section required that service of a citation or notice be made in person on the party to be cited or notified. However, Section 34, Texas Probate Code, as enacted by the same act and revised in this chapter as Section 51.055, permitted any citation or notice required to be served in person on a party in a probate proceeding to be served instead on the party's attorney. In 1971, Chapter 173, Acts of the 62nd Legislature, Regular Session, amended both Sections 33(f)(1) and 34 to make service on the party's attorney of record mandatory rather than permissive. Section 33(f)(1) was amended by that act to provide for this service using "any of the methods hereinafter specified" for service on an attorney. The only reference to the method of service on a party's attorney of record was contained in Section 34, which was amended by Chapter 173 to provide for notices to attorneys of record to be served either by delivery in person or by registered or certified mail. For that reason, the revised law substitutes a reference to "any method specified by Section 51.055"
for the quoted phrase.

(2) Section 33(f)(1), Texas Probate Code, refers to a "true copy" of a citation or notice. The revised law omits "true" because the word does not add to the clear meaning of the law. For example, a document purporting to be a copy is not a copy if it is different from the original document.

(3) Section 33(f)(1), Texas Probate Code, describes certain situations in which a person may be cited or notified by a disinterested person competent "to make oath of the fact." The revised law substitutes "to make an oath that the citation or notice was served" for the quoted language because it is clear from the context that the fact to which the source law refers is the service of citation or notice on the person to be served.

(4) Section 33(f)(1), Texas Probate Code, requires the county clerk, under certain circumstances, to issue a new citation or notice "directed to the person or persons sought to be served." The revised law omits the quoted language as duplicative of Section 33(c), Texas Probate Code, revised in relevant part as Section 51.003(a)(1), which requires that each citation and notice in a proceeding be directed to the person to be cited or notified.

Revised Law

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. (Tex. Prob. Code, Sec. 33(f)(4).)
clerk shall issue such citation or notice and shall serve the same by sending the original thereof by registered or certified mail. Any notice required to be given by a personal representative by registered or certified mail shall be issued by him, and he shall serve the same by sending the original thereof by registered or certified mail. In either case the citation or notice shall be mailed with instructions to deliver to the addressee only, and with return receipt requested. The envelope containing such citation or notice shall be addressed to the attorney of record in the proceeding for the person to be cited or notified, but if there is none, or if returned undelivered, then to the person to be cited or notified. A copy of such citation or notice, together with the certificate of the clerk, or of the personal representative, as the case may be, showing the fact and date of mailing, shall be filed and recorded. If a receipt is returned, it shall be attached to the certificate.

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

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

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

Revisor's Note

Section 33(f)(4)(B), Texas Probate Code, refers to a certificate showing the "time" of mailing of a citation or notice. However, Section 33(f)(4)(A), Texas Probate Code, refers to a certificate showing the "date" of mailing of a citation or notice. The revised law substitutes "date" for "time" for consistency of terminology and because a record of the specific time of day of the mailing is inconsequential. The purpose of maintaining a record of the date of mailing is to determine whether the mailing occurred within the period prescribed by Section 33(f)(4)(C), Texas Probate Code, which is revised in this section as Subsection (e). The time of day of the mailing is irrelevant in making that
Revised Law
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. (Tex. Prob. Code, Sec. 33(f)(2).)

Source Law

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

Revisor's Note

(1) Section 33(f)(2), Texas Probate Code,
specifies the period for which a citation or notice
must be posted before the return day of the service.
Section 33(h), Texas Probate Code, provides an
exception to the requirement that citation or notice
be posted for that period. The relevant part of
Section 33(h) is revised in this chapter as Section
51.102(b), and the revised law adds a cross-reference
to that section for the convenience of the reader.

(2) Section 33(f)(2), Texas Probate Code,
refers to the "time" and place of posting of a citation
or notice. The revised law substitutes "date" for
"time" for the reason stated in the revisor's note to
Section 51.052 with respect to the mailing of a
citation or notice.

Revised Law

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. (Tex. Prob. Code, Sec. 33(f)(3).)

Source Law

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

Revised Law
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.

(Tex. Prob. Code, Sec. 34.)

Source Law
Sec. 34. If any attorney shall have entered his
appearance of record for any party in any proceeding in
probate, all citations and notices required to be
served on the party in such proceeding shall be served
on the attorney, and such service shall be in lieu of
service upon the party for whom the attorney appears.
All notices served on attorneys in accordance with
this section may be served by registered or certified
mail or by delivery to the attorney in person. They
may be served by a party to the proceeding or his
attorney of record, or by the proper sheriff or
constable, or by any other person competent to
testify. A written statement by an attorney of record,
or the return of the officer, or the affidavit of any
other person showing service shall be prima facie
evidence of the fact of service.

Revisor's Note
Section 34, Texas Probate Code, refers to a
"proceeding in probate." Section 3(bb), Texas Probate
Code, revised in this code as Section 22.029, defines
"proceeding in probate" and "probate proceedings" as
having the same meaning. The revised law throughout
this chapter substitutes references to "probate
proceeding" for references to "proceeding in probate"
for consistency of terminology and because the phrases
are synonymous.

Revised Law
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.

(Tex. Prob. Code, Sec. 33(e).)

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

[Sections 51.057-51.100 reserved for expansion]

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

Revised Law
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. (Tex. Prob. Code, Sec. 33(f)(1) (part).)

Source Law

(1) Where it is provided that
personal service shall be had . . . .] The return of
the person serving the citation or notice shall be
endorsed on or attached to same; it shall show the time
and place of service, certify that a true copy of the
citation or notice was delivered to the person
directed to be served, be subscribed and sworn to
before some officer authorized by the laws of this
State to take affidavits, under the hand and official
seal of such officer, and returned to the county clerk
who issued same . . . .

Revisor's Note

(1) Section 33(f)(1), Texas Probate Code,
refers to the "time" and place of personal service of a
citation or notice. The revised law substitutes
"date" for "time" for the reason stated in the
revisor's note to Section 51.052 with respect to the
mailing of a citation or notice.

(2) Section 33(f)(1), Texas Probate Code,
refers to a "true" copy of a citation or notice. The
revised law omits "true" for the reason stated in
Revisor's Note (2) to Section 51.051.

Revised Law

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. (Tex. Prob. Code, Sec. 33(h).)

**Source Law**

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

**Revisor's Note**
Section 33(h), Texas Probate Code, provides
certain circumstances under which a citation or notice
served by posting and the service and return of that
citation or notice is "sufficient and valid" and refers to the "sufficiency or validity" of that citation, notice, service, or return. The revised law omits "sufficient" and "sufficiency" because, in context, the meaning of those terms is included within the meaning of "valid" and "validity," respectively.

Revised Law

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.

(Tex. Prob. Code, Sec. 33(i).)
(i) Proof of Service. Proof of service in all cases requiring notice or citation, whether by publication, posting, mailing, or otherwise, shall be filed before the hearing. Proof of service made by a sheriff or constable shall be made by the return of service. Service made by a private person shall be proved by the affidavit of the person. Proof of service by publication shall be made by the affidavit of the publisher or that of an employee of the publisher, which affidavit shall show the date the issue of the newspaper bore, and have attached to or embodied in it a copy of the published notice or citation. In the case of service by mail, proof shall be made by the certificate of the clerk, or the affidavit of the personal representative or other person making such service, stating the fact and time of mailing. In the case of service by registered or certified mail, the return receipt shall be attached to the certificate, if a receipt has been returned.

Revisor's Note

(1) Section 33(i), Texas Probate Code, refers to notice or citation "whether by publication, posting, mailing, or otherwise." The methods of service specified in the quoted language include all methods authorized by the Texas Probate Code. Because the specified methods of service do not exclude any method authorized under the code and therefore do not limit the applicability of the provision, the revised law omits the quoted language as unnecessary.

(2) Section 33(i), Texas Probate Code, refers to proof of the "time" of mailing of service of citation or notice. The revised law substitutes "date" for "time" for the reason stated in the revisor's note to Section 51.052.

Revised Law

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. (Tex. Prob. Code, Sec. 33(g).)
first Monday after the service is perfected.

**Revisor’s Note**

Section 33(g), Texas Probate Code, provides for the day on which a citation or notice "served by personal service, by mail, by posting, or by publication" must be returned. The revised law omits the quoted phrase for the reason stated in Revisor’s Note (1) to Section 51.103.

[Sections 51.105-51.150 reserved for expansion]

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

**Revised Law**

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. (Tex. Prob. Code, Sec. 33(d).)

**Source Law**

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

Revisor's Note

(1) Section 33(d), Texas Probate Code, refers to provisions of the Texas Probate Code in which a method of service and return of a citation or notice is specified but is "insufficient or inadequate." The revised law omits "insufficient" because, in context, the terms are synonymous.

(2) Section 33(d), Texas Probate Code, refers to the "force and effect" of the issuance, service, and return of citation or notice ordered by a court. The revised law omits the reference to "force" as unnecessary because, in context, the meaning of the term is included within the meaning of "effect."

[Sections 51.152-51.200 reserved for expansion]

SUBCHAPTER E. ADDITIONAL NOTICE PROVISIONS

Revised Law

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. (Tex. Prob. Code, Sec. 35.)

Source Law

Sec. 35. Any person legally competent who is
interested in any hearing in a proceeding in probate
may, in person or by attorney, waive in writing notice
of such hearing. A trustee may make such a waiver on
behalf of the beneficiary of his trust. A consul or
other representative of a foreign government, whose
appearance has been entered as provided by law on
behalf of any person residing in a foreign country, may
make such waiver of notice on behalf of such person.
Any person who submits to the jurisdiction of the court
in any hearing shall be deemed to have waived notice
thereof.

Revised Law

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. (Tex. Prob. Code,
Sec. 33(j).)

Source Law

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

Section 33(j), Texas Probate Code, refers to any proceeding in probate "including, but not limited to" certain specified proceedings. The revised law omits "but not limited to" as unnecessary because Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, provides that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

Revised Law

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) commission may issue for taking the depositions for which the notice was posted; and

(2) the judge may file cross-interrogatories if no person appears. (Tex. Prob. Code, Sec. 22 (part).)

Source Law

Sec. 22. . . . where a will is to be probated, and in other probate matters where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served, service may be had by posting notice of intention to take depositions for a period of ten days as provided in this Code governing posting of notices. When such notice is filed with the clerk, a copy of the interrogatories shall also be filed, and at the expiration of ten days, commission may issue for taking the depositions, and the judge may file cross-interrogatories where no one appears, if he so desires.
Revisor's Note

Section 22, Texas Probate Code, refers to a 10-day period "as provided in this Code," meaning the Texas Probate Code, that governs the posting of notices. The posting of notices is governed by Section 33(f)(2), Texas Probate Code, which is revised as Section 51.053 of this chapter. The revised law substitutes a reference to Section 51.053 for the quoted phrase for the convenience of the reader.

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 minute 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. (Tex. Prob. Code, Sec. 13 (part).)

Source Law

Sec. 13. The county clerk shall keep a record book to be styled "Judge's Probate Docket," and shall enter therein:

(a) The name of each person upon whose person or estate proceedings are had or sought to be had.

(b) The name of the executor or administrator or of the applicant for letters.

(c) The date of the filing of the original application for probate proceedings.

(d) A minute of each order, judgment, decree, and proceeding had in each estate, with the date thereof.

(e) A number for each estate upon the docket in the order in which proceedings are commenced, and

Revisor's Note

Section 13(b), Texas Probate Code, refers to "the applicant for letters." For clarity and the convenience of the reader, the revised law specifies that this section concerns "letters testamentary or of administration," to distinguish letters of guardianship, which are covered by Section 623, Texas Probate Code, redesignated as Section 623 of this code.

Revised Law

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

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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. (Tex. Prob. Code, Sec. 14.)

Source Law

Sec. 14. The county clerk shall also keep a record book to be styled "Claim Docket," and shall enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; the date of filing; when due; the date from which it bears interest; the rate of interest; when allowed by the executor or administrator; the amount allowed; the date of rejection; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of
Revised Law
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. (Tex. Prob. Code, Sec. 16.)

Source Law
Sec. 16. The county clerk shall keep a record book styled "Probate Fee Book," and shall enter therein each item of costs which accrues to the officers of the court, together with witness fees, if any, showing the party to whom the costs or fees are due, the date of the accrual of the same, the estate or party liable therefor, and the date on which any such costs or fees are paid.

Revised Law
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. (Tex. Prob. Code, Sec. 17.)

Source Law
Sec. 17. In lieu of keeping the record books described by Sections 13, 14, and 16 of this code, the county clerk may maintain the information relating to a person's or estate's probate proceedings maintained in those record books on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation.
[Sections 52.005-52.050 reserved for expansion]
SUBCHAPTER B. FILES; INDEX

Revised Law
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. (Tex. Prob. Code, Secs. 11, 13(e) (part).)

Source Law
Sec. 11. All applications for probate proceedings, complaints, petitions and all other papers permitted or required by law to be filed in the court in probate matters, shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number, and his official signature.

[Sec. 13]
(e) . . . each paper filed in an estate shall be given the corresponding docket number of the estate.

Revised Law
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;

(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). (Tex. Prob. Code, Sec. 15.)

Source Law

Sec. 15. The county clerk shall maintain a case file for each decedent's estate in which a probate proceeding has been filed. The case file must contain all orders, judgments, and proceedings of the court and any other probate filing with the court, including all:

(1) applications for the probate of wills and for the granting of administration;

(2) citations and notices, whether published or posted, with the returns thereon;

(3) wills and the testimony upon which the same are admitted to probate, provided that the substance only of depositions shall be recorded;

(4) bonds and official oaths;

(5) inventories, appraisements, and lists of claims;

(6) exhibits and accounts;

(7) reports of hiring, renting, or sale;

(8) applications for sale or partition of real estate and reports of sale and of commissioners of partition;

(9) applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money; and

(10) reports of lending or investing money.

Revisor's Note

Section 15(7), Texas Probate Code, refers to "reports of hiring, renting, or sale." Section 365,
Texas Probate Code, requires, under certain circumstances, the filing of a report when estate property has been "hired or rented." Section 357.051 of this code, which is the revision of Section 365, omits the references to the "hiring" of property because "hiring" property is synonymous with "renting" property, and "renting" property is more consistent with modern usage. Similar changes are made throughout Chapter 357 of this code. Therefore, for consistency of terminology with that chapter, the revised law omits the reference to "hiring" from the quoted phrase.

In addition, the revised law omits the reference in the quoted phrase to a report of sale as duplicative of Section 15(8), Texas Probate Code, revised in this section as Subsection (b)(10), which also requires each case file maintained by a county clerk to contain each report of sale.

Revised Law

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.

(Tex. Prob. Code, Sec. 17A.)

Source Law

Sec. 17A. The county clerk shall properly index the records and keep the index open for public inspection, but may not release the index from the clerk's custody.

CHAPTER 53. OTHER COURT DUTIES AND PROCEDURES

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CHAPTER 53. OTHER COURT DUTIES AND PROCEDURES

SUBCHAPTER A. ENFORCEMENT OF ORDERS

Revised Law

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. (Tex. Prob.
Code, Sec. 24.)

Source Law

Sec. 24. The county or probate judge may enforce
obedience to all his lawful orders against executors
and administrators by attachment and imprisonment, but
no such imprisonment shall exceed three days for any
one offense, unless otherwise expressly so provided in
this Code.

Revisor's Note

(1) Section 24, Texas Probate Code, provides
that the "county or probate judge" may enforce the
judge's orders by attachment and imprisonment.
Section 3(f), Texas Probate Code, defines "county
judge," "probate judge," and "judge" identically as
interchangeable terms, with each term meaning the
presiding judge of a court having original
jurisdiction over probate proceedings. The definition
specifically includes the judge of a district court
exercising jurisdiction in contested probate matters. See the revisor's note to Section 22.019 of this code for an analysis of the amendment history of Sections 3(f) and 5, Texas Probate Code, that resulted in the inclusion of a district judge in the definition. Section 22.019 of this code, which is the revision of Section 3(f), Texas Probate Code, omits the terms "county judge" and "probate judge" because those terms are synonymous with the term "judge," and defining "county judge" and "probate judge" to mean, in part, a "district judge" is misleading. The revisor's note to that section indicates that throughout this code, the term "judge" will be substituted for references to "county judge" or "probate judge." Accordingly, the revised law in this section substitutes "judge" for "county or probate judge."

(2) Section 24, Texas Probate Code, refers to the maximum period of "imprisonment" to enforce an order against an executor or administrator, except as otherwise provided by "this Code," meaning the Texas Probate Code, and to "such imprisonment." The revised law replaces the references to "imprisonment" with "confinement" to conform to the terminology of the Penal Code. In addition, the revised law substitutes a reference to "this title" for the reference to "this Code" because the provisions of the Texas Probate Code that relate to executors and administrators are revised in Title 2 of this code, and this chapter is included in that title.

[Sections 53.002-53.050 reserved for expansion]

SUBCHAPTER B. COSTS AND SECURITY

Revised Law

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. (Tex. Prob.
Code, Sec. 12(a).)

Source Law

Sec. 12. (a) Applicability of Laws Regulating
Costs. The provisions of law regulating costs in
ordinary civil cases shall apply to all matters in
probate when not expressly provided for in this Code.

Revisor's Note

Section 12(a), Texas Probate Code, provides that
a law regulating costs in ordinary civil cases applies
to a matter in probate when not expressly provided for
in "this Code." The revised law substitutes a
reference to "this title" for the reference to "this
Code" because Section 3(bb), Texas Probate Code,
revised as Section 22.029 of this code, defines a
probate matter to include "a matter or proceeding
relating to the estate of a decedent" and that subject
matter is revised or redesignated, as appropriate, in
this title of the revised law.

Revised Law

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. (Tex. Prob. Code, Secs.
12(b), (c).)

Source Law

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

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

Revisor's Note

Section 12(c), Texas Probate Code, refers to
"fiduciary character." The revised law substitutes
"fiduciary capacity" for "fiduciary character"
because, in the context of this section, the terms are
synonymous and "fiduciary capacity" is more commonly
used.

Revised Law

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
(2) a fee for any service rendered by the probate court regarding the administration of the decedent's estate. (Tex. Prob. Code, Sec. 11A.)

Source Law

Sec. 11A. (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.

[Sections 53.054-53.100 reserved for expansion]

SUBCHAPTER C. PROCEDURES FOR PROBATE MATTERS

Revised Law

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. (Tex. Prob. Code, Sec. 19.)

Source Law

Sec. 19. The judge of the court in which probate proceedings are pending, at such times as he shall determine, shall call the estates of decedents in their regular order upon both the probate and claim dockets and make such orders as shall be necessary.

Revised Law

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. (Tex.
Prob. Code, Sec. 20.)

Source Law

Sec. 20. Whenever, on account of the county
designate the time and place for hearing;
judge's absence from the county seat, or his being on
enter the setting on the judge's docket; and
vacation, disqualified, ill, or deceased, such judge
certify on the docket the reason that the judge is
is unable to designate the time and place for hearing a
not acting to set the hearing.
probate matter pending in his court, authority is
hereby vested in the county clerk of the county in
which such matter is pending to designate such time and
place, entering such setting on the judge's docket and
certifying thereupon why such judge is not acting by
himself. If, after service of such notices and
perfection of the service of notices and
citations as required by law with reference to such
time and place of hearing has been perfected, no
citations required by law concerning the time and place of hearing,
a qualified judge is present for the hearing, the same
qualified judge is present to hear and determine the
shall automatically be continued from day to day until
matter.
a qualified judge is present to hear and determine the

Revisor's Note

Section 20, Texas Probate Code, refers to the
"county judge's absence." The revised law substitutes
"judge's absence" for the reasons stated in Revisor's
Note (1) to Section 53.001 of this chapter.

Revised Law

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. (Tex. Prob. Code, Sec. 23 (part).)

Source Law

Sec. 23. All decisions, orders, decrees, and
judgments of the county court in probate matters shall
be rendered in open court except in cases where it is
otherwise specially provided. . . .
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:

(1) a person who has a legal disability;
(2) a nonresident;
(3) an unborn or unascertained person; or
(4) an unknown heir.

(b) An attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

(Tex. Prob. Code, Sec. 34A.)

Source Law

Sec. 34A. Except as provided by Section 53(c) of this code, the judge of a probate court may appoint an attorney ad litem to represent the interests of a person having a legal disability, a nonresident, an unborn or unascertained person, or an unknown heir in any probate proceeding. Each attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court and to be taxed as costs in the proceeding.

Revised Law

Sec. 53.105. SIGNING OF MINUTES. (a) Except as provided by Subsection (b), the judge shall approve and sign the minutes on the first day of each month.

(b) If the first day of the month falls on a Sunday, the judge's approval must be entered on the preceding or succeeding day. (Tex. Prob. Code, Sec. 23 (part.).)

Source Law

Sec. 23. . . . The probate minutes shall be approved and signed by the judge on the first day of each month, except, however, that if the first day of the month falls on a Sunday, such approval shall be entered on the preceding or succeeding day.

Revisor's Note

Section 23, Texas Probate Code, refers to the "probate minutes." The revised law substitutes "minutes" for "probate minutes" because "minutes" is
defined to mean "probate minutes" in Section 3(u), Texas Probate Code, revised in this code as Section 22.023.

Revised Law
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. (Tex. Prob. Code, Sec. 25.)

Source Law
Sec. 25. Executions in probate matters shall be directed "to any sheriff or any constable within the State of Texas," made returnable in sixty days, and shall be attested and signed by the clerk officially under the seal of the court. All proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the District Court so far as applicable. Provided, however, that no execution directed to the sheriff or any constable of a specific county within this State shall be held defective if such execution was properly executed within such county by such officer.

CHAPTER 54. PLEADINGS AND EVIDENCE IN GENERAL

SUBCHAPTER A. PLEADINGS
Sec. 54.001. EFFECT OF FILING OR CONTESTING PLEADING
Sec. 54.002. DEFECT IN PLEADING
[Sections 54.003-54.050 reserved for expansion]

SUBCHAPTER B. EVIDENCE
Sec. 54.051. APPLICABILITY OF CERTAIN RULES RELATING TO WITNESSES AND EVIDENCE
CHAPTER 54. PLEADINGS AND EVIDENCE IN GENERAL

SUBCHAPTER A. PLEADINGS

Revised Law

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. (Tex. Prob. Code, Sec. 10C.)

Source Law

Sec. 10C. (a) The filing or contesting in probate court of any pleading relating to a decedent's estate does not constitute tortious interference with inheritance of the estate.

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

Revised Law

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. (Tex. Prob. Code, Sec. 9.)

Source Law

Sec. 9. No defect of form or substance in any pleading in probate shall be held by any court to invalidate such pleading, or any order based upon such pleading, unless the defect has been timely objected to and called to the attention of the court in which such proceedings were or are pending.

[Sections 54.003-54.050 reserved for expansion]

SUBCHAPTER B. EVIDENCE

Revised Law

Sec. 54.051. APPLICABILITY OF CERTAIN RULES RELATING TO WITNESSES AND EVIDENCE. Except as provided by Section 51.203, the rules relating to witnesses and evidence that apply in the district court apply in a proceeding arising under this title to the extent

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practicable. (Tex. Prob. Code, Sec. 22 (part).)

Source Law

Sec. 22. In proceedings arising under the provisions of this Code, the rules relating to witnesses and evidence that govern in the District Court shall apply so far as practicable except that...

Revisor's Note

Section 22, Texas Probate Code, provides in part that in proceedings arising under the provisions of "this Code," meaning the Texas Probate Code, the rules relating to witnesses and evidence that govern in district courts apply to the extent practicable. The revised law substitutes a reference to a proceeding arising under "this title" for the reference to proceedings arising under "this Code" and does not reference provisions revised or redesignated in other titles of this code for the reasons that follow.

The Texas Probate Code consists of general provisions, provisions relating to the estate of a decedent, the Durable Power of Attorney Act, and provisions relating to guardianships. Title 2 of this code, of which this chapter is a part, contains the revision of certain general provisions, the provisions relating to the estate of a decedent, and the Durable Power of Attorney Act. The other general provisions are revised in Title 1 of this code, and provisions relating to guardianships are redesignated as Title 25 of this code. The substance of Section 22 revised as this section is inapplicable to the provisions revised in Title 1 because no proceeding could arise under that title, and to the extent Section 22 applies to guardianship proceedings, it continues to apply because Section 603, Texas Probate Code, redesignated as Section 603 of this code, provides that the laws and rules governing the estates of decedents apply to...
guardianships to the extent those laws and rules are applicable and not inconsistent with other provisions of the code.

Revised Law

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.

(Tex. Prob. Code, Sec. 18.)

Source Law

Sec. 18. The record books or individual case files, including records on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation described in preceding sections of this code, or certified copies or reproductions of the records, shall be evidence in any court of this state.

Revisor's Note

(1) Section 18, Texas Probate Code, states that certain records and files "shall be evidence" in any court of this state. The revised law substitutes "are admissible as evidence" for the quoted language because the phrases have the same meaning and the latter phrase is consistent with modern usage.

(2) Section 18, Texas Probate Code, refers to "record books or individual case files, including records on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation described in preceding sections of this code." Sections 13, 14, 15, and 16, Texas Probate Code, are the sections of that code that precede Section 18 and describe those records and files, and Section 17, Texas Probate Code, is the section of that code that precedes Section 18 and
authorizes certain records to be maintained on a computer file, on microfilm, in the form of a digitized optical image, or in another form of data compilation. For the convenience of the reader, the revised law substitutes references to record books described by Sections 52.001, 52.002, and 52.003 of this code, which are the provisions that revise the relevant portion of Section 13 and Sections 14 and 16, Texas Probate Code, and to individual case files maintained under Section 52.052 of this code, which is the provision that revises Section 15, Texas Probate Code, and records maintained in a manner allowed under Section 52.004 of this code, which is the provision that revises Section 17, Texas Probate Code.

CHAPTER 55. COMPLAINTS AND CONTESTS

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CHAPTER 55. COMPLAINTS AND CONTESTS

SUBCHAPTER A. CONTEST OF PROCEEDINGS IN PROBATE COURT

Revised Law

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. (Tex. Prob. Code, Sec. 10.)

Source Law

Sec. 10. Any person interested in an estate may, at any time before any issue in any proceeding is decided upon by the court, file opposition thereto in writing and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition, as in other suits.

Revised Law

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. (Tex. Prob. Code, Sec. 21.)

Source Law

Sec. 21. In all contested probate and mental illness proceedings in the district court or in the county court or statutory probate court, county court at law or other statutory court exercising probate jurisdiction, the parties shall be entitled to trial by jury as in other civil actions.

Revisor's Note

Section 21, Texas Probate Code, refers to "the district court or . . . the county court or statutory
probate court, county court at law or other statutory
court exercising probate jurisdiction." The revised
law substitutes "probate court" for the quoted
language because Section 3(e), Texas Probate Code,
revised in Section 22.007 of this code, defines the
term to mean the courts listed above.

[Sections 55.003-55.050 reserved for expansion]

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

Revised Law
Sec. 55.051. DEFINITION. In this subchapter, "institution
of higher education" has the meaning assigned by Section 61.003,
Education Code. (Tex. Prob. Code, Sec. 10A(a) (part).)

Source Law
Sec. 10A. (a) An institution of higher education as defined by Section 61.003, Education Code, . . . .

Revised Law
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. (Tex. Prob. Code, Sec. 10A(a) (part).)

Source Law
(a) An institution of higher education . . . a private institution of higher education, or a charitable organization is a necessary party to a will contest or will construction suit involving a will in which the institution or organization is a distributee.

Revised Law
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
distributaries. (Tex. Prob. Code, Sec. 10A(b).)

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

Revisor's Note

Section 10A(b), Texas Probate Code, refers to
service on an institution of higher education or a
charitable organization by a court in the manner
provided for service on other parties by "this code,"
meaning the Texas Probate Code. The revised law
substitutes a reference to "this title" for the
reference to "this code" because the provisions of the
Texas Probate Code that relate to service on parties to
will contests and will construction suits are revised
in Title 2 of this code, and this chapter is included
in that title.

[Sections 55.054-55.100 reserved for expansion]

SUBCHAPTER C. MENTAL CAPACITY OF DECEDENT

Revised Law

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.
(Tex. Prob. Code, Sec. 10B (part).)

Source Law

Sec. 10B. Notwithstanding the Medical Practice
Act (Article 4495b, Vernon's Texas Civil Statutes), a
person who is a party to a will contest or a proceeding
in which a party relies on the mental or testamentary
capacity of a decedent before the decedent's death as
part of the party's claim or defense is entitled to
production of all communications or records relevant
to the decedent's condition before the decedent's
death. . . .

Revisor's Note

Section 10B, Texas Probate Code, refers to the
"Medical Practice Act (Article 4495b, Vernon's Texas
Civil Statutes)," which was revised in 1999 as
Subtitle B, Title 3, Occupations Code. The revised law substitutes a reference to Subtitle B, Title 3, Occupations Code, for the reference to Article 4495b.

Revised Law

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. (Tex. Prob. Code, Sec. 10B (part).)

Source Law

Sec. 10B. . . . On receipt of a subpoena of communications or records under this section and proof of filing of the will contest or proceeding, by file-stamped copy, the appropriate physician, hospital, medical facility, custodian of records, or other person in possession of the communications or records shall release the communications or records to the party requesting the records without further authorization.

[Sections 55.103-55.150 reserved for expansion]

SUBCHAPTER D. ATTACHMENT OF ESTATE PROPERTY

Revised Law

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. (Tex. Prob. Code, Sec. 26 (part).)

Source Law

Sec. 26. Whenever complaint in writing, under oath, shall be made to the county or probate judge by any person interested in the estate of a decedent that the executor or administrator is about to remove said estate, or any part thereof, beyond the limits of the State, such judge may order a writ to issue, directed "to any sheriff or any constable within the State of Texas," commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge shall make on such complaint.

... Provided, however, that no writ of attachment directed to the sheriff or any constable of a specific county within this State shall be held defective if such writ was properly executed within such county by such officer.

Revisor's Note

Section 26, Texas Probate Code, refers to a complaint made to the "county or probate judge."

Section 3(f), Texas Probate Code, defines "county judge," "probate judge," and "judge" identically as interchangeable terms, with each term meaning the presiding judge of a court having original jurisdiction over probate proceedings. The definition specifically includes the judge of a district court exercising jurisdiction in contested probate matters.

See the revisor's note to Section 22.019 of this code for an analysis of the amendment history of Sections 3(f) and 5, Texas Probate Code, that resulted in the inclusion of a district judge in the definition. Section 22.019 of this code, which is the revision of Section 3(f), Texas Probate Code, omits the terms "county judge" and "probate judge" because those terms are synonymous with the term "judge," and defining "county judge" and "probate judge" to mean, in part, a "district judge" is misleading. The revisor's note to that section indicates that throughout this code, the term "judge" will be substituted for references to "county judge" or "probate judge." Accordingly, the
revised law in this section substitutes "judge" for "county or probate judge."

Revised Law
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.

(Tex. Prob. Code, Sec. 26 (part).)

Source Law
Sec. 26. ... No such writ shall issue unless the complainant shall give bond, in such sum as the judge shall require, payable to the executor or administrator of such estate, conditioned for the payment of all damages and costs that shall be recovered for the wrongful suing out of such writ.

[Sections 55.153-55.200 reserved for expansion]

SUBCHAPTER E. SPECIFIC PERFORMANCE OF AGREEMENT TO TRANSFER TITLE

Revised Law
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. (Tex. Prob. Code, Sec. 27 (part).)

Source Law

Sec. 27. When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement or his legal representatives, may file a complaint in writing in the court of the county where the letters testamentary or of administration on the estate of the deceased obligor were granted, and cause the personal representative of such estate to be cited to appear at a date stated in the citation and show cause why specific performance of such bond or written agreement should not be decreed. Such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same cannot be filed; and if it cannot be so filed, the same or the substance thereof shall be set forth in the complaint. . . .

Revisor's Note

Section 27, Texas Probate Code, refers to a written agreement to "make title thereto." Throughout this subchapter, the revised law substitutes "transfer title" for "make title thereto" because the phrases are synonymous, in context, and the former phrase is more consistent with modern usage.

Revised Law

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. (Tex. Prob. Code, Sec. 27 (part).)

Source Law

Sec. 27. ... After the service of the citation, the court shall hear such complaint and the evidence thereon, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand specific performance thereof, a decree shall be made ordering the personal representative to make title to the property, according to the tenor of the obligation, fully describing the property in such decree. ...

Revisor's Note

Section 27, Texas Probate Code, refers to a bond or written agreement executed by the "testator or intestate." Throughout this subchapter, the revised law substitutes "decedent" for the quoted language for consistency of terminology and because a "decedent" includes a person who dies leaving a will, referred to as a "testator," and a person who dies without a will, referred to as an "intestate."

Revised Law

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. (Tex. Prob. Code, Sec. 27 (part).)

Source Law

Sec. 27. ... When a conveyance is made under the provisions of this Section, it shall refer to and identify the decree of the court authorizing it, and, when delivered, shall vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all requirements of the law have been complied with in obtaining the same.

[Sections 55.204-55.250 reserved for expansion]
SUBCHAPTER F. BILL OF REVIEW

Revised Law
Sec. 55.251. REVISION AND CORRECTION OF ORDER 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 rendered by the court revised and corrected on a showing of error in the order.

(b) A bill of review to revise and correct an order may not be filed more than two years after the date of the order. (Tex. Prob. Code, Sec. 31 (part).)

Source Law
Sec. 31. Any person interested may, by a bill of review filed in the court in which the probate proceedings were had, have any decision, order, or judgment rendered by the court, or by the judge thereof, revised and corrected on showing error therein; but ... no bill of review shall be filed after two years have elapsed from the date of such decision, order, or judgment.

Revisor's Note
Section 31, Texas Probate Code, refers to a "decision, order, or judgment" rendered by the court or "the judge thereof." Throughout this subchapter, the revised law omits the references to "decision" and "judgment" because, in context, a "decision" or "judgment" of a court is entered in the records of the court proceedings as an "order" of the court. In addition, the revised law omits the reference to an order rendered by the judge of the court as unnecessary because a reference to an order rendered by the court includes an order rendered by the judge of that court.

Revised Law
Sec. 55.252. INJUNCTION. A process or action under a court order subject to a bill of review filed under Section 55.251 may be stayed only by writ of injunction. (Tex. Prob. Code, Sec. 31 (part).)

Source Law
Sec. 31. ... no process or action under such
decision, order or judgment shall be stayed except by
writ of injunction, and . . . .

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. (Tex. Prob. Code, Sec. 221A.)

Sec. 221A. (a) A personal representative may change its resident agent to accept service of process in a probate proceeding or other action relating to the estate by filing a statement of the change titled "Designation of Successor Resident Agent" with the court in which the probate proceeding is pending. The statement must contain the names and addresses of the:

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

(b) The designation of a successor resident agent made in a statement filed under this section takes effect on the date on which the statement is filed with the court.

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. (Tex. Prob. Code, Sec. 221B.)

Source Law

Sec. 221B. (a) A resident agent of a personal representative may resign as the resident agent by giving notice to the personal representative and filing with the court in which the probate proceeding is pending a statement titled "Resignation of Resident Agent" that:

1. contains the name of the personal representative;
2. contains the address of the personal representative most recently known by the resident agent;
3. states that notice of the resignation has been given to the personal representative and that the personal representative has not designated a successor resident agent; and
4. contains the date on which the notice of the resignation was given to the personal representative.

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

1. the personal representative at the address most recently known by the agent; and
2. each party in the case or the party's attorney or other designated representative of record.
The resignation of a resident agent takes effect on the date on which the court enters an order accepting the agent's resignation. A court may not enter an order accepting the agent's resignation unless the agent complies with the requirements of this section.

[Chapters 57-100 reserved for expansion]

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

CHAPTER 101. ESTATE ASSETS IN GENERAL

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CHAPTER 101. ESTATE ASSETS IN GENERAL

SUBCHAPTER A. PASSAGE AND POSSESSION OF DECEDENT'S ESTATE ON DEATH

Revised Law

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.

(Tex. Prob. Code, Sec. 37 (part).)

Source Law

Sec. 37. When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will, and all powers of appointment granted in such will, shall vest immediately in the devisees or

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legatees of such estate and the donees of such powers; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject, however, to . . . whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exception aforesaid . . . .

Revisor's Note

(1) Section 37, Texas Probate Code, refers to an estate "devised or bequeathed" by a will. The revised law omits the reference to "bequeathed" as unnecessary. Traditionally, "devise" referred to the disposition of real property by a will; "bequeath" usually refers to the disposition of personal property by a will. Black's Law Dictionary (revised eighth edition, 2004). Section 3(h), Texas Probate Code, revised as Section 22.008 of this code, provides that "devise" means "to dispose of real or personal property, or of both, by will." The revised law therefore omits "bequeathed" because the meaning of that term is included within the meaning of "devised."

(2) Section 37, Texas Probate Code, refers to "devisees or legatees" of an estate. The revised law omits the reference to "legatees" because Section 3(i), Texas Probate Code, revised as Section 22.009 of this code, provides that "devisee" includes "legatee."

Revised Law

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. (Tex. Prob. Code, Sec. 46(a) (part).)

Source Law

Sec. 46. (a) If two or more persons hold an
interest in property jointly, and one joint owner dies
before severance, the interest of the decedent in the
joint estate shall not survive to the remaining joint
owner or owners but shall pass by will or intestacy
from the decedent as if the decedent's interest had
been severed....

Revised Law
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. (Tex. Prob. Code, Sec. 37 (part).)

Source Law
Sec. 37. ... but upon the issuance of letters
testamentary or of administration upon any such
estate, the executor or administrator shall have the
right to possession of the estate as it existed at the
death of the testator or intestate, with the exception
aforesaid; and he shall recover possession of and hold
such estate in trust to be disposed of in accordance
with the law.

[Sections 101.004-101.050 reserved for expansion]

SUBCHAPTER B. LIABILITY OF ESTATE FOR DEBTS

Revised Law
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. (Tex. Prob. Code,
Sec. 37. [When a person dies] . . . [all of his estate] . . . [shall vest] . . . [subject, however, to] the payment of the debts of the testator or intestate, except such as is exempted by law, and subject to the payment of court-ordered child support payments that are delinquent on the date of the person's death; and [whenever a person dies intestate, all of his estate shall vest . . . but with the exception aforesaid] shall still be liable and subject in their hands to the payment of the debts of the intestate and the delinquent child support payments; . . . .

Revised Law

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. (Tex. Prob. Code, Secs. 155 (part), 156 (part).)

Source Law

Sec. 155. . . . Nothing in this part of this chapter prohibits the administration of community property under other provisions of this code relating to the administration of an estate.

Sec. 156. The community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse upon death. In addition, the interest that the deceased spouse owned in any other nonexempt community property passes to his or her heirs or devisees charged with the debts which were enforceable against such deceased spouse prior to his or her death. . . .

Revisor's Note

(1) Section 155, Texas Probate Code, refers to "this part of this chapter," meaning Part 5, Chapter VI, Texas Probate Code. Subsections (a) and (b) of
this section of the revised law are derived entirely
from Section 156, Texas Probate Code, which is
included in Part 5. The revised law substitutes
"[t]his section" for "this part of this chapter" and
does not reference the provisions revising other
portions of Part 5 because this part of Section 155 is
also revised in the chapter of this code that contains
the revision of those other portions.

(2) Section 155, Texas Probate Code, refers to
"other provisions of this code relating to the
administration of an estate." The reference to "of
this code" in Section 155 means the Texas Probate Code.
The revised law substitutes a reference to "this
title" for the reference to "this code" because the
provisions of the Texas Probate Code that relate to the
administration of an estate are revised in, or
redesignated as part of, Title 2 of this code, and this
chapter is included in that title.

CHAPTER 102. PROBATE ASSETS: DECEDENT'S HOMESTEAD

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CHAPTER 102. PROBATE ASSETS: DECEDENT'S HOMESTEAD

Revised Law

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. (Tex. Prob. Code, Sec. 42(c)
(part).)
(c) Homestead Rights, Exempt Property, and Family Allowances. A child as provided by Subsections (a) and (b) of this section is a child of his mother, and a child of his father, for the purpose of determining homestead rights.

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. (Tex. Prob. Code, Sec. 282.)

Sec. 282. The homestead rights of the surviving spouse and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the surviving spouse and the deceased, and the respective interests of such surviving spouse and children shall be the same in one case as in the other.

Section 282, Texas Probate Code, refers to "the deceased." Throughout the Texas Probate Code, a deceased person is more commonly referred to as a "decedent." The revised law throughout this chapter substitutes references to a "decedent" for references to the "deceased" for consistency of terminology throughout this code.

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. (Tex. Prob. Code, Sec. 283.)

Sec. 283. On the death of the husband or wife, leaving a spouse surviving, the homestead shall descend and vest in like manner as other real property of the deceased and shall be governed by the same laws of descent and distribution.
Sec. 102.004. LIABILITY OF HOMESTEAD FOR DEBTS. 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. (Tex. Prob. Code, Sec. 270.)

Sec. 270. The homestead shall not be liable for the payment of any of the debts of the estate, except for:

(1) the purchase money thereof;
(2) the taxes due thereon;
(3) work and material used in constructing improvements thereon if the requirements of Section 50(a)(5), Article XVI, Texas Constitution, are met;
(4) an owelty of partition imposed against the entirety of the property by court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
(5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the decedent;
(6) an extension of credit on the homestead if the requirements of Section 50(a)(6), Article XVI, Texas Constitution, are met; or
(7) a reverse mortgage.
Revised Law

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. (Tex. Prob. Code, Sec. 284.)

Source Law

Sec. 284. The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the surviving spouse, or so long as the survivor elects to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased is permitted, under the order of the proper court having jurisdiction, to use and occupy the same.

Revisor's Note

(1) Section 284, Texas Probate Code, in part, prohibits the partition of a decedent's homestead "during the lifetime of the surviving spouse, or so long as the survivor elects to use or occupy the same as a homestead." Section 52, Article XVI, Texas Constitution, and the predecessor statutes to Sections 282-284, Texas Probate Code, revised as this chapter, have been held to entitle a surviving spouse to the exclusive right to possess, use, and occupy the homestead of a decedent until the surviving spouse's death. See, for example, Sargeant v. Sargeant, 15 S.W.2d 589 (Tex. 1929). However, the right to possess, use, and occupy the homestead terminates on the surviving spouse's abandonment of the homestead. See Moore v. Moore, 33 S.W. 217 (Tex. 1895); Hoefling v. Hoefling, 167 S.W. 210 (Tex. 1914). On the surviving spouse's election to no longer use or occupy the property as a homestead, Section 285, Texas Probate Code, revised as Section 102.006 of this chapter,
authorizes the partition of the homestead among its respective owners. The revised law therefore clarifies that the prohibition on partitioning the homestead continues throughout the surviving spouse's lifetime as long as the surviving spouse elects to use or occupy the property as a homestead.

(2) Section 284, Texas Probate Code, refers to an order rendered by a "proper court having jurisdiction." General laws of jurisdiction prescribe which courts have jurisdiction of the matters with respect to which the referenced types of orders would be rendered, making those courts the proper courts to render orders in those matters. See, for example, Sections 4 and 5, Texas Probate Code, redesignated as Sections 4 and 5 of this code, and Section 25.0003, Government Code, which provide for certain courts' jurisdiction of probate proceedings. A court may render an enforceable order with respect to a matter only if the court has jurisdiction of the matter, and an explicit statement requiring that the court rendering the order be a "proper" court "having jurisdiction" is unnecessary. For that reason, the revised law omits the quoted phrases.

Revised Law
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. (Tex. Prob. Code, Sec. 285.)
Sec. 285. When the surviving spouse dies or sells his or her interest in the homestead, or elects no longer to use or occupy the same as a homestead, or when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

Revisor's Note
Section 285, Texas Probate Code, refers to a "proper" court no longer granting certain authority to a guardian. The revised law omits the reference to the court being "proper" for the reason stated in Revisor's Note (2) to Section 102.005.

[Chapters 103-110 reserved for expansion]

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. (Tex. Prob. Code, Sec. 46(a) (part).)

Source Law

Sec. 46. (a) [If two or more persons hold an interest in property jointly, ....] The joint owners may agree in writing, however, that the interest of any joint owner who dies shall survive to the surviving joint owner or owners, but no such agreement shall be inferred from the mere fact that the property is held in joint ownership.

Revisor's Note

Section 46(a), Texas Probate Code, provides in the second sentence that joint owners of property may by written agreement create a right of survivorship with respect to the property. That provision is an exception to the first sentence of Section 46(a), revised in this code as Section 101.002, which states that the interest held by a joint owner who dies does not survive to the remaining joint owners, but instead passes by will or intestacy. For the convenience of the reader, the revised law adds a cross-reference to Section 101.002.

Revised Law

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. (Tex. Prob. Code, Sec. 46(b).)

Source Law

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

Revisor's Note

(1) Section 46(b), Texas Probate Code, refers to Section 46(a), Texas Probate Code. Part of Section
46(a) is revised in Section 111.001 of this chapter, and the remainder of the section is revised in this code as Section 101.002. The revised law substitutes a reference to Section 111.001 of this chapter for the reference to Section 46(a) because that is the section in which the relevant portion of Section 46(a) is revised.

(2) Section 46(b), Texas Probate Code, refers to "Part 3 of Chapter XI of this code," meaning Part 3, Chapter XI, Texas Probate Code. Part 3, Chapter XI, consists of Sections 451 through 462, Texas Probate Code, which are revised in this code as Chapter 112. The revised law is drafted accordingly.

[Sections 111.003-111.050 reserved for expansion]

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

Revised Law

Sec. 111.051. DEFINITIONS. In this subchapter:

(1) "Employees' trust" means:
   (A) a trust that forms a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C. 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)).

Source Law

Sec. 450. (a) [Any of the following provisions in . . . accounts with] financial institutions as defined in Part 1 of this chapter . . . .

(c) In this section:

(1) "Employees' trust" means:
   (A) a trust that forms a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 401 (1986));
   (B) a pension trust under Chapter 111, Property Code; and
   (C) an employer-sponsored benefit plan or program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.

(2) "Individual retirement account" means a trust, custodial arrangement, or annuity under Section 408(a) or (b), Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

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

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

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

Revisor's Note

Section 450(a), Texas Probate Code, refers to financial institutions as defined by "Part 1 of this chapter," meaning Part 1, Chapter XI, Texas Probate Code. Section 436, Texas Probate Code, revised in
relevant part in this code as Section 113.001, is included in Part 1, Chapter XI, and defines terms for purposes of Part 1, including the term "financial institution." Accordingly, the revised law substitutes a reference to Section 113.001 for the reference to "Part 1 of this chapter."

Revised Law

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. (Tex. Prob. Code, Sec. 450(a) (part).)

Source Law

Sec. 450. (a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, employees' trust, retirement account, deferred compensation arrangement, custodial agreement, pension plan, trust agreement, conveyance of real or personal property, securities, accounts with financial institutions . . . , mutual fund account, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be
nontestamentary, and this code does not invalidate the
instrument or any provision:
(1) that money or other benefits
theretofore due to, controlled, or owned by a decedent
shall be paid after his death to a person designated by
the decedent in either the instrument or a separate
writing, including a will, executed at the same time as
the instrument or subsequently;
(2) that any money due or to become due
under the instrument shall cease to be payable in event
of the death of the promisee or the promissor before
payment or demand; or
(3) that any property which is the subject
of the instrument shall pass to a person designated by
the decedent in either the instrument or a separate
writing, including a will, executed at the same time as
the instrument or subsequently.

Revisor's Note
Section 450(a), Texas Probate Code, refers to
"real or personal property." The revised law omits the
reference to "real or personal" as unnecessary because
Section 311.005(4), Government Code (Code
Construction Act), applicable to the revised law,
defines "property" to mean real and personal property.

Revised Law
Sec. 111.053. CREDITOR'S RIGHTS NOT LIMITED. Nothing in
this subchapter limits the rights of a creditor under another law of
this state. (Tex. Prob. Code, Sec. 450(b).)

Source Law
(b) Nothing in this section limits the rights of
creditors under other laws of this state.

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CHAPTER 112. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law
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. (New.)

Revisor's Note
The revised law adds a definition of "community property survivorship agreement" for the convenience of the reader and to avoid the frequent, unnecessary repetition of the substance of the definition.

Revised Law
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. (Tex. Prob. Code, Sec. 462.)

Source Law
Sec. 462. The provisions of Part 1 of this chapter apply to multiple-party accounts held by spouses with a right of survivorship to the extent that such provisions are not inconsistent with the provisions of this part.

Revisor's Note
(1) Section 462, Texas Probate Code, refers to "Part 1 of this chapter," meaning Part 1, Chapter XI,
Texas Probate Code. Part 1, Chapter XI, Texas Probate Code, is revised as Chapter 113 of this code. Throughout this chapter, the revised law substitutes a reference to Chapter 113 for the quoted language.

(2) Section 462, Texas Probate Code, refers to "this part," meaning Part 3, Chapter XI, Texas Probate Code. Part 3, Chapter XI, Texas Probate Code, is revised as this chapter. The revised law is drafted accordingly throughout this chapter.

[Sections 112.003-112.050 reserved for expansion]

SUBCHAPTER B. COMMUNITY PROPERTY SURVIVORSHIP AGREEMENTS

Revised Law

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. (Tex. Prob. Code, Sec. 451.)

Source Law

Sec. 451. 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.

Revised Law

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. (Tex. Prob. Code, Sec. 452.)

**Source Law**

Sec. 452. An agreement between spouses creating a right of survivorship in community property must be in writing and signed by both spouses. If an agreement in writing is signed by both spouses, the agreement shall be sufficient to create a right of survivorship in the community property described in the agreement if it includes any of the following phrases:

1. "with right of survivorship";
2. "will become the property of the survivor";
3. "will vest in and belong to the surviving spouse"; or
4. "shall pass to the surviving spouse."

An agreement that otherwise meets the requirements of this part, however, shall be effective without including any of those phrases.

**Revised Law**

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. (Tex. Prob. Code, Secs. 456(a) (part), 458 (part).)

**Source Law**

Sec. 456. (a) Application for Adjudication. An agreement between spouses creating a right of survivorship in community property that satisfies the requirements of this part is effective without an adjudication.

Sec. 458. An agreement between spouses creating a right of survivorship in community property that satisfies the requirements of this code is effective and enforceable without an adjudication.

**Revisor's Note**

Section 458, Texas Probate Code, refers to an agreement between spouses creating a right of survivorship in community property that satisfies the requirements of "this code." Throughout this chapter, the revised law substitutes references to "this chapter" for references to "this code" in this context because the requirements for an agreement between spouses creating a right of survivorship in community property that otherwise meets the requirements of this chapter is effective without including any of those phrases.
property are contained in Part 3, Chapter XI, Texas
Probate Code, which is revised as this chapter.

Revised Law
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. (Tex. Prob. Code, Sec. 455.)

Source Law
Sec. 455. An agreement between spouses made in
accordance with this part of this code may be revoked
in accordance with the terms of the agreement. If the
agreement does not provide a method for revocation,
the agreement may be revoked by a written instrument
signed by both spouses or by a written instrument
signed by one spouse and delivered to the other spouse.
The agreement may be revoked with respect to specific
property subject to the agreement by the disposition
of such property by one or both of the spouses if such
disposition is not inconsistent with specific terms of
the agreement and applicable law.

[Sections 112.055-112.100 reserved for expansion]

SUBCHAPTER C. ADJUDICATION TO PROVE COMMUNITY PROPERTY
SURVIVORSHIP AGREEMENT

Revised Law
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.
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.

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

The original community property survivorship agreement shall be filed with an application under this section. (Tex. Prob. Code, Secs. 456(a) (part), (d).)

Source Law

(a) [Application for Adjudication. An agreement between spouses creating a right of survivorship in community property that satisfies the requirements of this part is effective without an adjudication.] After the death of a spouse, however, the surviving spouse or the personal representative of the surviving spouse may apply to the court for an order stating that the agreement satisfies the requirements of this code and is effective to create a right of survivorship in community property. The original agreement shall be filed with the application for an adjudication. An application for an adjudication under this section must include:

1. the name and domicile of the surviving spouse;
2. the name and former domicile of the decedent and the fact, time, and place of death;
3. facts establishing venue in the court; and
4. the social security number of the decedent, if known.

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

Revisor's Note

(1) Section 456(a), Texas Probate Code, provides that a surviving spouse or personal representative may apply for an order stating that an agreement between spouses is effective to create a right of survivorship in community property. The
revised law adds a cross-reference to Section 112.053 of this chapter for the convenience of the reader. Although Sections 456(a) and 458, Texas Probate Code, the pertinent parts of which are revised as Section 112.053, provide that those agreements are effective without adjudication, Sections 456 through 459, Texas Probate Code, revised as this subchapter, set forth optional procedures that may be used to prove the existence of community property survivorship agreements for the purpose of establishing title to community property subject to those agreements.

(2) Section 456(a), Texas Probate Code, refers to the "decedent." Throughout this chapter, the revised law substitutes "deceased spouse" for "decedent" for consistency of terminology and because it is clear from the context that "decedent" refers to the "deceased spouse."

Revised Law

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. (Tex. Prob. Code, Sec. 456(b).)

Source Law

(b) Proof Required. An applicant for an adjudication under this section must prove to the satisfaction of the court:

(1) that the spouse whose community property interest is at issue is dead;
(2) that the court has jurisdiction and
venue;

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

(4) that the agreement was not revoked;

and

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

Revisor's Note

Section 456(b), Texas Probate Code, refers to
citation that has been served and returned in the
manner and for the time required by "this code,"
meaning the Texas Probate Code. The revised law
substitutes a reference to "this title" for the
reference to "this code" because the provisions of the
Texas Probate Code related to nontestamentary
transfers, including rights of survivorship
agreements, are revised in Title 2 of this code, and
this chapter is included in that title.

Revised Law

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. (Tex. Prob. Code, Sec. 456(c).)

Source Law

(c) Method of Proof. The deceased spouse's
signature to the agreement may be proved by the sworn
testimony of one witness taken in open court, by the
affidavit of one witness, or by the deposition of one
witness, either written or oral, taken in the same
manner and under the same rules as depositions in other
civil actions. If the surviving spouse is competent to
make an oath, the surviving spouse's signature to the
agreement may be proved by the sworn testimony of the
surviving spouse taken in open court, by the affidavit
of the surviving spouse, or by the deposition of the
surviving spouse either written or oral, taken in the
same manner and under the same rules as depositions in
other civil actions. If the surviving spouse is not
competent to make an oath, the surviving spouse's
signature to the agreement may be proved in the manner
provided above for the proof of the deceased spouse's
signature.

Revised Law

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. (Tex. Prob. Code, Sec. 457.)

Source Law

Sec. 457. On completion of a hearing on an
application under Section 456 of this code, if the
court is satisfied that the requisite proof has been
made, an order adjudging the agreement valid shall be
entered. Certified copies of the agreement and order
may be recorded in other counties and may be used in
evidence, as the original might be, on the trial of the
same matter in any other court, on appeal or otherwise.

Revised Law

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).

(Tex. Prob. Code, Sec. 458 (part).)
be removed for inspection to another place on order of
the court where adjudicated. If the court orders an
original agreement to be removed to another place for
inspection, the person removing the original agreement
shall give a receipt therefor, and the clerk of the
court shall make and retain a copy of the original
agreement.

[Sections 112.107-112.150 reserved for expansion]

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

Revised Law

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. (Tex. Prob. Code, Sec. 453.)

Source Law

Sec. 453. Property subject to an agreement
between spouses creating a right of survivorship in
community property remains community property during
the marriage of the spouses. Such an agreement does
not affect the rights of the spouses concerning
management, control, and disposition of the property
subject to the agreement unless the agreement provides
otherwise.

Revised Law

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.
(Tex. Prob. Code, Sec. 454.)

Source Law

Sec. 454. Transfers at death resulting from
agreements made in accordance with this part of this
code are effective by reason of the agreement involved
and are not testamentary transfers. Such transfers
are not subject to the provisions of this code applicable to testamentary transfers except as expressly provided otherwise in this code.

Revisor's Note

Section 454, Texas Probate Code, refers to "this code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this code" because the provisions of the Texas Probate Code that relate to decedents' estates are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

[Sections 112.153-112.200 reserved for expansion]

SUBCHAPTER E. THIRD PARTIES DEALING WITH COMMUNITY PROPERTY

SUBJECT TO RIGHT OF SURVIVORSHIP

Revised Law

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. (Tex. Prob. Code, Sec. 460(f) (part).)

Source Law

(f) Definitions. Under this section:

(3) a "certified copy" is a copy of an official record or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, certified as correct in accordance with the provisions of Rule 902 of the Texas Rules of Civil Evidence.

Revisor's Note

(1) Section 460(f), Texas Probate Code, refers to definitions "[u]nder this section." Throughout this subchapter, the revised law substitutes references to "this subchapter" for references to "this section" because Section 460, Texas Probate Code, is revised as this subchapter.

(2) Section 460(f)(3), Texas Probate Code,
refers to a copy of an official record or document that
is certified as correct in accordance with the
provisions of Rule 902 of the "Texas Rules of Civil
Evidence." In 1998, the Texas Rules of Evidence
replaced the Texas Rules of Civil Evidence and the
Texas Rules of Criminal Evidence. Rule 902(4), Texas
Rules of Evidence, governs certification of copies of
public records. The revised law therefore substitutes
a reference to the "Texas Rules of Evidence" for the
reference to the "Texas Rules of Civil Evidence."

Revised Law
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. (Tex. Prob. Code, Sec. 460(f) (part).)

Source Law
(f) Definitions. Under this section:

(1) a person or entity has "actual
knowledge" of an agreement creating a right of
survivorship in community property or of the
revocation of such an agreement only if the person or
entity has received written notice or has received the
original or a certified copy of the agreement or
revoking instrument;

(2) a person or entity has "notice" of an
agreement creating a right of survivorship in
community property or the revocation of such an
agreement if the person or entity has actual knowledge
of the agreement or revocation or, with respect to real
property, if the agreement or revoking instrument is
properly recorded in the county in which the real
property is located; and

... Revised Law

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. (Tex. Prob. Code, Sec.
460(a).)

Source Law

Sec. 460. (a) Personal Representatives. If the
personal representative of a decedent's estate has no
actual knowledge of the existence of an agreement
creating a right of survivorship in community property
in the decedent's surviving spouse, the personal
representative shall not be liable to the surviving
spouse or to any person claiming from the surviving
spouse for selling, exchanging, distributing, or
otherwise disposing of the property or an interest
therein.

Revisor's Note

Section 460(a), Texas Probate Code, refers to
property "or an interest therein." Section
311.005(4), Government Code (Code Construction Act),
applicable to the revised law, defines "property" to
mean real and personal property. Section 3(dd), Texas
Probate Code, revised as Section 22.030 of this code,
defines "real property" to include an interest in that
property. Section 3(z), Texas Probate Code, revised
as Section 22.028 of this code, defines "personal
property" to include an interest in that property. The
revised law therefore omits the quoted language as
unnecessary.

Revised Law

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.

(Tex. Prob. Code, Sec. 460(b).)

Source Law

(b) Purchaser without Notice of Survivorship Agreement. (1) If any person or entity purchases real
or personal property from a person claiming from a
decedent more than six months after the date of the
decedent's death, for value, and without notice of the
existence of an agreement creating a right of
survivorship in the property in the decedent's
surviving spouse, the purchaser shall have good title
to the interest which the person claiming from the
decedent would have had in the absence of the
agreement, as against the claims of the surviving
spouse or any person claiming from the surviving
spouse.

(2) If any person or entity purchases real
or personal property from the personal representative
of a decedent's estate, for value, and without notice
of the existence of an agreement creating a right of
survivorship in the property in the decedent's
surviving spouse, the purchaser shall have good title
to the interest which the personal representative
would have had the power to convey in the absence of
the agreement, as against the claims of the surviving
spouse or any person claiming from the surviving
spouse.
Revisor's Note

Section 460(b), Texas Probate Code, refers to "real or personal property." Throughout this chapter, the revised law omits references to "real or personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

Revised Law

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. (Tex. Prob. Code, Sec. 460(d).)

Source Law

(d) Debtors, Transfer Agents, and Other Persons Acting without Notice of Survivorship Agreement. If any person or entity owing money to a decedent or having custody of any property or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right which was owned by a decedent prior to death has no actual knowledge of an agreement creating a right of survivorship in such property in the decedent's surviving spouse, that person or entity may pay or transfer such property to the personal representative of the decedent's estate or to the heirs, legatees, or devisees of the decedent's estate if no administration is pending on the estate, and the person or entity shall be discharged from all claims for amounts or property so paid or transferred.
Revisor's Note

Section 460(d), Texas Probate Code, refers to the "heirs, legatees, or devisees of the decedent's estate." The revised law omits the reference to "legatees" because Section 3(i), Texas Probate Code, revised as Section 22.009 of this code, provides that "devisee" includes "legatee."

Revised Law

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.
(Tex. Prob. Code, Sec. 460(c).)

(c) Purchaser without Notice of Revocation of Survivorship Agreement. If any person or entity purchases real or personal property from a decedent's surviving spouse more than six months after the date of the decedent's death, for value, and:

(1) with respect to real or personal property, the purchaser has received an original or certified copy of an agreement purporting to create a right of survivorship in such property in the decedent's surviving spouse, purportedly signed by the decedent and the surviving spouse; or

(2) with respect to real property, an agreement purporting to create a right of survivorship in such property in the decedent's surviving spouse, purportedly signed by the decedent and the surviving spouse, is properly recorded in a county in which a part of the property is located; and the purchaser has no notice that the agreement was revoked, the purchaser shall have good title to the interest which the surviving spouse would have had in the absence of a revocation of the agreement, as against the claims of the personal representative of the decedent's estate and all persons claiming from the decedent or the personal representative of the decedent's estate.

Revised Law
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. (Tex. Prob. Code, Sec. 460(e).)

Source Law
(e) Debtors, Transfer Agents, and Persons Acting without Notice of Revocation of Survivorship Agreement. If any person or entity owing money to a decedent or having custody of any property or acting as
registrar or transfer agent of any evidence of interest, indebtedness, property, or right which was owned by a decedent prior to death is presented with the original or a certified copy of an agreement creating a right of survivorship in such property in the decedent's surviving spouse, purportedly signed by the decedent and the decedent's surviving spouse and if such person or entity has no actual knowledge that the agreement was revoked, that person or entity may pay or transfer such property to the decedent's surviving spouse and shall be discharged from all claims for amounts or property so paid or transferred.

Revised Law
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. (Tex. Prob. Code, Sec. 460(g).)

Source Law
(g) Other Cases. Except as expressly provided in this section, the provisions of this section do not affect the rights of a surviving spouse or person claiming from the surviving spouse in disputes with persons claiming from a 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 pursuant to an agreement that satisfies the requirements of this code.

[Sections 112.209-112.250 reserved for expansion]

SUBCHAPTER F. RIGHTS OF CREDITORS

Revised Law
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. (Tex. Prob. Code, Sec. 461 (part).)

Source Law
Sec. 461. The provisions of Part 1 of this chapter govern the rights of creditors in multiple-party accounts, as defined by Section 436 of Part 1. . . .

Revised Law
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. (Tex. Prob. Code, Sec. 461 (part).)

Source Law

Sec. 461. [The provisions of Part 1 of this chapter govern the rights of creditors in multiple-party accounts as defined by Section 436 of Part 1.] Except as expressly provided above in this section, the community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse upon death without regard to a right of survivorship in the decedent's surviving spouse under an agreement made in accordance with the provisions of this part. The surviving spouse shall be liable to account to the deceased spouse's personal representative for the property received by the surviving spouse pursuant to a right of survivorship to the extent necessary to discharge such liabilities. No proceeding to assert such a liability shall be commenced unless the personal representative has received a written demand by a creditor, and no proceeding shall be commenced later than two years following the death of the decedent. Property recovered by the personal representative shall be administered as part of the decedent's estate.

Revisor's Note

Section 461, Texas Probate Code, provides that "[e]xcept as expressly provided above in this
section," certain community property continues to be subject to a deceased spouse's liabilities. The revised law substitutes a reference to Section 112.251 because the provisions of Section 461 referred to in the quoted language are revised as Section 112.251.

**Revised Law**

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. (Tex. Prob. Code, Sec. 461 (part).)

**Source Law**

Sec. 461. . . . This section does not affect the protection given to persons and entities under Section 460 of this code unless, before payment or transfer to the surviving spouse, the person or entity received a written notice from the decedent's personal representative stating the amount needed to satisfy the decedent's liabilities.

**Revisor's Note**

(1) Section 461, Texas Probate Code, refers to "Section 460 of this code," meaning the Texas Probate Code. Section 460, Texas Probate Code, is revised as Subchapter E of this chapter, and the revised law is drafted accordingly.

(2) Section 461, Texas Probate Code, refers to the amount needed to "satisfy" the deceased spouse's liabilities. The revised law substitutes "discharge" for "satisfy" because the terms are synonymous in context and "discharge" is more consistent with the terminology used in this subchapter.
Sec. 113.002. DEFINITION OF PARTY

Sec. 113.003. DEFINITION OF NET CONTRIBUTION

Sec. 113.004. TYPES OF ACCOUNTS

Sec. 113.005. AUTHORITY OF FINANCIAL INSTITUTIONS TO ENTER INTO CERTAIN ACCOUNTS

[Sections 113.006-113.050 reserved for expansion]

SUBCHAPTER B. UNIFORM ACCOUNT FORM

Sec. 113.051. ESTABLISHMENT OF TYPE OF ACCOUNT; APPLICABILITY OF CERTAIN LAW

Sec. 113.052. FORM

Sec. 113.053. USE OF FORM; DISCLOSURE

[Sections 113.054-113.100 reserved for expansion]

SUBCHAPTER C. OWNERSHIP AND OPERATION OF ACCOUNTS

Sec. 113.101. EFFECT OF CERTAIN PROVISIONS REGARDING OWNERSHIP BETWEEN PARTIES AND OTHERS

Sec. 113.102. OWNERSHIP OF JOINT ACCOUNT DURING PARTIES' LIFETIMES

Sec. 113.103. OWNERSHIP OF P.O.D. ACCOUNT DURING ORIGINAL PAYEE'S LIFETIME

Sec. 113.104. OWNERSHIP OF TRUST ACCOUNT DURING TRUSTEE'S LIFETIME

Sec. 113.105. OWNERSHIP OF CONVENIENCE ACCOUNT; ADDITIONS AND ACCRUALS

[Sections 113.106-113.150 reserved for expansion]

SUBCHAPTER D. RIGHTS OF SURVIVORSHIP IN ACCOUNTS

Sec. 113.151. ESTABLISHMENT OF RIGHT OF SURVIVORSHIP IN JOINT ACCOUNT; OWNERSHIP ON DEATH OF PARTY

Sec. 113.152. OWNERSHIP OF P.O.D. ACCOUNT ON DEATH OF PARTY

Sec. 113.153. OWNERSHIP OF TRUST ACCOUNT ON DEATH OF TRUSTEE

Sec. 113.154. OWNERSHIP OF CONVENIENCE ACCOUNT ON DEATH OF PARTY
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.

(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 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
(9) "Withdrawal" includes payment to a third person in accordance with a check or other directive of a party. (Tex. Prob. Code, Secs. 436(1), (2), (3), (8), (9), (11), (12), (13), (15).)
Revisor's Note

(1) Section 436, Texas Probate Code, refers to "this part," meaning Part 1, Chapter XI, Texas Probate Code. Part 1, Chapter XI, Texas Probate Code, is revised as this chapter. The revised law is drafted accordingly throughout this chapter.

(2) Section 436(3), Texas Probate Code, refers to financial institutions, "including, without limitation" certain types of institutions. The revised law omits "without limitation" because Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, provides that "including" is a term of enlargement and not of limitation and does not create a presumption that components not expressed are excluded.

Revised Law

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 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. (Tex. Prob. Code, Sec. 436(7).)

Source Law

Sec. 436. In this part:

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a
party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

Revised Law
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. (Tex. Prob. Code, Secs. 436(6), 444 (part).)

Source Law
Sec. 436. In this part:

(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits made to that account by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

Sec. 444. . . . A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

Revised Law
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. (Tex.
Prob. Code, Secs. 436(4), (5), (10), (14), 438A(a).)

Source Law
Sec. 436. In this part:

(4) "Joint account" means an account
payable on request to one or more of two or more
parties whether or not there is a right of
survivorship.
(5) "Multiple-party account" means a joint
account, a convenience account, a P.O.D. account, or a
trust account. It does not include accounts
established for deposit of funds of a partnership,
joint venture, or other association for business
purposes, or accounts controlled by one or more
persons as the duly authorized agent or trustee for a
corporation, unincorporated association, charitable
or civic organization, or a regular fiduciary or trust
account where the relationship is established other
than by deposit agreement.

(10) "P.O.D. account" means an account
payable on request to one person during lifetime and on
his death to one or more P.O.D. payees, or to one or
more persons during their lifetimes and on the death of
all of them to one or more P.O.D. payees.

(14) "Trust account" means an account in
the name of one or more parties as trustee for one or
more beneficiaries where the relationship is
established by the form of the account and the deposit
agreement with the financial institution and there is
no subject of the trust other than the sums on deposit
in the account. It is not essential that payment to
the beneficiary be mentioned in the deposit agreement.
A trust account does not include a regular trust
account under a testamentary trust or a trust
agreement which has significance apart from the
account, or a fiduciary account arising from a
fiduciary relation such as attorney-client.

Sec. 438A. (a) If an account is established at
a financial institution by one or more parties in the
names of the parties and one or more convenience
signers and the terms of the account provided that the
sums on deposit are paid or delivered to the parties or
to the convenience signers "for the convenience" of
the parties, the account is a convenience account.

Revisor's Note
Section 436(5), Texas Probate Code, refers to a
"duly authorized agent or trustee." The revised law
omits the reference to "duly" in this context because
the word does not add to the clear meaning of the law.
The requirement that the agent or trustee be authorized is sufficient to convey that the agent or trustee must have met the requirements for authorization.

**Revised Law**

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. (Tex. Prob. Code, Sec. 444 (part).)

**Source Law**

Sec. 444. Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. . . .

[Sections 113.006-113.050 reserved for expansion]

SUBCHAPTER B. UNIFORM ACCOUNT FORM

**Revised Law**

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, other than a single-party account without a P.O.D. designation.

(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. (Tex. Prob. Code, Sec. 439A(a).)

**Source Law**

Sec. 439A. (a) A contract of deposit that contains provisions substantially the same as in the form provided by Subsection (b) of this section establishes the type of account selected by a party. The provisions of this part of Chapter XI of this code govern an account selected under the form, other than a single-party account without a P.O.D. designation. A contract of deposit that does not contain provisions substantially the same as in the form provided by Subsection (b) of this section is governed by the provisions of this chapter applicable to the account that most nearly conforms to the depositor's intent.
Revisor's Note

Section 439A(a), Texas Probate Code, provides that certain contracts of deposit are governed by the provisions of "this chapter," meaning Chapter XI, Texas Probate Code, that are applicable to the type of account that most nearly conforms to the depositor's intent. Chapter XI, Texas Probate Code, consists of Parts 1-3. The provisions of Part 1, Chapter XI, are revised as this chapter. The provisions of Parts 2 and 3, Chapter XI, are revised in Subchapter B, Chapter 111, and Chapter 112 of this code. However, the revised law does not include a reference to those chapters because when applicable, the chapters apply by their own terms to the revised law and a reference is, therefore, unnecessary.

Revised Law
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.

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:

__________________________

____ (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:

______________________________________________

(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:

______________________________________________

______________________________________________

(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:

______________________________________________

______________________________________________

(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:

___ (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 names of the convenience signers:

___ (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:

(Tex. Prob. Code, Sec. 439A(b).)

Source Law

(b) A financial institution may use the following form to establish the type of account selected by a party:

UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT SELECTION FORM

NOTICE: The type of account you select may determine how property passes on your death. Your will may not control the disposition of funds held in some of the following accounts.

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:

(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:

(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:

(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:

(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 a party, the party's ownership of the account passes to the surviving parties.

Enter the names of the parties:
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:

(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,
ownship 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 names of the convenience signers:

(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:

Revised Law
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. (Tex. Prob. Code, Secs. 439A(c), (d).)

Source Law

(c) A financial institution shall be deemed to have adequately disclosed the information provided in this section if the financial institution uses the form set forth in Subsection (b) of this section. If a financial institution varies the format of the form set forth in Subsection (b) of this section, then such financial institution may make disclosures in the account agreement or in any other form which adequately discloses the information provided in this section.

(d) A financial institution may combine any of the provisions and vary the format of the selections form and notices described in Subsection (b) of this section provided that the customer receives adequate disclosure of the ownership rights and there is appropriate indication of the names of the parties. This may be accomplished in a universal account form with options listed for selection and additional disclosures provided in the account agreement, or in any other manner which adequately discloses the information provided in this section.

Revisor's Note

Section 439A(d), Texas Probate Code, refers to the "selections form." The revised law omits "selections" for consistency of terminology used throughout this chapter. [Sections 113.054-113.100 reserved for expansion]

SUBCHAPTER C. OWNERSHIP AND OPERATION OF ACCOUNTS

Revised Law

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. (Tex. Prob. Code, Sec. 437.)

Source Law

Sec. 437. The provisions of Sections 438 through 440 of this code that concern beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts.

Revisor's Note

Section 437, Texas Probate Code, provides that "Sections 438 through 440 of this code," meaning the Texas Probate Code, govern the beneficial ownership of accounts between certain people. With the exception of portions of Section 438A, Texas Probate Code, Sections 437 through 440 are revised in this subchapter and Subchapters B and D of this chapter. Those portions of Section 438A that are not revised in this subchapter or Subchapter B or D do not relate to the beneficial ownership of accounts. The revised law therefore substitutes "this subchapter and Subchapters B and D" for "Sections 438 through 440."

Revised Law

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. (Tex. Prob. Code, Sec. 438(a).)

Source Law

Sec. 438. (a) A joint account belongs, during the lifetime of all parties, to the parties in
proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

Revised Law

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. (Tex. Prob. Code, Sec. 438(b).)

Source Law

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees. If two or more parties are named as original payees, during their lifetimes rights as between them are governed by Subsection (a) of this section.

Revised Law

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. (Tex. Prob. Code, Sec. 438(c).)

Source Law

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by Subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.
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. (Tex. Prob. Code, Secs. 438A(b), (c), (e).)
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.

(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. (Tex. Prob. Code, Sec. 439(a).)

Source Law
Sec. 439. (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties. Notwithstanding any other law, an agreement is sufficient to confer an absolute right of survivorship on parties to a joint account under this subsection if the agreement states in substantially the following form: "On the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate." A survivorship agreement will not be inferred from the mere fact that the account is a joint account. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 438 of this code augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, and the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies provides.

Revised Law
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. (Tex. Prob. Code, Sec. 439(b).)

Source Law

(b) If the account is a P.O.D. account and there
is a written agreement signed by the original payee or
payees, on the death of the original payee or on the
death of the survivor of two or more original payees,
any sums remaining on deposit belong to the P.O.D.
payee or payees if surviving, or to the survivor of
them if one or more P.O.D. payees die before the
original payee. If two or more P.O.D. payees survive,
there is no right of survivorship in event of death of
a P.O.D. payee thereafter unless the terms of the
account or deposit agreement expressly provide for
survivorship between them.

Revised Law

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. (Tex. Prob. Code, Sec.
439(c).)

Source Law

(c) If the account is a trust account and there
is a written agreement signed by the trustee or
trustees, on death of the trustee or the survivor of
two or more trustees, any sums remaining on deposit
belong to the person or persons named as
beneficiaries, if surviving, or to the survivor of
them if one or more beneficiaries die before the
trustee dies. If two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

Revised Law
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. (Tex. Prob. Code, Sec. 438A(d).)

Source Law
(d) On the death of the last surviving party, a convenience signer shall have no right of survivorship in the account and ownership of the account remains in the estate of the last surviving party.

Revised Law
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. (Tex. Prob. Code, Sec. 439(d).)

Source Law
(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

Revised Law
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. (Tex. Prob. Code, Sec. 440 (part).)

Source Law
Sec. 440. The provisions of Section 439 of this code as to rights of survivorship are determined by the form of the account at the death of a party. . . .
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. (Tex. Prob. Code, Sec. 440 (part).)

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. (Tex. Prob. Code, Sec. 441.)

Sec. 441. Transfers resulting from the application of Section 439 of this code are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to the testamentary provisions of this code.

(1) Section 441, Texas Probate Code, provides that certain transfers "are effective by reason of the account contracts involved and this statute." Section 441, Texas Probate Code, was enacted as a portion of Part 1, Chapter XI, Texas Probate Code, by Section 31, Chapter 713, Acts of the 66th Legislature, Regular
Session, 1979. Section 31 of Chapter 713 also enacted Section 450, Texas Probate Code, as Part 2, Chapter XI, of that code. From the context of Section 441, Texas Probate Code, "this statute" means Part 1, Chapter XI, which is revised as this chapter. Additionally, Section 450, Texas Probate Code, does not address or affect the validity of the types of transfers described by Section 441. The revised law therefore substitutes "this chapter" for "this statute."

(2) Section 441, Texas Probate Code, refers to the testamentary provisions of "this code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this code" because the provisions of the Texas Probate Code that relate to estates of decedents are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

[Sections 113.159-113.200 reserved for expansion]

SUBCHAPTER E. PROTECTION OF FINANCIAL INSTITUTIONS

Revised Law

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. (Tex. Prob. Code, Sec. 443.)

Source Law

Sec. 443. Sections 444 through 449 of this code govern the liability of financial institutions that make payments as provided in this chapter and the set-off rights of the institutions.

Revisor's Note

(1) Section 443, Texas Probate Code, provides that the set-off rights and liability of financial institutions that make certain payments are governed by "Sections 444 through 449 of this code," meaning the
Texas Probate Code. Those sections are revised in this subchapter and in Sections 113.003(b) and 113.005. Because Section 113.005 does not relate to the making of payments by financial institutions, the revised law substitutes "this subchapter and Section 113.003(b)" for "Sections 444 through 449."

(2) Section 443, Texas Probate Code, refers to "this chapter," meaning Chapter XI, Texas Probate Code. Parts 1 and 2 of Chapter XI were enacted by Chapter 713, Acts of the 66th Legislature, Regular Session, 1979. Part 3 of Chapter XI was enacted by Chapter 655, Acts of the 71st Legislature, Regular Session, 1989. Part 2 of Chapter XI is, by its own terms, inapplicable to the situation described by Section 443 because that part does not provide the authority for financial institutions to make payments. Furthermore, Section 462, Texas Probate Code, which is included in Part 3 of Chapter XI, provides that Part 1 applies to accounts otherwise subject to Part 3 to the extent Part 1 does not conflict with Part 3. The revised law therefore does not reference the revisions of Parts 2 and 3, Chapter XI, and substitutes "this subchapter" for "this chapter" because the provisions in Part 1, Chapter XI, that relate to the making of payments are revised in this subchapter.

Revised Law
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. (Tex. Prob. Code, Sec. 444 (part).)

Source Law
Sec. 444. . . . A multiple-party account may be paid, on request, to any one or more of the parties. . . .

Revised Law
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. (Tex. Prob. Code, Sec. 445 (part).)

Source Law

Sec. 445. Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded, but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 439 of this code. . . .

Revised Law

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. (Tex. Prob. Code, Sec. 446.)

Source Law

Sec. 446. A P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the
personal representative or heirs of a deceased P.O.D. 
payee upon presentation to the financial institution 
of proof of death showing that the P.O.D. payee 
survived all persons named as original payees. 
Payment may be made to the personal representative or 
heirs of a deceased original payee if proof of death is 
presented to the financial institution showing that 
his decedent was the survivor of all other persons 
named on the account either as an original payee or as 
P.O.D. payee.

Revisor's Note

Section 446, Texas Probate Code, refers to an 
"original party" to a P.O.D. account. For consistency 
with the terminology used throughout this chapter, the 
revised law substitutes "original payee" for "original 
party."

Revised Law

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. (Tex. Prob. Code, Sec. 447.)

Source Law

Sec. 447. A trust account may be paid, on 
request, to any trustee. Unless the financial 
institution has received written notice that the 
beneficiary has a vested interest not dependent upon 
his surviving the trustee, payment may be made to the 
personal representative or heirs of a deceased trustee 
if proof of death is presented to the financial 
institution showing that his decedent was the survivor 
of all other persons named on the account either as 
trustee or beneficiary. Payment may be made, on 
request, to the beneficiary upon presentation to the 
financial institution of proof of death showing that 
the beneficiary or beneficiaries survived all persons 
named as trustees.
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. (Tex. Prob. Code, Sec. 438A(f) (part).)

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. (Tex. Prob. Code, Sec. 445 (part).)

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. (Tex. Prob. Code, Secs. 438A(f) (part), (g).)

(f) The financial institution is completely released from liability for a payment made from the account before the financial institution receives notice in writing signed by 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.

(g) If the financial institution makes a payment of the sums on deposit in a convenience account to a convenience signer after the death of the last surviving party and before the financial institution has received written notice of the last surviving party's death, the financial institution is completely released from liability for the payment. If a financial institution makes payment to the personal representative of the deceased last surviving party's estate after the death of the last surviving party and before service on the financial institution of a court order prohibiting payment, the financial institution is released to the extent of the payment from liability to any person claiming a right to the funds. The receipt by the representative to whom payment is made is a complete release and discharge of the financial institution.

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. (Tex. Prob. Code,
Sec. 448.)

Source Law

Sec. 448. Payment made as provided by Section
444, 445, 446, or 447 of this code discharges the
financial institution from all claims for amounts so
paid whether or not the payment is consistent with the
beneficial ownership of the account as between
parties, P.O.D. payees, or beneficiaries, or their
successors. The protection here given does not extend
to payments made after a financial institution has
received written notice from any party able to request
present payment to the effect that withdrawals in
accordance with the terms of the account should not be
permitted. Unless the notice is withdrawn by the
person giving it, the successor of any deceased party
must concur in any demand for withdrawal if the
financial institution is to be protected under this
section. No other notice or any other information
shown to have been available to a financial
institution shall affect its right to the protection
provided here. The protection here provided shall
have no bearing on the rights of parties in disputes
between themselves or their successors concerning the
beneficial ownership of funds in, or withdrawn from,
multiple-party accounts.

Revisor's Note

Section 448, Texas Probate Code, refers to
"[p]ayment made as provided by Section 444, 445, 446,
or 447 of this code," meaning the Texas Probate Code.
Those sections are revised in this code as Sections
113.003(b), 113.005, 113.202, 113.203, 113.204,
113.205, and 113.207. Because Sections 113.003(b) and
113.005 do not relate to the making of payments by a
financial institution, the revised law substitutes
"Section 113.202, 113.203, 113.204, 113.205, or 113.207" for the quoted language.

Revised Law
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. (Tex. Prob. Code, Sec. 449.)

Source Law
Sec. 449. Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

[Sections 113.211-113.250 reserved for expansion]

SUBCHAPTER F. RIGHTS OF CREDITORS; PLEDGE OF ACCOUNT

Revised Law
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. (Tex. Prob. Code, Sec. 442 (part).)

Source Law
Sec. 442. . . . A party to a multiple-party account may pledge the account or otherwise create a security interest in the account without the joinder of, as appropriate, a P.O.D. payee, a beneficiary, a convenience signer, or any other party to a joint account, regardless of whether there is a right of survivorship. A convenience signer may not pledge or otherwise create a security interest in an account. Not later than the 30th day after the date on which a security interest on a multiple-party account is perfected, a secured creditor that is a financial institution the accounts of which are insured by the Federal Deposit Insurance Corporation shall provide written notice of the pledge of the account to any other party to the account who did not create the security interest. The notice must be sent by certified mail to any other party at the last address the party provided to the depository bank and is not required to be provided to a P.O.D. payee, a beneficiary, or a convenience signer. . . .

Revised Law
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
depart 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.

(Tex. Prob. Code, Sec. 442 (part).)

Source Law

Sec. 442. No multiple-party account will be
effective against an estate of a deceased party to
transfer to a survivor sums needed to pay debts, taxes,
and expenses of administration, including statutory
allowances to the surviving spouse and minor children,
if other assets of the estate are insufficient. No
multiple-party account will be effective against the
claim of a secured creditor who has a lien on the
account. . . . A party, P.O.D. payee, or beneficiary
who receives payment from a multiple-party account
after the death of a deceased party shall be liable to
account to the deceased party's personal
representative for amounts the decedent owned
beneficially immediately before his death to the
extent necessary to discharge the claims and charges
mentioned above remaining unpaid after application of
the decedent's estate, but is not liable in an amount
greater than the amount that the party, P.O.D. payee,
or beneficiary received from the multiple-party
account. No proceeding to assert this liability shall
be commenced unless the personal representative has
received a written demand by a surviving spouse, a
creditor, or one acting for a minor child of the
decedent, and no proceeding shall be commenced later
than two years following the death of the decedent.
Sums recovered by the personal representative shall be
administered as part of the decedent's estate. . . .
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. (Tex. Prob. Code, Sec. 442 (part.).)

Sec. 442. ... This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution received written notice from the personal representative stating the sums needed to pay debts, taxes, claims, and expenses of administration.

[Chapters 114-120 reserved for expansion]

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CHAPTER 121. SURVIVAL REQUIREMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

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. (Tex. Prob. Code, Sec. 47(f).)

Source Law

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

[Sections 121.002-121.050 reserved for expansion]

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

Revised Law

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. (Tex. Prob. Code, Sec. 47(a) (part).)

Source Law

(a) . . . This subsection does not apply where its application would result in the escheat of an intestate estate.
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. (Tex. Prob. Code, Sec. 47(a) (part).)

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. (Tex. Prob. Code, Sec. 47(a) (part).)

Sec. 121.054-.121.100 reserved for expansion

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.

(Tex. Prob. Code, Sec. 47(c) (part).)

Source Law

(c) Survival of Devisees or Beneficiaries. A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous death or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

Revisor's Note

Section 47(c), Texas Probate Code, refers to a "testator" and to the will of the "decedent." The revised law substitutes a reference to the "testator's" will for the reference to the will of the "decedent" for consistency of terminology and because it is clear from the context that "decedent" refers to the "testator."

Revised Law

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.
portions shall be distributed respectively to those who would have taken if each beneficiary had survived. (Tex. Prob. Code, Sec. 47(c) (part).)

**Source Law**

(c) If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, the beneficiary shall be deemed not to have survived unless he or she survives the person by 120 hours. However, if any interest in property is given alternatively to one of two or more beneficiaries, with the right of each to take being dependent upon his surviving the other or others, and all shall die within a period of less than 120 hours, the property shall be divided into as many equal portions as there are beneficiaries, and those portions shall be distributed respectively to those who would have taken in the event that each beneficiary had survived.

[Sections 121.103-121.150 reserved for expansion]

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

**Revised Law**

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.

(Tex. Prob. Code, Sec. 47(b).)

**Source Law**

(b) Disposal of Community Property. When a husband and wife have died, leaving community property, and neither the husband nor wife survived the other by 120 hours, one-half of all community property shall be distributed as if the husband had survived, and the other one-half thereof shall be distributed as if the wife had survived. The provisions of this subsection apply to proceeds of life or accident insurance which are community property and become payable to the estate of either the husband or the wife, as well as to other kinds of community property.

**Revised Law**

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. (Tex. Prob. Code, Sec. 47(d).)

Source Law

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

Revisor's Note

Section 47(d), Texas Probate Code, refers to "real or personal property." The revised law omits the reference to "real or personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

Revised Law

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. (Tex. Prob. Code, Sec. 47(e).)

(b) This section does not prevent the applicability of Section 121.151 to proceeds of life or accident insurance that are community property. (Tex. Prob. Code, Sec. 47(e).)

Source Law

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

CHAPTER 122. DISCLAIMERS AND ASSIGNMENTS

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CHAPTER 122. DISCLAIMERS AND ASSIGNMENTS

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO DISCLAIMER

Revised Law
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.
(Tex. Prob. Code, Sec. 37A(e).)

Source Law

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

Revised Law

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. (Tex. Prob. Code, Sec. 37A(a).)

Source Law

Sec. 37A. (a) Persons Who May Disclaim. Any person, or the guardian of an incapacitated person, the personal representative of a deceased person, or the guardian ad litem of an unborn or unascertained person, with prior court approval of the court having, or which would have, jurisdiction over such guardian, personal representative, or guardian ad litem, or any independent executor of a deceased person, without prior court approval, or an attorney in fact or agent appointed under a durable power of attorney authorizing disclaimers that is executed by a principal, who may be entitled to receive any property as a beneficiary and who intends to effect disclaimer irrevocably on or after September 1, 1977, of the whole or any part of such property shall evidence same as herein provided.

Revisor's Note

Section 37A(a), Texas Probate Code, refers to a "deceased person." Throughout the Texas Probate Code, a deceased person is more commonly referred to as a "decedent." The revised law substitutes references to a "decedent" for references to a "deceased person" for
consistency of terminology throughout this code.

Revised Law
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 disclamiant. (Tex. Prob. Code, Sec. 37A(b).)

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

Revisor's Note
Section 37A(b), Texas Probate Code, provides that a disclaimer "shall relate back" for all purposes to the death of the decedent. The revised law omits that phrase as unnecessary because this section already states that a disclaimer is "effective for all purposes as of the date of the decedent's death."

Revised Law
Sec. 122.004. DISCLAIMER IRREVOCABLE. A disclaimer that is filed and served as provided by this chapter is irrevocable. (Tex. Prob. Code, Sec. 37A(k).)

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

Revised Law
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. (Tex. Prob. Code, Sec. 37A(j).)
(j) Power to Provide for Disclaimer. Nothing herein shall prevent a person from providing in a will, insurance policy, employee benefit agreement, or other instrument for the making of disclaimers by a beneficiary of an interest receivable under that instrument and for the disposition of disclaimed property in a manner different from the provisions hereof.

[Sections 122.006-122.050 reserved for expansion]

SUBCHAPTER B. FORM, FILING, AND NOTICE OF DISCLAIMER

Revised Law

Sec. 122.051. FORM. 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. (Tex. Prob. Code, Sec. 37A(g).)

Source Law

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

Revised Law

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. (Tex. Prob. Code, Sec. 37A(h) (part).)

Source Law

(h) ... The written memorandum of disclaimer shall be filed in the probate court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, . . . .
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. (Tex. Prob. Code, Sec. 37A(h) (part).)

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. (Tex. Prob. Code, Sec. 37A(h) (part).)
located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

Revisor's Note
Section 37A(h), Texas Probate Code, refers to real property "or an interest therein." The revised law omits the quoted language as unnecessary because Section 3(dd), Texas Probate Code, revised as Section 22.030 of this code, defines "real property" to include an interest in land.

Revised Law
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 the inventory, appraisement, and list of claims due or owing to the estate. (Tex. Prob. Code, Sec. 37A(h) (part)).

Source Law
(h) Filing of Disclaimer. Unless the beneficiary is a charitable organization or governmental agency of the state, a written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later
than nine months after the event determining that the
taker of the property or interest is finally
ascertained and his interest is indefeasibly vested.
If the beneficiary is a charitable organization or a
governmental agency of the state, a written memorandum
of disclaimer disclaiming a present or future interest
shall be filed not later than the first anniversary of
the date the beneficiary receives the notice required
by Section 128A of this code, or the expiration of the
six-month period following the date the personal
representative files the inventory, appraisement, and
list of claims due or owing to the estate, whichever
occurs later. . . .

Revised Law

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 the inventory,
appraisement, and list of claims due or owing to the estate. (Tex.
Prob. Code, Sec. 37A(i).)

Source Law

(i) Notice of Disclaimer. Unless the
beneficiary is a charitable organization or
governmental agency of the state, copies of any
written memorandum of disclaimer shall be delivered in
person to, or shall be mailed by registered or
certified mail to and received by, the legal
representative of the transferor of the interest or
the holder of legal title to the property to which the
disclaimer relates not later than nine months after
the death of the decedent or, if the interest is a
future interest, not later than nine months after the
date the person who will receive the property or
interest is finally ascertained and the person's
interest is indefeasibly vested. If the beneficiary
is a charitable organization or government agency of
the state, the notices required by this section shall
be filed not later than the first anniversary of the
date the beneficiary receives the notice required by
Section 128A of this code, or the expiration of the
six-month period following the date the personal
representative files the inventory, appraisement, and
list of claims due or owing to the estate, whichever
occurs later.

[Sections 122.057-122.100 reserved for expansion]

SUBCHAPTER C. EFFECT OF DISCLAIMER

Revised Law
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. (Tex. Prob. Code, Sec.
37A(c).)

Source Law

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

Revised Law
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. (Tex. Prob. Code, Sec.
37A(d).)
(d) Ineffective Disclaimer. Failure to comply with the provisions of this section shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent.

Revised Law

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. (Tex. Prob. Code, Sec. 37A(f).)

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

Revised Law

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. (Tex. Prob. Code, Sec. 37A(n).)

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

Revised Law

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. (Tex. Prob. Code, Sec. 37A(o) (part).)

(o) Interest in Trust Property. A beneficiary who accepts an interest in a trust is not considered to have a direct or indirect interest in trust property that relates to a licensed or permitted business and over which the beneficiary exercises no control. . . .

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Revised Law

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. (Tex. Prob. Code, Sec. 37A(o) (part).)

Source Law

(o) Direct or indirect beneficial ownership of not more than five percent of any class of equity securities that is registered under the Securities Exchange Act of 1934 shall not be deemed to be an ownership interest in the business of the issuer of such securities within the meaning of any statute, pursuant thereto.

[Sections 122.107-122.150 reserved for expansion]

SUBCHAPTER D. PARTIAL DISCLAIMER

Revised Law

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. (Tex. Prob. Code, Sec. 37A(1) (part).)

Source Law

(1) Partial Disclaimer. Any person who may be entitled to receive any property as a beneficiary may disclaim such property in whole or in part, including but not limited to specific powers of invasion, powers of appointment, and fee estate in favor of life estates; and . . . .

Revisor's Note

Section 37A(1), Texas Probate Code, refers to "property . . . including but not limited to" certain specific property interests. The revised law omits "but not limited to" because Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, provides that "includes" and
including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

**Revised Law**

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. (Tex. Prob. Code, Sec. 37A(1) (part).)

**Source Law**

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

**Revisor's Note**

Section 37A(1), Texas Probate Code, refers to "a partial disclaimer or renunciation" and to property "so renounced or disclaimed." Throughout this chapter, the revised law omits the references to "renunciation" and "renounced" as unnecessary because Section 122.001 defines "disclaimer" to include renunciation.

**Revised Law**

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. (Tex. Prob. Code, Sec. 37A(m).)

Source Law

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

Revisor's Note

Section 37A(m), Texas Probate Code, provides that
"[w]ithout limiting Subsection (l) of this section," a
disclaimer by the decedent's spouse of a transfer by
the decedent is not a disclaimer of any other transfer
from the decedent. The revised law omits the quoted
language because under Section 311.021(2), Government
Code (Code Construction Act), applicable to the
revised law, it is presumed that all parts of a statute
are intended to be effective. Any applicable
limitations apply by their own terms.

[Sections 122.154-122.200 reserved for expansion]

SUBCHAPTER E. ASSIGNMENT OF INTEREST

Revised Law

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

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. (Tex. Prob. Code, Sec. 37B(b) (part).)

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

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. (Tex. Prob. Code, Sec. 37B(b) (part).)

(b) . . . The filing requires the service of notice under Section 37A(i) of this code.

Sec. 122.204. FAILURE TO COMPLY. Failure to comply with Subchapters A, B, C, and D does not affect an assignment. (Tex. Prob. Code, Sec. 37B(c).)

(c) Failure to comply with the provisions of Section 37A of this code does not affect an assignment under 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. (Tex. Prob. Code, Sec. 37B(d).)

(d) An assignment under this section is a gift to the assignee and is not a disclaimer or renunciation under Section 37A of this code.
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. (Tex. Prob. Code, Sec. 37B(e).)

(e) An assignment that would defeat a spendthrift provision imposed in a trust may not be made under 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. (Tex. Prob. Code, Secs. 69(a), (b).)

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. (Tex. Prob. Code, Sec. 69(c).)

**Source Law**

(c) A person whose marriage to the decedent has been dissolved, whether by divorce, annulment, or a declaration that the marriage is void, is not a surviving spouse unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death and the subsequent marriage is not declared void under Section 47A of this code.

[Sections 123.003-123.050 reserved for expansion]

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

**Revised Law**

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 or annulment.

(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. (Tex. Prob. Code, Sec. 471.)

**Source Law**

Sec. 471. In this chapter:

(1) "Disposition or appointment of property" includes a transfer of property or provision of any other benefit to a beneficiary under a trust instrument.

(2) "Divorced individual" means an individual whose marriage has been dissolved, regardless of whether by divorce or annulment.

(3) "Revocable," with respect to a disposition, appointment, provision, or nomination, means a disposition to, appointment of, provision in favor of, or nomination of an individual's spouse in a
trust instrument executed by the individual before the dissolution of the individual's marriage to the spouse that the individual was solely empowered by law or by the trust instrument to revoke, regardless of whether the individual had the capacity to exercise the power at that time.

Revised Law
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 individual's marriage was dissolved and that:
(1) is a revocable disposition or appointment of property made to the individual's former spouse;
(2) confers a general or special power of appointment on the individual's former spouse; or
(3) nominates the individual's former spouse 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. (Tex. Prob. Code, Sec. 472(a); New.)
Sec. 472. (a) Except as otherwise provided by a court order, the express terms of a trust instrument executed by a divorced individual before the individual’s marriage was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between a divorced individual and the individual’s former spouse before, during, or after the marriage, the dissolution of the marriage revokes the following:

(1) a revocable disposition or appointment of property made by a divorced individual to the individual’s former spouse in a trust instrument executed before the dissolution of the marriage;

(2) a provision in a trust instrument executed by a divorced individual before the dissolution of the marriage that confers a general or special power of appointment on the individual’s former spouse; and

(3) a nomination in a trust instrument executed by a divorced individual before the dissolution of the marriage that nominates the individual’s former spouse to serve in a fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent, or guardian.

Revisor's Note

(1) Section 472, Texas Probate Code, governs the treatment, after dissolution of marriage, of certain dispositions, appointments, provisions, and nominations made by a divorced person in favor of the person’s former spouse. Similarly, Section 9.301, Family Code, applies if a decree of divorce or annulment is rendered after a person has designated the former spouse as a beneficiary under a life insurance policy. Section 9.302, Family Code, applies if a decree of divorce or annulment is rendered after a person has designated the former spouse as a beneficiary under an individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan. Because all of these provisions relate to the treatment of nontestamentary transfers after the dissolution of a marriage, the revised law adds a reference to Sections 9.301 and 9.302, Family Code, for the convenience of the reader.
Section 472(a)(3), Texas Probate Code, refers to a "personal representative, executor, trustee, conservator, agent, or guardian." The revised law omits the reference to "executor" because under Section 3(aa), Texas Probate Code, revised in this code as Section 22.031, a "personal representative" is defined to include an "executor."

Revised Law

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 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 died immediately before the dissolution of the marriage.

(Tex. Prob. Code, Sec. 472(b).)

Source Law

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 a person who receives from the former spouse 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. (Tex. Prob. Code, Sec. 473(a).)
Sec. 473.  (a) A bona fide purchaser of property from a divorced individual's former spouse or a person who receives from a divorced individual's former spouse a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:
(1) is not required by this chapter to return the payment, benefit, or property; and
(2) is not liable under this chapter for the amount of the payment or the value of the property or benefit.

Sec. 123.055. LIABILITY OF FORMER SPOUSE FOR CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A divorced individual's former spouse who, not for value, receives a payment, benefit, or property to which the former spouse 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. (Tex. Prob. Code, Sec. 473(b).)

Sec. 123.056-123.100 reserved for expansion

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. (Tex. Prob. Code, Sec. 47A(a).)

Source Law

Sec. 47A. (a) If a proceeding under Chapter 6, Family Code, to declare a marriage void based on the lack of mental capacity of one of the parties to the marriage is pending on the date of death of one of those parties, or if a guardianship proceeding in which a court is requested under Chapter 6, Family Code, to declare a ward's or proposed ward's marriage void based on the lack of mental capacity of the ward or proposed ward is pending on the date of death of the ward or proposed ward, the court may make the determination and declare the marriage void after the decedent's death. In making that determination after the decedent's death, the court shall apply the standards for an annulment prescribed by Section 6.108(a), Family Code.

Revised Law

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. (Tex. Prob. Code, Secs. 47A(b), (c).)

**Source Law**

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

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

**Revised Law**

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. (Tex. Prob. Code, Secs. 47A(d), (e).)

**Source Law**

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

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

(e) In a proceeding brought under Subsection (b) of this section, a court that makes a finding described
by Subsection (d) of this section may not declare the
decedent's marriage void if the court finds that, after
the date the marriage occurred, the decedent:
(1) gained the mental capacity to
recognize the marriage relationship; and
(2) did recognize the marriage
relationship.

Revised Law
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. (Tex. Prob. Code, Sec.
47A(f).)

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

CHAPTER 124. VALUATION AND TAXATION OF ESTATE PROPERTY
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CHAPTER 124. VALUATION AND TAXATION OF ESTATE PROPERTY
SUBCHAPTER A. APPORTIONMENT OF TAXES
Revised Law
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. (Tex.
Prob. Code, Secs. 322A(a), (s).)

Source Law

Sec. 322A. (a) In this section:

(1) "Estate" means the gross estate of a
decedent as determined for the purpose of estate
taxes.

(2) "Estate tax" means any estate,
inheritance, or death tax levied or assessed on the
property of a decedent's estate, because of the death
of a person, imposed by federal, state, local, or
foreign law, including the federal estate tax and the
additional inheritance tax imposed by Chapter 211, Tax
Code, and including interest and penalties imposed in
addition to those taxes. Estate tax does not include a
tax imposed under Section 2701(d)(1)(A), Internal
Revenue Code of 1986 (26 U.S.C. Section 2701(d)).

(3) "Person" includes a trust, natural
person, partnership, association, joint stock
company, corporation, government, political
subdivision, or governmental agency.

(4) "Person interested in the estate"
means a person, or a fiduciary on behalf of that
person, who is entitled to receive, or who has
received, from a decedent or because of the death of the
decedent, property included in the decedent's
estate for purposes of the estate tax, but does not
include a creditor of the decedent or of the decedent's
estate.

(5) "Representative" means the
representative, executor, or administrator of an
estate, or any other person who is required to pay
estate taxes assessed against the estate.
For the purposes of this section, "court" means a court in which proceedings for administration of the estate are pending or have been completed or, if no proceedings are pending or have been completed, a court in which venue lies for the administration of the estate of the decedent.

Revised Law
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. (Tex. Prob. Code, Sec. 322A(x).)

Source Law
(x) A reference in this section to a section of the Internal Revenue Code of 1986 refers to the section as it exists at the time in question. The reference also includes a corresponding section of a subsequent Internal Revenue Code and the referenced section as renumbered if it is renumbered.

Revised Law
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. (Tex. Prob. Code, Sec. 322A(l).)

Source Law
(l) If federal law directs the apportionment of the federal estate tax, a similar state tax shall be apportioned in the same manner.

Revised Law
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. (Tex. Prob. Code, Sec. 322A(p).)

Source Law
(p) This section shall be applied after giving effect to any disclaimers made in accordance with Section 37A of this code.

Revised Law
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. (Tex. Prob. Code, Sec. 322A(b).)

Source Law

(b)(1) The representative shall charge each person interested in the estate a portion of the total estate tax assessed against the estate. The portion of each estate tax that is charged to each person interested in the estate must represent the same ratio as the taxable value of that person's interest in the estate included in determining the amount of the tax bears to the total taxable value of all the interests of all persons interested in the estate included in determining the amount of the tax. In apportioning an estate tax under this subdivision, the representative shall disregard a portion of the tax that is apportioned under the law imposing the tax, otherwise apportioned by federal law, or apportioned as otherwise provided by this section.

(2) Subdivision (1) of this subsection does not apply to the extent the decedent in a written inter vivos or testamentary instrument disposing of or creating an interest in property specifically directs the manner of apportionment of estate tax or grants a discretionary power of apportionment to another person. A direction for the apportionment or nonapportionment of estate tax is limited to the estate tax on the property passing under the instrument unless the instrument is a will that provides otherwise.

(3) If under Subdivision (2) of this subsection directions for the apportionment of an estate tax in two or more instruments executed by the same person conflict, the instrument disposing of or creating an interest in the property to be taxed controls. If directions for the apportionment of estate tax in two or more instruments executed by different persons conflict, the direction of the person in whose estate the property is included controls.

(4) Subdivisions (2) and (3) of this subsection do not grant or enlarge the power of a person to apportion estate tax to property passing under an instrument created by another person in excess of the estate tax attributable to the property. Subdivisions (2) and (3) of this subsection do not apply to the extent federal law directs a different manner of apportionment.

Revised Law

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. (Tex. Prob. Code, Secs. 322A(c), (d), (e), (f).)

Source Law 

(c) Any deduction, exemption, or credit allowed by law in connection with the estate tax inures to a person interested in the estate as provided by Subsections (d)-(f) of this section. 

(d) If the deduction, exemption, or credit is allowed because of the relationship of the person interested in the estate to the decedent, or because of the purpose of the gift, the deduction, exemption, or credit inures to the person having the relationship or receiving the gift, unless that person's interest in the estate is subject to a prior present interest that is not allowable as a deduction. The estate tax apportionable to the person having the present interest shall be paid from the corpus of the gift or the interest of the person having the relationship. 

(e) A deduction for property of the estate that was previously taxed and a credit for gift taxes or death taxes of a foreign country that were paid by the decedent or his estate inures proportionally to all persons interested in the estate who are liable for a share of the estate tax. 

(f) A credit for inheritance, succession, or estate taxes, or taxes of a similar nature applicable to property or interests includable in the estate, inures to the persons interested in the estate who are chargeable with payment of a portion of those taxes to the extent that the credit reduces proportionately those taxes.

Revised Law

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. (Tex. Prob. Code, Sec. 322A(g).)

Source Law

(g) To the extent that property passing to or in trust for a surviving spouse or a charitable, public, or similar gift or devise is not an allowable deduction for purposes of the estate tax solely because of an inheritance tax or other death tax imposed on and deductible from the property, the property is not included in the computation provided for by Subsection (b) of this section, and to that extent no apportionment is made against the property. The exclusion provided by this subsection does not apply if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d), Internal Revenue Code of 1986, relating to deductions for state death taxes on transfers for public, charitable, or religious uses.

Revisor's Note

Section 322A(g), Texas Probate Code, states that the exclusion provided by that subsection does not apply if it would deprive the estate of a deduction "otherwise allowable under Section 2053(d), Internal Revenue Code of 1986, relating to deductions for state death taxes on transfers for public, charitable, or religious uses." Subdivision (1)(A) of Section 2053(d), Internal Revenue Code of 1986, as that section existed at the time of enactment of Section 322A(g), Texas Probate Code, related to deductions for state death taxes on transfers for certain public,
charitable, or religious uses. Section 2053(d), however, was amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16. Section 532 of that act in part amended Section 2053(d) to repeal the deduction authorized by Section 2053(d)(1)(A) and provided that the change applied to estates of decedents dying after December 31, 2004. Consequently, Section 2053(d) as currently enacted refers only to deductions for certain foreign death taxes. Furthermore, Section 501 of the act provided that the law imposing the federal estate tax, which includes Section 2053, does not apply to estates of decedents dying after December 31, 2009, effectively repealing the tax for purposes of those estates.

Notwithstanding the amendments made by the Economic Growth and Tax Relief Reconciliation Act of 2001 cited above, the revised law preserves the reference to Section 2053(d) because Section 901 of that act provides that the changes made by the act do not apply to estates of decedents dying after December 31, 2010, presumably reversing the effective repeal of the federal estate tax and the amendments made to the law imposing the tax, including the amendments made to Section 2053(d). For this reason, it appears that the language of Section 2053(d)(1)(A) as it existed before the effective date of the Economic Growth and Tax Relief Reconciliation Act will be restored and will apply to estates of decedents dying after December 31, 2010. Unless subsequent federal legislation further amends Section 2053(d), the former language of that section will be in effect on the effective date of the revised law.

Revised Law

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. (Tex. Prob. Code, Sec. 322A(h).)

Source Law

(h) Except as provided by Subsection (i)(3) of this section, an interest in income, an estate for years or for life, or another temporary interest in any property or fund is not subject to apportionment. The estate tax apportionable to the temporary interest and the remainder, if any, is chargeable against the corpus of the property or the funds that are subject to the temporary interest and remainder.

Revised Law

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. (Tex. Prob. Code, Sec. 322A(i).)

Source Law

(i)(1) In this subsection, "qualified real property" has the meaning assigned by Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A).

(2) 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 amount of the reduction of the estate tax resulting from the election shall be applied to reduce the amount of the estate tax allocated based on the value of the qualified real property that is the subject of the election. If the amount applied to reduce the taxes allocated based on the value of the qualified real property is greater than the amount of those taxes, the excess shall be applied to the portion of the taxes allocated for all other property. This amount is to be apportioned under Subsection (b)(1) of this section.

(3) If additional federal estate tax is imposed under Section 2032A(c), Internal Revenue Code of 1986 (26 U.S.C. 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 such qualified real property. If the qualified real property is split between one or more life or term interests and remainder interests, the additional tax shall be apportioned to each person whose action or cessation of use caused the imposition of additional tax, unless
all persons with an interest in the qualified real
property agree in writing to dispose of the property,
in which case the additional tax shall be apportioned
among the remainder interests.

Revised Law

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. (Tex. Prob. Code, Secs. 322A(k),
(m).)

Source Law

(k) If the date for the payment of any portion of
an estate tax is extended, the amount of the extended
tax shall be apportioned to the persons who receive the
specific property that gives rise to the extension.
Those persons are entitled to the benefits and shall
bear the burdens of the extension.

(m) Interest on an extension of estate tax and
interest and penalties on a deficiency shall be
apportioned equitably to reflect the benefits and
burdens of the extension or deficiency and of any tax
deduction associated with the interest and penalties,
but if the assessment or penalty and interest is due to
delay caused by the negligence of the representative,
the representative shall be charged with the amount of
assessed penalty and interest.

Revised Law

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. (Tex. Prob. Code, Sec. 322A(q).)

Source Law

(q) Interest and penalties assessed against the estate by a taxing authority shall be apportioned among and charged to the persons interested in the estate in the manner provided by Subsection (b) of this section, unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable or that the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative. If the apportionment is not equitable, the court may apportion interest and penalties in an equitable manner. If the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative, the court may charge the representative with the amount of the interest and penalties assessed attributable to his conduct. (Tex. Prob. Code, Sec. 322A(q).)

Revised Law

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. (Tex. Prob. Code, Sec. 322A(r).)

Source Law

(r) Expenses reasonably incurred by a
representative in determination of the amount, apportionment, or collection of the estate tax shall be apportioned among and charged to persons interested in the estate in the manner provided by Subsection (b) of this section unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable. If the court determines that the assessment is not equitable, the court may apportion the expenses in an equitable manner.

Revisor's Note

Section 322A(r), Texas Probate Code, refers to the court determining that "the proposed apportionment" of a representative's expenses is not equitable, and subsequently states that if the court determines that "the assessment" is not equitable, the court may apportion the expenses. Because it is clear in context that "the assessment" is referring to the previously referenced "proposed apportionment" of the representative's expenses, the revised law substitutes "the proposed apportionment" for the reference to "the assessment" for consistency of terminology.

Revised Law

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. (Tex. Prob. Code, Sec. 322A(t).)

Source Law

(t) A representative who has possession of any property of an estate that is distributable to a person interested in the estate may withhold from that property an amount equal to the person's apportioned share of the estate tax.

Revised Law

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. (Tex. Prob.
Code, Sec. 322A(n).)

Source Law

(n) If property includable in an estate does not
come into possession of the representative obligated
to pay the estate tax, the representative shall
recover from each person interested in the estate the
amount of the estate tax apportioned to the person
under this section or assign to persons affected by the
tax obligation the representative's right of recovery.
The obligation to recover a tax under this subsection
does not apply if:

(1) the duty is waived by the parties
affected by the tax obligation or by the instrument
under which the representative derives powers; or

(2) in the reasonable judgment of the
representative, proceeding to recover the tax is not
cost-effective.

Revised Law

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. (Tex.
Prob. Code, Secs. 322A(o), (u).)

Source Law

(o) If a representative cannot collect from a
person interested in the estate an unpaid amount of
estate tax apportioned to the person, the amount not
collected shall be apportioned among the other persons
interested in the estate who are subject to
apportionment in the same manner as provided by
Subsection (b)(1) of this section. A person who is
charged with or who pays an apportioned amount under
this subsection because another person failed to pay
an amount of estate tax apportioned to the person has a
right of reimbursement for that amount from the person
who failed to pay the tax. The representative may
enforce the right of reimbursement, or the person who
is charged with or who pays an apportioned amount under
this subsection may enforce the right of reimbursement
directly by an assignment from the representative. A
person assigned the right under this subsection is
subrogated to the rights of the representative. A
representative who has a right of reimbursement may
petition a court to determine the right of
reimbursement.

(u) A representative shall recover from any
person interested in the estate the unpaid amount of
the estate tax apportioned and charged to the person
under this section, unless the representative
determines in good faith that an attempt to recover
this amount would be economically impractical.

Revised Law

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. (Tex. Prob. Code, Sec. 322A(v).)

Source Law

(v) A representative required to recover unpaid amounts of estate tax apportioned to persons interested in the estate under this section may not be required to initiate the necessary actions until the expiration of 90 days after the date of the final determination of the amount of the estate tax by the Internal Revenue Service. A representative who initiates an action under this section within a reasonable time after the 90-day period is not subject to any liability or surcharge because any portion of the estate tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible.

Revised Law

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. (Tex. Prob. Code, Sec. 322A(w).)

Source Law

(w) A representative acting in another state may initiate an action in a court of this state to recover a proportionate amount of the federal estate tax, of an
estate tax payable to another state, or of a death duty
due by a decedent's estate to another state, from a
person interested in the estate who is domiciled in
this state or owns property in this state subject to
attachment or execution. In the action, a
determination of apportionment by the court having
jurisdiction of the administration of the decedent's
estate in the other state is prima facie correct. This
section applies only if the state in which the
determination of apportionment was made affords a
substantially similar remedy.

Revisor's Note
Section 322A(w), Texas Probate Code, provides
that "[t]his section" applies only if specified
requirements are met. The source law reference to
"this section" means Section 322A, Texas Probate Code.
Section 322A is revised as Subchapter A of this
chapter, which includes this section of the revised
law. The revised law substitutes a reference to this
section of the revised law, rather than Subchapter A in
its entirety, however, because the reference here is
to actions taken only under Section 322A(w), which is
revised entirely in this section.

Revised Law
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. (Tex. Prob. Code, Sec. 322A(y).)

Source Law
(y) The prevailing party in an action initiated
by a person for the collection of estate taxes from a
person interested in the estate to whom estate taxes
were apportioned and charged under Subsection (b) of
this section shall be awarded necessary expenses,
including reasonable attorney's fees.

[Sections 124.019-124.050 reserved for expansion]

SUBCHAPTER B. SATISFACTION OF CERTAIN PECUNIARY GIFTS

Revised Law
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.

(Tex. Prob. Code, Sec. 378A(b).)

Source Law

(b) Unless the governing instrument provides otherwise, if a will or trust contains a pecuniary bequest, devise, or transfer that may be satisfied by distributing assets in kind and if the executor, administrator, or trustee determines to fund the bequest, devise, or transfer by distributing assets in kind, the property shall, for the purpose of funding the bequest, devise, or transfer, be valued at its value on the date or dates of distribution.

Revisor's Note

Section 378A(b), Texas Probate Code, refers to a "bequest, devise, or transfer." The revised law omits the reference to a "bequest" as unnecessary. Traditionally, "devise" referred to the disposition of real property by a will; "bequest" usually refers to the disposition of personal property by a will. Black's Law Dictionary (revised eighth edition, 2004). Section 3(h), Texas Probate Code, revised as Section 22.008 of this code, provides that "devise" includes "a testamentary disposition of real or personal property, or of both." The revised law therefore omits "bequest" because the meaning of that term is included within the meaning of "devise." Similar changes are made throughout this subchapter.

Revised Law

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. (Tex. Prob. Code, Sec. 378A(a).)
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. (Tex. Prob. Code, Sec. 36B.)

Source Law
Sec. 36B. (a) A judge of a court having probate
jurisdiction of a decedent's estate may order a person
to permit a court representative named in the order to
examine a decedent's documents or safe deposit box if
it is shown to the judge that:

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

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

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

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

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

Revised Law
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. (Tex. Prob. Code, Sec. 36C.)

Source Law

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

(1) a will of the decedent;

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

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

(b) The court representative shall deliver:

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

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

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

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

Revised Law

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. (Tex. Prob. Code, Sec.
36D.)

Source Law
Sec. 36D. (a) A person who possesses or
controls a document delivered by a decedent for
safekeeping or who leases a safe deposit box to a
decedent may permit any of the following persons to
examine the document or the contents of the safe
deposit box:
   (1) the spouse of the decedent;
   (2) a parent of the decedent;
   (3) a descendant of the decedent who is at
least 18 years old; or
   (4) a person named as executor of the
decedent's estate in a copy of a document that the
person has and that appears to be a will of the
decedent.

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

Revised Law
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. (Tex. Prob. Code, Sec. 36E.)

Source Law

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

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

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

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

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

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

Revised Law

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. (Tex. Prob. Code, Sec. 36F.)

Source Law

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

CHAPTER 152. EMERGENCY INTERVENTION

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CHAPTER 152. EMERGENCY INTERVENTION

SUBCHAPTER A. EMERGENCY INTERVENTION APPLICATION

Revised Law

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 145, 256.052, 256.054, or 301.052 or
Chapter 205; 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. (Tex.
Prob. Code, Secs. 108 (part), 109, 110.)

Source Law

Sec. 108. An applicant may file an application
requesting emergency intervention by a court
exercising probate jurisdiction to provide for the
payment of funeral and burial expenses or the
protection and storage of personal property owned by
the decedent that was located in rented accommodations
on the date of the decedent's death. . . .

Sec. 109. A person qualified to serve as an
administrator under Section 77 of this code may file an
emergency intervention application.

Sec. 110. An applicant may file an emergency
application with the court under Section 108 of this
code only if an application has not been filed and is
not pending under Section 81, 82, 137, or 145 of this
code and the applicant:
(1) needs to obtain funds for the funeral
and burial of the decedent; or
(2) needs to gain access to rental
accommodations in which the decedent's personal
property is located and the applicant has been denied
access to those accommodations.

Revisor's Note

(1) Section 108, Texas Probate Code, provides,
in part, for emergency intervention for the protection
and storage of a decedent's personal property located
in "rented accommodations." Section 110(2), Texas
Probate Code, refers to a decedent's personal property
located in "rental accommodations." The revised law
specifies "accommodations rented by the decedent" for
consistency with Sections 112 and 113(b), Texas
Probate Code, revised in this chapter as Sections
152.002(c) and 152.052, respectively. Similar changes
are made throughout this chapter.

(2) Section 110, Texas Probate Code, refers to
"an application" under Section 81, 82, 137, or 145 of
this code. Section 137, Texas Probate Code, revised in
Chapter 205 of this code, provides procedures for the
collection of certain small estates on approval of an
affidavit, as opposed to an application, filed with
the court. The revised law substitutes "application
or affidavit" for "application" for clarity and
accuracy.

Revised Law
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
devises 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. (Tex. Prob. Code, Secs. 111(a), 112.)

Source Law

Sec. 111. (a) An application for emergency intervention to obtain funds needed for a decedent's funeral and burial expenses must be sworn and must contain:

(1) the name, address, and interest of the applicant;
(2) the facts showing an immediate necessity for the issuance of an emergency intervention order under this section by the court;  
(3) the date of the decedent's death, place of death, decedent's residential address, and the name and address of the funeral home holding the decedent's remains;  
(4) any known or ascertainable heirs and devisees of the decedent and the reason:  
(A) the heirs and devisees cannot be contacted; or  
(B) the heirs and devisees have refused to assist in the decedent's burial;  
(5) a description of funeral and burial procedures necessary and a statement from the funeral home that contains a detailed and itemized description of the cost of the funeral and burial procedures; and  
(6) the name and address of an individual, entity, or financial institution, including an employer, that is in possession of any funds of or due to the decedent, and related account numbers and balances, if known by the applicant.

Sec. 112. An application for emergency intervention to gain access to rental accommodations of a decedent at the time of the decedent's death that contain the decedent's personal property must be sworn and must contain:  
(1) the name, address, and interest of the applicant;  
(2) the facts showing an immediate necessity for the issuance of an emergency intervention order by the court;  
(3) the date and place of the decedent's death, the decedent's residential address, and the name and address of the funeral home holding the decedent's remains;  
(4) any known or ascertainable heirs and devisees of the decedent and the reason:  
(A) the heirs and devisees cannot be contacted; or  
(B) the heirs and devisees have refused to assist in the protection of the decedent's personal property;  
(5) the type and location of the decedent's personal property and the name of the person in possession of the property; and  
(6) the name and address of the owner or manager of the decedent's rental accommodations and whether access to the accommodations is necessary.

Revisor's Note

Section 111(a)(2), Texas Probate Code, provides that an application must contain facts showing an immediate necessity for the issuance of an emergency intervention order "under this section," meaning Section 111, Texas Probate Code. The provisions under which an emergency intervention order is issued, however, are contained in Section 113, Texas Probate Code, which is revised in Subchapter B of this chapter.
Because the reference in the source law to an emergency intervention order issued under Section 111 is clearly an error, the revised law substitutes a reference to an emergency intervention order "under Subchapter B" for the reference to an emergency intervention order "under this section."

Revised Law
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. (Tex. Prob. Code, Sec. 111(b).)

Source Law
(b) The application shall also state whether there are any written instructions from the decedent relating to the type and manner of funeral or burial the decedent would like to have. The applicant shall attach the instructions, if available, to the application and shall fully comply with the instructions. If written instructions do not exist, the applicant may not permit the decedent's remains to be cremated unless the applicant obtains the court's permission to cremate the decedent's remains.

Revised Law
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. (Tex. Prob. Code, Sec. 108 (part).)

Source Law

Sec. 108. [An applicant may file an application]...
with the clerk of the court in the county of
domicile of the decedent or the county in which the
rental accommodations that contain the decedent's
personal property are located. The application must
be filed not earlier than the third day after the date
of the decedent's death and not later than the 90th day
after the date of the decedent's death.

[Sections 152.005-152.050 reserved for expansion]

SUBCHAPTER B. ORDER FOR EMERGENCY INTERVENTION

Revised Law

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. (Tex. Prob. Code,
Sec. 113(a).)

Source Law

Sec. 113. (a) If the court determines on review
of an application filed under Section 108 of this code
that emergency intervention is necessary to obtain
funds needed for a decedent's funeral and burial
expenses, the court may order funds of the decedent
held by an employer, individual, or financial
institution to be paid directly to a funeral home only
for reasonable and necessary attorney's fees for the
attorney who obtained the order granted under this
section, for court costs for obtaining the order, and
for funeral and burial expenses not to exceed $5,000 as
ordered by the court to provide the decedent with a reasonable, dignified, and appropriate funeral and burial.

Revised Law

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. (Tex. Prob. Code, Sec. 113(b).)

Source Law

(b) If the court determines on review of an application filed under Section 108 of this code that emergency intervention is necessary to gain access to accommodations rented by the decedent at the time of the decedent's death that contain the decedent's personal property, the court may order one or more of the following:

(1) the owner or agent of the rental accommodations shall grant the applicant access to the accommodations at a reasonable time and in the presence of the owner or agent;

(2) the applicant and owner or agent of the rental accommodations shall jointly prepare and file with the court a list that generally describes the decedent's property found at the premises;
(3) the applicant or the owner or agent of the rental accommodations may remove and store the decedent's property at another location until claimed by the decedent's heirs;

(4) the applicant has only the powers that are specifically stated in the order and that are necessary to protect the decedent's property that is the subject of the application; or

(5) funds of the decedent held by an employer, individual, or financial institution to be paid to the applicant for reasonable and necessary attorney's fees and court costs for obtaining the order.

Revised Law

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. (Tex. Prob. Code, Sec. 114(a).)

Source Law

Sec. 114. (a) All power and authority of an applicant under an emergency intervention order cease to be effective or enforceable on the 90th day after the date the order was issued or on the date a personal representative is qualified, whichever occurs first.

Revisor's Note

Section 114(a), Texas Probate Code, refers to all "power and authority" of an applicant under an emergency intervention order. The revised law omits "power" because, in this context, "power" is included within the meaning of "authority."

Revised Law

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. (Tex. Prob. Code, Sec. 113(c).)

Source Law

(c) The court clerk may issue certified copies of an emergency intervention order on request of the applicant only until the 90th day after the date the order was signed or the date a personal representative is qualified, whichever occurs first.
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. (Tex. Prob. Code, Secs. 113(d), 114(b).)

Sec. 113(d). A person who is furnished with a certified copy of an emergency intervention order within the period described by Subsection (c) of this section is not personally liable for the person's actions that are taken in accordance with and in reliance on the order.

Sec. 114(b). If a personal representative has not been appointed when an emergency intervention order issued under Section 113(b) of this code ceases to be effective, a person who is in possession of the decedent's personal property that is the subject of the order, without incurring civil liability, may:

(1) release the property to the decedent's heirs; or

(2) dispose of the property under Subchapter C, Chapter 54, Property Code, or Section 7.209 or 7.210, Business & Commerce Code.

Subchapter C. LIMITATION ON RIGHT OF DECEDEED'S SURVIVING SPOUSE TO CONTROL DECEDEED'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. (Tex. Prob. Code, Secs. 115(a), (b).)

Source Law

Sec. 115. (a) An application under this section may be filed by:

(1) the executor of the deceased's will; or
(2) the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes the deceased's descendants who legally adopted the deceased or who have been legally adopted by the deceased.

(b) An application under this section must be under oath and must establish:

(1) whether the deceased died intestate or testate;
(2) the surviving spouse is alleged to be a principal or accomplice in a wilful act which resulted in the death of the deceased; and
(3) good cause exists to limit the right of the surviving spouse to control the burial and interment or cremation of the deceased spouse.

Revisor's Note

(1) Section 115, Texas Probate Code, refers to "the deceased." Throughout the Texas Probate Code, a deceased person is more commonly referred to as a "decedent." The revised law throughout this subchapter substitutes references to a "decedent" for references to the "deceased" for consistency of terminology throughout this code.
Section 115(b), Texas Probate Code, refers to the "burial and interment" of the deceased spouse. Throughout this subchapter, the revised law omits "interment" because "interment" is included within the meaning of "burial."

Revised Law

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; and

(2) regardless of whether the surviving spouse is designated by the decedent's will as the executor of the decedent's estate.

(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.

(Tex. Prob. Code, Secs. 115(c), (d).)

Source Law

(c) After notice and hearing, without regard to whether the deceased died intestate or testate, a court may limit the right of a surviving spouse, whether or not the spouse has been designated by the deceased's will as the executor of a deceased spouse's estate, to control the burial and interment or cremation of the deceased spouse if the court finds that there is good cause to believe that the surviving spouse is the principal or an accomplice in a wilful act which resulted in the death of the deceased spouse.

(d) If the court limits the surviving spouse's right of control, as provided by Subsection (c), the court shall designate and authorize a person to make burial or cremation arrangements.

[Chapters 153-200 reserved for expansion]
SUBTITLE E. INTESTATE SUCCESSION

CHAPTER 201. DESCENT AND DISTRIBUTION

SUBCHAPTER A. INTESTATE SUCCESSION

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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). (Tex. Prob. Code, Sec. 38(a).)

Source Law

Sec. 38. (a) Intestate Leaving No Husband or Wife. Where any person, having title to any estate, real, personal or mixed, shall die intestate, leaving no husband or wife, it shall descend and pass in parcenary to his kindred, male and female, in the following course:

1. To his children and their descendants.
2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants;
but if there be none such, then the whole estate shall be inherited by the surviving father or mother.

3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.

4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course: To the grandfather and grandmother in equal portions, but if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

Revisor's Note

(1) Section 38(a), Texas Probate Code, refers to "any estate, real, personal or mixed." Throughout this chapter, the revised law omits references to "real, personal or mixed" because Section 3(1), Texas Probate Code, revised in this code as Section 22.012, defines "estate" to mean certain "real and personal property." "Mixed" property is a combination of real and personal property and is therefore included in that definition.

(2) Section 38(a), Texas Probate Code, refers to a decedent's "kindred, male and female." The revised law omits "male and female" as unnecessary because without an express limitation, "kindred" includes male and female kindred.

Revised Law

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.

(Tex. Prob. Code, Sec. 38(b).)

Source Law

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

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased has neither surviving father nor mother nor surviving brothers or sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate.
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. (Tex. Prob. Code, Sec. 45.)

Sec. 45. (a) On the intestate death of one of the spouses to a marriage, the community property estate of the deceased spouse passes to the surviving spouse if:

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

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

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

Revisor's Note

Section 45(a), Texas Probate Code, refers to the "community property estate" of the deceased spouse.
The revised law substitutes "community estate" for "community property estate" because the terms are synonymous and the former is more consistent with the terminology used in this chapter.

[Sections 201.004-201.050 reserved for expansion]

SUBCHAPTER B. MATTERS AFFECTING INHERITANCE

Revised Law

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. (Tex. Prob. Code, Sec. 42(a).)

Source Law

Sec. 42. (a) Maternal Inheritance. For the purpose of inheritance, a child is the child of his biological or adopted mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

Revisor's Note

Section 42(a), Texas Probate Code, refers to "collaterals." Throughout this chapter, the revised law substitutes "collateral kindred" for "collaterals" for consistency with other sections in this chapter.

Revised Law

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.

(b) A child described by Subsection (a) 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. (Tex. Prob. Code, Sec. 42(b)(1).)

Source Law

(b) Paternal Inheritance. (1) For the purpose of inheritance, a child is the child of his biological father if the child is born under circumstances described by Section 160.201, Family Code, is adjudicated to be the child of the father by court decree as provided by Chapter 160, Family Code, was adopted by his father, or if the father executed an acknowledgment of paternity as provided by Subchapter...
D, Chapter 160, Family Code, or a like statement properly executed in another jurisdiction, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue. A person claiming to be a biological child of the decedent, who is not otherwise presumed to be a child of the decedent, or claiming inheritance through a biological child of the decedent, who is not otherwise presumed to be a child of the decedent, may petition the probate court for a determination of right of inheritance. If the court finds by clear and convincing evidence that the purported father was the biological father of the child, the child is treated as any other child of the decedent for the purpose of inheritance and he and his issue may inherit from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue. This section does not permit inheritance by a purported father of a child, whether recognized or not, if the purported father's parental rights have been terminated.

Revisor's Note

Section 42(b)(1), Texas Probate Code, provides that "[t]his section" does not permit inheritance by a purported father of a child under certain circumstances. The source law reference to "this section" means Section 42, Texas Probate Code, which is revised as Sections 201.051, 201.052, 201.053, and 201.055 of this chapter. The only part of Section 42 that is relevant to paternal inheritance is revised in this section. The revised law therefore retains the reference to "this section."

Revised Law

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

Revisor's Note

(1) Section 42(b)(2), Texas Probate Code, refers to "real or personal" property. The revised law omits the reference to "real or personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

(2) Section 42(b)(2), Texas Probate Code, refers to a child who has not been found to be entitled to treatment under "this subsection," meaning Subsection (b), Section 42, Texas Probate Code, as a decedent's child. Part of Subsection (b) is revised as this section, and part is revised as Section 201.052 of this chapter. The revised law substitutes a reference only to Section 201.052 for the reference to "this subsection."
subsection," however, because the relevant portion of
Subsection (b) is revised as Section 201.052.

Revised Law

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 descendents 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. (Tex. Prob. Code, Sec. 40.)

Source Law

Sec. 40. For purposes of inheritance under the
laws of descent and distribution, an adopted child
shall be regarded as the child of the parent or parents
by adoption, such adopted child and its descendents
inheriting from and through the parent or parents by
adoption and their kin the same as if such child were
the natural child of such parent or parents by
adoption, and such parent or parents by adoption and
their kin inheriting from and through such adopted
child the same as if such child were the natural child
of such parent or parents by adoption. The natural
parent or parents of such child and their kin shall not
inherit from or through said child, but, except as
provided by Section 162.507(c), Family Code, the child
shall inherit from and through its natural parent or
parents. Nothing herein shall prevent any parent by
adoption from disposing of his property by will
according to law. The presence of this Section
specifically relating to the rights of adopted
children shall in no way diminish the rights of such
children, under the laws of descent and distribution
or otherwise, which they acquire by virtue of their
inclusion in the definition of "child" which is
contained in this Code.

Revised Law

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. (Tex. Prob.
Code, Sec. 42(d).)

Source Law

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

Revised Law

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. (Tex. Prob.
Code, Sec. 41(a).)

Source Law

Sec. 41. (a) Persons Not in Being. No right of
inheritance shall accrue to any persons other than to
children or lineal descendants of the intestate,
unless they are in being and capable in law to take as
heirs at the time of the death of the intestate.

Revised Law

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. (Tex. Prob. Code, Sec. 41(b).)

Source Law

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

Revised Law

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. (Tex. Prob. Code, Sec. 41(d) (part).)

Source Law

(d) Convicted Persons and Suicides. No
conviction shall work corruption of blood or
forfeiture of estate, except in the case of a
beneficiary in a life insurance policy or contract who
is convicted and sentenced as a principal or
accomplice in wilfully bringing about the death of the
insured, in which case the proceeds of such insurance
policy or contract shall be paid as provided in the
Insurance Code of this State, as same now exists or is
hereafter amended; . . . .

Revisor's Note

Section 41(d), Texas Probate Code, refers to "the
Insurance Code of this State, as same now exists or is
hereafter amended." The revised law omits the
reference to "as same now exists or is hereafter
amended" because under Section 311.027, Government
Code (Code Construction Act), applicable to the
revised law, a reference to a statute applies to all
reenactments, revisions, or amendments of that statute
unless expressly provided otherwise.

Revised Law

Sec. 201.059. PERSON WHO DIES BY CASUALTY. Death by
casualty does not result in forfeiture of estate. (Tex. Prob. Code,
Sec. 41(d) (part).)

Source Law

(d) . . . . [No conviction shall work
. . . . forfeiture of estate,] . . . . nor shall there be
any forfeiture by reason of death by casualty; and
. . . .
Revised Law
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. (Tex. Prob. Code, Sec. 41(c).)

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

Revised Law
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. (Tex. Prob. Code, Sec. 41(d) (part).)

Source Law
(d) . . . the estates of those who destroy their own lives shall descend or vest as in the case of natural death.

Revised Law
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.

(Tex. Prob. Code, Secs. 41(e), (f).)
(e) Parent-Child Relationship. A probate court may declare that the parent of a child under 18 years of age may not inherit from or through the child under the laws of descent and distribution if the court finds by clear and convincing evidence that the parent has:

1. Voluntarily abandoned and failed to support the child in accordance with the parent's obligation or ability for at least three years before the date of the child's death, and did not resume support for the child before that date;
2. Voluntarily and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from and failed to support the child since birth; or
3. Been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3, Family Code, for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following sections of the Penal Code:
   (A) Section 19.02 (murder);
   (B) Section 19.03 (capital murder);
   (C) Section 19.04 (manslaughter);
   (D) Section 21.11 (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).

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

1. Inheritance under the laws of descent and distribution; and
2. Any other cause of action based on parentage.

[Sections 201.063–201.100 reserved for expansion]
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. (Tex. Prob. Code, Sec. 43.)

Source Law

Sec. 43. When the intestate's children, descendants, brothers, sisters, uncles, aunts, or any other relatives of the deceased standing in the first or same degree alone come into the distribution upon intestacy, they shall take per capita, namely: by persons; and, when a part of them being dead and a part living, the descendants of those dead shall have right to distribution upon intestacy, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive.

Revisor's Note

Section 43, Texas Probate Code, refers to persons in the first or same "degree," meaning degree of relationship. The revised law adds "of relationship" for clarity.

Revised Law

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. (Tex. Prob. Code, Sec. 39 (part).)

Source Law

Sec. 39. There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and . . . .
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. (Tex. Prob. Code, Sec. 39 (part).)

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. (Tex. Prob. Code, Secs. 44(a), (b).)
Source Law

Sec. 44. (a) If a decedent dies intestate as to all or a portion of the decedent's estate, property the decedent gave during the decedent's lifetime to a person who, on the date of the decedent's death, is the decedent's heir, or property received by a decedent's heir under a nontestamentary transfer under Chapter XI of this code is an advancement against the heir's intestate share only if:

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

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

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

Revised Law

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. (Tex. Prob. Code, Sec. 44(c).)

Source Law

(c) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.
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[Sections 202.010-202.050 reserved for expansion]

SUBCHAPTER B. NOTICE OF PROCEEDING TO DECLARE HEIRSHIP

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[Sections 202.057-202.100 reserved for expansion]

SUBCHAPTER C. TRANSFER OF PENDING PROCEEDING TO DECLARE HEIRSHIP

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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. (Tex. Prob. Code, Sec. 48(a) (part).)
Revisor's Note

Section 48(a), Texas Probate Code, provides that the court may "determine and declare" the persons who are a decedent's heirs and those heirs' interests in the decedent's estate. The revised law omits "declare" because, in this context, the court's power to make a determination includes the power to declare the determination.

Revised Law

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; or

(2) there has been a will probated in this state or elsewhere or an administration in this state of the 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. (Tex. Prob. Code, Sec. 48(a) (part).)

Source Law

Sec. 48. (a) When a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon his estate; or when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, [the court] . . . .

Revisor's Note

Section 48(a), Texas Probate Code, refers to "real or personal property" in this state. Throughout this chapter, the revised law omits "real or personal" in this context as unnecessary because Section
311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to include both real and personal property.

Revised Law
Sec. 202.003. VENUE FOR PROCEEDING TO DECLARE HEIRSHIP.

(a) A proceeding to declare heirship of a decedent may be conducted by:

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

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

(b) Notwithstanding Subsection (a), a probate court in which proceedings for the guardianship of the estate of a ward who dies intestate were pending at the time of the decedent's death may, if there is no administration pending in the estate, determine:

(1) the persons who are the 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. (Tex. Prob. Code, Secs. 48(a) (part), (c).)

Source Law
Sec. 48. (a) . . . the court of the county in which such proceedings were last pending, or in the event no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under Section 6 of this code, [may determine] . . . .

(c) Notwithstanding any other provision of this section, a probate court in which the proceedings for the guardianship of the estate of a ward who dies intestate were pending at the time of the death of the ward may, if there is no administration pending in the estate, determine and declare who are the heirs and only heirs of the ward, and their respective shares and interests, under the laws of this State, in the estate.
Revisor's Note

(1) Section 48(c), Texas Probate Code, provides that "[n]otwithstanding any other provision of this section," meaning Section 48, Texas Probate Code, a probate court in which guardianship proceedings were pending may determine the persons who are the heirs of a decedent who was the ward in those proceedings at the time of the decedent's death and those heirs' interests in the decedent's estate. The revised law substitutes a reference to Subsection (a) of this section for the reference to Section 48, Texas Probate Code, because that subsection is the revision of the only provision of Section 48 that could require a different court to conduct a proceeding to declare heirship.

(2) Section 48(c), Texas Probate Code, provides that a probate court may, in certain circumstances, "determine and declare" the persons who are the heirs of a decedent who was a ward at the time of the decedent's death and those heirs' interests in the decedent's estate. The revised law omits "declare" for the reason stated in the revisor's note to Section 202.001 of this chapter.

Revised Law

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 secured creditor or the owner of all or part of the decedent's estate; or

(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. (Tex.
Prob. Code, Sec. 49(a) (part).)

Source Law
Sec. 49. (a) Such proceedings may be instituted
and maintained in any of the instances enumerated
above by the qualified personal representative of the
estate of such decedent, by any person or persons
claiming to be a secured creditor or the owner of the
whole or a part of the estate of such decedent, or by
the guardian of the estate of a ward, if the
proceedings are instituted and maintained in the
probate court in which the proceedings for the
guardianship of the estate were pending at the time of
the death of the ward.

Revisor's Note
Section 49(a), Texas Probate Code, provides that
a proceeding to declare heirship may be commenced and
maintained by the "qualified personal representative"
of a decedent's estate. The revised law omits
"qualified" as unnecessary because a person may not
act as a personal representative until the person
qualifies to act in that capacity under Section 189,
Texas Probate Code, revised as Section 305.002 of this
code.

Revised Law
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 202.003 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;
(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; and

(8) an explanation for the omission from the
application of any of the information required by this section.

(Tex. Prob. Code, Sec. 49(a) (part).)

Sec. 49. (a) . . . In such a case an
application shall be filed in a proper court stating
the following information:

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

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

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

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

(5) a statement that each marriage of the
decedent has been listed with the date of the marriage,
the name of the spouse, and if the marriage was
terminated, the date and place of termination, and
other facts to show whether a spouse has had an
interest in the property of the decedent;

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

(7) a general description of all the real
and personal property belonging to the estate of the
Section 49(a), Texas Probate Code, provides that an application to commence a proceeding to declare heirship must be filed in a "proper court." Sections 48(a) and (c), Texas Probate Code, revised in relevant part as Section 202.003 of this chapter, prescribe the courts in which venue is proper for a proceeding to declare heirship. For the convenience of the reader, the revised law substitutes a reference to a "court specified by Section 202.003" of this chapter for the reference to a "proper court."

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. (Tex. Prob. Code, Sec. 48(b).)

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. (Tex. Prob. Code, Sec. 49(b) (part).)

Source Law

(b) Such application shall be supported by the
affidavit of each applicant to the effect that,
inssofar as is known to such applicant, all the
allegations of such application are true in substance
and in fact and that no such material fact or
circumstance has, within the affiant's knowledge, been
omitted from such application. . . .

Revisor's Note

Section 49(b), Texas Probate Code, requires an
application to commence a proceeding to declare
heirship to be supported by an affidavit to the effect
that the allegations made in the application are "true
in substance and in fact." The revised law omits "in
substance and in fact" as unnecessary because an
allegation that is "true" is necessarily true in
substance and true in fact.

Revised Law

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. (Tex. Prob. Code, Sec.
49(b) (part).)

Source Law

(b) . . . The unknown heirs of such decedent,
all persons who are named in the application as heirs
of such decedent, and all persons who are, at the date
of the filing of the application, shown by the deed
records of the county in which any of the real property
described in such application is situated to own any
share or interest in any such real property, shall be made parties in such proceeding.

**Revised Law**

Sec. 202.009. REPRESENTATION OF INTERESTS OF CERTAIN PERSONS. (a) If it appears to the court in a proceeding to declare heirship that there is or may be a living heir whose name or whereabouts is unknown, or that a defendant is an incapacitated person, the court may appoint an attorney ad litem or guardian ad litem to represent the interests of that person. The court may not appoint an attorney ad litem or guardian ad litem unless the court finds that the appointment is necessary to protect the interests of the living heir or incapacitated person.

(b) The court shall appoint an attorney ad litem to represent the interests of unknown heirs. (Tex. Prob. Code, Secs. 53(b), (c).)

**Source Law**

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

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

[Sections 202.010-202.050 reserved for expansion]

**SUBCHAPTER B. NOTICE OF PROCEEDING TO DECLARE HEIRSHIP**

**Revised Law**

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. (Tex. Prob. Code, Sec. 50(a) (part).)

Source Law

Sec. 50. (a) Citation shall be served by registered or certified mail upon all distributees 12 years of age or older whose names and addresses are known, or whose names and addresses can be learned through the exercise of reasonable diligence, provided that . . . . Citation shall be served as provided by this subsection on the parent, managing conservator, or guardian of a distributee who is younger than 12 years of age, if the name and address of the parent, managing conservator, or guardian is known or can be reasonably ascertained.

Revised Law

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 shall 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 shall also be served on unknown heirs by publication in the manner provided by this section. (Tex. Prob. Code, Sec. 50(b).)

Source Law

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

Revised Law

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. (Tex. Prob. Code, Sec. 50(c).)

Source Law

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

Revised Law

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. (Tex. Prob. Code, Sec. 50(a) (part).)

Source Law

(a) ... the court may in its discretion require that service of citation shall be made by personal service upon some or all of those named as distributees in the application....

Revised Law

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. (Tex. Prob. Code, Sec. 50(d).)

Source Law

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

Revised Law

Sec. 202.056. WAIVER OF SERVICE OF CITATION ON CERTAIN PERSONS NOT PERMITTED. A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is 12 years of age or older, but younger than 19 years of age, may not waive citation required by this subchapter to be served on the distributee. (Tex. Prob. Code, Sec. 50(e).)

Source Law

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

[Sections 202.057-202.100 reserved for expansion]

SUBCHAPTER C. TRANSFER OF PENDING PROCEEDING TO DECLARE HEIRSHIP

Revised Law

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. (Tex. Prob.
Code, Sec. 51 (part).)

Source Law

Sec. 51. If an administration upon the estate of
any such decedent shall be granted in the State, or if
the will of such decedent shall be admitted to probate
in this State, after the institution of a proceeding to
declare heirship, the court in which such proceeding
is pending shall, by an order entered of record
therein, transfer the cause to the court of the county
in which such administration shall have been granted,
or such will shall have been probated, and . . . .

Revisor's Note

Section 51, Texas Probate Code, refers in part to
the commencement of a proceeding to declare heirship
and to a subsequent transfer of the "cause."
Throughout this subchapter, the revised law
substitutes "proceeding" for "cause" for consistency
of terminology.

Revised Law

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, docket entries, 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 minutes of the court;

and

(3) docket the proceeding. (Tex. Prob. Code, Sec. 51 (part).)

Source Law

Sec. 51. . . . thereupon the clerk of the court in which such proceeding was originally filed shall send to the clerk of the court named in such order, a certified transcript of all pleadings, docket entries, and orders of the court in such cause. The clerk of the court to which such cause shall be transferred shall file the transcript and record the same in the minutes of the court and shall docket such cause, and . . . .

Revised Law

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. (Tex. Prob. Code, Sec. 51 (part).)

Source Law

Sec. 51. . . . the same shall thereafter proceed as though originally filed in that court. The court, in its discretion, may consolidate the cause so transferred with the pending proceeding.

[Sections 202.104-202.150 reserved for expansion]

SUBCHAPTER D. EVIDENCE RELATING TO DETERMINATION OF HEIRSHIP

Revised Law

Sec. 202.151. WRITTEN EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP. The court may require that all or any part of the evidence admitted in a proceeding to declare heirship be:

(1) reduced to writing and subscribed and sworn to by the witnesses, respectively; and

(2) filed in the proceeding and recorded in the minutes of the court. (Tex. Prob. Code, Sec. 53(a).)
Sec. 53. (a) The court in its discretion may require all or any part of the evidence admitted in a proceeding to declare heirship to be reduced to writing, and subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court.

[Sections 202.152-202.200 reserved for expansion]

SUBCHAPTER E. JUDGMENT IN PROCEEDING TO DECLARE HEIRSHIP

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. (Tex. Prob. Code, Sec. 54.)

Sec. 54. The judgment of the court in a proceeding to declare heirship shall declare the names and places of residence of the heirs of the decedent, and their respective shares and interests in the real and personal property of such decedent. If the proof is in any respect deficient, the judgment shall so state.

Revisor's Note

Section 54, Texas Probate Code, requires the "judgment of the court" in a proceeding to declare heirship to state certain facts. The revised law omits "of the court" as unnecessary in this context because a judgment in a proceeding to declare heirship may only be rendered by a court.

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. (Tex. Prob. Code, Sec. 55(a) (part).)

Source Law

Sec. 55. (a) Such judgment shall be a final judgment, and may be appealed or reviewed within the same time limits and in the same manner as may other judgments in probate matters at the instance of any interested person. . . .

Revised Law

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. (Tex. Prob. Code, Sec. 55(a) (part).)

Source Law

(a) . . . If any person who is an heir of the decedent is not served with citation by registered or certified mail, or by personal service, he may at any time within four years from the date of such judgment have the same corrected by bill of review, or upon proof of actual fraud, after the passage of any length of time, and may recover from the heirs named in the judgment, and those claiming under them who are not bona fide purchasers for value, his just share of the property or its value.

Revised Law

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. (Tex. Prob. Code, Sec. 55(b).)

Source Law

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

Revisor's Note

Section 55(b), Texas Probate Code, refers to a person who has delivered "funds or property" to certain persons. Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property. In addition, Section 3(z), Texas Probate Code, revised in this code as Section 22.028, defines "personal property" as including money. In this context, the terms "money" and "funds" are synonymous. For these reasons, the revised law omits "funds" as included within the meaning of "property."

Revised Law

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. (Tex. Prob. Code, Sec. 55(c).)

Source Law

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

Revisor's Note

Section 55(c), Texas Probate Code, provides that nothing in "this chapter," meaning Chapter III, Texas Probate Code, affects the rights or remedies of the decedent's creditors. The relevant provisions of Chapter III, Texas Probate Code, that could otherwise
be interpreted to affect a creditor's rights or remedies are revised as this chapter and Chapter 203, which concerns an affidavit of facts concerning the identity of a decedent's heirs. Section 52(c), Texas Probate Code, revised in that chapter as Section 203.001(d), provides that an affidavit of facts does not affect the rights of a creditor. It is therefore unnecessary to reference Chapter 203 in this section. For that reason, the revised law substitutes "this chapter" for the reference to Chapter III, Texas Probate Code.

Revised Law
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. (Tex. Prob. Code, Sec. 56.)

Source Law
Sec. 56. A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment is situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth therein.
Sec. 203.002. FORM OF AFFIDAVIT CONCERNING IDENTITY OF HEIRS

CHAPTER 203. NONJUDICIAL EVIDENCE OF HEIRSHIP

Revised Law

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. (Tex.
Prob. Code, Sec. 52.)

Source Law

Sec. 52. (a) A statement of facts concerning the
family history, genealogy, marital status, or the
identity of the heirs of a decedent shall be received
in a proceeding to declare heirship, or in a suit
involving title to real or personal property, as prima
facie evidence of the facts therein stated, if the
statement is contained in either an affidavit or any
other instrument legally executed and acknowledged or
sworn to before, and certified by, an officer
authorized to take acknowledgments or oaths as
applicable, or any judgment of a court of record, and
if the affidavit or instrument has been of record for
five years or more in the deed records of any county in
this state in which such real or personal property is
located at the time the suit is instituted, or in the
deed records of any county of this state in which the
decedent had his domicile or fixed place of residence
at the time of his death. If there is any error in the
statement of facts in such recorded affidavit or
instrument, the true facts may be proved by anyone
interested in the proceeding in which said affidavit
or instrument is offered in evidence.

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

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

Revisor's Note

Section 52(a), Texas Probate Code, refers to
"real or personal property." The revised law omits
"real or personal" in this context as unnecessary
because Section 311.005(4), Government Code (Code
Construction Act), applicable to the revised law,
defines "property" to mean real and personal property.

Revised Law

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: __________
Sec. 52A. An affidavit of facts concerning the identity of heirs of a decedent may be in substantially the following form:

**AFFIDAVIT OF FACTS CONCERNING THE IDENTITY OF HEIRS**

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

1. My name is __________ (insert name of affiant), and I live at __________ (insert address of affiant's 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. (Optional.) The following were the heirs of decedent: __________ (insert names of heirs).

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)
(Sign, if any, of notary) __________
(printed name) __________
My commission expires: __________

CHAPTER 204. GENETIC TESTING IN PROCEEDINGS TO DECLARE HEIRSHIP

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CHAPTER 204. GENETIC TESTING IN PROCEEDINGS TO DECLARE HEIRSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law
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. (Tex. Prob. Code, Sec. 53E.)

Source Law
Sec. 53E. A proceeding under this chapter involving genetic testing is open to the public as in other civil cases, and papers and records in the proceeding are available for public inspection.

Revisor's Note
Section 53E, Texas Probate Code, refers to a proceeding under "this chapter," meaning Chapter III, Texas Probate Code. That chapter consists of Sections 53A through 53E, which are revised as this chapter, Sections 48 through 51, 53, and 54 through 56, which are revised as Chapter 202 of this code, and Sections 52 and 52A, which are revised as Chapter 203 of this code. The revised law substitutes references to this chapter and Chapter 202 of this code for the reference to Chapter III, Texas Probate Code, but does not reference Chapter 203 of this code because no
proceeding is brought under that chapter.  

[Sections 204.002-204.050 reserved for expansion]

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

Revised Law

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. (Tex. Prob. Code, Sec. 53A(a).)

Source Law

Sec. 53A. (a) In a proceeding to declare heirship under this chapter, the court may, on the court's own motion, and shall, on the request of a party to the proceeding, order one or more specified individuals to submit to genetic testing as provided for in Subchapter F, Chapter 160, Family Code. If two or more individuals are ordered to be tested, the court may order that the testing of those individuals be done concurrently or sequentially. The court may enforce an order under this subsection by contempt.

Revisor's Note

Section 53A(a), Texas Probate Code, refers to "a proceeding to declare heirship under this chapter," meaning Chapter III, Texas Probate Code. Sections 48 through 51, 53, and 54 through 56, Texas Probate Code, revised as Chapter 202 of this code, are the relevant sections of Chapter III that relate to proceedings to declare heirship. The revised law is drafted accordingly.

Revised Law

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. (Tex. Prob. Code, Sec. 53A(b).)

Source Law

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

(1) by a party to the proceeding who requests the testing;
(2) as agreed by the parties and approved by the court; or
(3) as ordered by the court.

Revised Law

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. (Tex. Prob. Code, Secs. 53A(c), (d).)

Source Law

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

(1) a party to the proceeding contests the results of the genetic testing ordered under Subsection (a) of this section; and
the party contesting the results requests that additional testing be conducted.

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

Revised Law
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. (Tex. Prob. Code, Sec. 53A(e).)

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

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

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

Revised Law
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. (Tex. Prob. Code, Sec. 53A(f).)

**Source Law**

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

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

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

**Revised Law**

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.

(Tex. Prob. Code, Sec. 53A(g).)

**Source Law**

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

[Sections 204.057-204.100 reserved for expansion]

**SUBCHAPTER C. RESULTS OF GENETIC TESTING**

**Revised Law**

Sec. 204.101. RESULTS OF GENETIC TESTING; ADMISSIBILITY. A report of the results of genetic testing ordered under Subchapter B:
must comply with the requirements for a report prescribed by Section 160.504, Family Code; and

is admissible in a proceeding to declare heirship under Chapter 202 as evidence of the truth of the facts asserted in the report. (Tex. Prob. Code, Sec. 53B(a).)

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

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

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

Revisor's Note
Section 53B(a)(2), Texas Probate Code, refers to "a proceeding to declare heirship under this chapter," meaning Chapter III, Texas Probate Code. The revised law substitutes a reference to Chapter 202 of this code for the reference to Chapter III, Texas Probate Code, for the reason stated in the revisor's note to Section 204.051 of this chapter.

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. (Tex. Prob. Code, Sec. 53B(b).)

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

Revisor's Note
Section 53B(b), Texas Probate Code, refers to "genetic testing ordered under this section," meaning Section 53B, Texas Probate Code. The provisions under
which genetic testing is ordered, however, are contained in Section 53A, Texas Probate Code, which is revised as Subchapter B of this chapter. Because the reference in the source law to genetic testing ordered under Section 53B is clearly an error, the revised law substitutes a reference to "genetic testing ordered under Subchapter B" for the reference to "genetic testing ordered under this section."

Revised Law

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. (Tex. Prob. Code, Sec. 53B(c).)

Source Law

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

[Sections 204.104-204.150 reserved for expansion]

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

Revised Law

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:

(1) petitions the court for a determination of right of inheritance as authorized by Section 201.052(c); and

(2) claims:

(A) to be a biological child of the decedent, but with respect to whom a parent-child relationship with the decedent...
was not established as provided by Section 160.201, Family Code; or

(B) to inherit through a biological child of the
decedent, if a parent-child relationship between the individual
through whom the inheritance is claimed and the decedent was not
established as provided by Section 160.201, Family Code. (Tex.
Prob. Code, Sec. 53C(a).)

Source Law

Sec. 53C. (a) This section applies in a
proceeding to declare heirship of a decedent only with
respect to an individual who:

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

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

Revised Law

Sec. 204.152. REQUIRED FINDINGS IN ABSENCE OF REBUTTAL
EVIDENCE. Unless the results of genetic testing of another
individual who is an heir of the decedent who is the subject of a
proceeding to declare heirship to which this subchapter applies are
admitted as rebuttal evidence, the court shall find that the
individual described by Section 204.151:

(1) is an heir of the decedent, if the results of
genetic testing ordered under Subchapter B identify a tested
individual who is an heir of the decedent as the ancestor of the
individual described by Section 204.151; or

(2) is not an heir of the decedent, if the results of
genetic testing ordered under Subchapter B exclude a tested
individual who is an heir of the decedent as the ancestor of the
individual described by Section 204.151. (Tex. Prob. Code, Secs.
53C(b), (c).)

Source Law

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

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

Revised Law

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. (Tex. Prob.
Code, Sec. 53C(d).)

Source Law

(d) If the results of genetic testing ordered
under Section 53A of this chapter do not identify or
exclude a tested individual as the ancestor of the
individual described by Subsection (a) of this
section:

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

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

[Sections 204.154-204.200 reserved for expansion]

SUBCHAPTER E. ADDITIONAL ORDERS FOLLOWING RESULTS OF GENETIC
TESTING

Revised Law

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. (Tex. Prob. Code, Sec.
Sec. 53D. On the request of an individual determined by the results of genetic testing to be the heir of a decedent and for good cause shown, the court may:

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

CHAPTER 205. SMALL ESTATE AFFIDAVIT

Sec. 205.001. ENTITLEMENT TO ESTATE WITHOUT APPOINTMENT OF PERSONAL REPRESENTATIVE

Sec. 205.002. AFFIDAVIT REQUIREMENTS

Sec. 205.003. EXAMINATION AND APPROVAL OF AFFIDAVIT

Sec. 205.004. COPY OF AFFIDAVIT TO CERTAIN PERSONS

Sec. 205.005. AFFIDAVIT AS LOCAL GOVERNMENT RECORD

Sec. 205.006. TITLE TO HOMESTEAD TRANSFERRED UNDER AFFIDAVIT

Sec. 205.007. LIABILITY OF CERTAIN PERSONS

Sec. 205.008. EFFECT OF CHAPTER

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;
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.
(Tex. Prob. Code, Sec. 137(a) (part).)

Source Law
Sec. 137. (a) The distributees of the estate of
a decedent who dies intestate shall be entitled
to the extent that the assets, exclusive of
homestead and exempt property, exceed the known
liabilities of said estate, exclusive of liabilities
secured by homestead and exempt property, without
awaiting the appointment of a personal representative
when:
(1) No petition for the appointment of a
personal representative is pending or has been
granted; and
(2) Thirty days have elapsed since the
death of the decedent; and
(3) The value of the entire assets of the
estate, not including homestead and exempt property,
does not exceed $50,000; and
(4) There is filed with the clerk of the
court having jurisdiction and venue an affidavit
....; and
(6) The judge, .... approves the
affidavit; and
(7) [A copy of the affidavit, .... is
furnished] by the distributees of the estate ....

Revised Law
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. (Tex. Prob. Code, Sec.
137(a) (part).)

Source Law

(a) ... (4) ... an affidavit sworn to by two
disinterested witnesses, by all such distributees that
have legal capacity, and, if the facts warrant, by the
natural guardian or next of kin of any minor or the
guardian of any other incapacitated person who is also
a distributee, ...; and
(5) The affidavit shows the existence of
the foregoing conditions and includes a list of all of
the known assets and liabilities of the estate, the
names and addresses of the distributees, and the
relevant family history facts concerning heirship that
show the distributees' rights to receive the money or
property of the estate or to have such evidences of
money, property, or other rights of the estate as are
found to exist transferred to them as heirs or
assignees; and
...

Revised Law

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. (Tex.
Prob. Code, Sec. 137(a) (part).)

Source Law

(a) ... (4) ... which affidavit shall be
examined by the judge of the court having jurisdiction
and venue; and
(6) The judge, in the judge's discretion,
finds that the affidavit conforms to the terms of this
section and approves the affidavit; and
...

Revisor's Note

Section 137(a)(4), Texas Probate Code, in part
requires the judge "of the court having jurisdiction
and venue" to examine a small estate affidavit. The
revised law omits the quoted language because it is clear from the context that the judge required to examine the affidavit is the judge of the court in which the affidavit is filed and that court is the court that has jurisdiction and venue of the estate, as provided by another part of Section 137(a)(4), Texas Probate Code, which is revised in this chapter as Section 205.001(4).

Revised Law
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. (Tex. Prob. Code, Sec. 137(a) (part).)

Source Law
(a) . . .
(7) A copy of the affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property, or other right belonging to the estate.

Revised Law
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. (Tex. Prob. Code, Sec. 137(d).)

Source Law

(d) If the judge approves the affidavit under this section, the affidavit is to be recorded as an official public record under Chapter 194, Local Government Code. If the county has not adopted a microfilm or microphotographic process under Chapter 194, Local Government Code, the county clerk shall provide and keep in his office an appropriate book labeled "Small Estates," with an accurate index showing the name of the decedent and reference to land, if any, involved, in which he shall record every such affidavit so filed, upon being paid his legal recording fee.

Revisor's Note

Section 137(d), Texas Probate Code, refers to adoption by a county of "a microfilm or microphotographic process under Chapter 194, Local Government Code," and requires that a small estate affidavit be "recorded as an official public record" under that chapter. Chapter 194, Local Government Code, was repealed by Section 85, Chapter 1248, Acts of the 71st Legislature, Regular Session, 1989, as part of the enactment of a comprehensive system for the maintenance of local government records, which included the amendment of Subtitle C, Title 6, Local Government Code. During the same legislative session, Sections 44 and 45, Chapter 1, Acts of the 71st Legislature, Regular Session, 1989, made technical, nonsubstantive amendments to Chapter 194 to incorporate amendments to the laws from which Chapter 194 was derived that were previously enacted by the 70th Legislature. These nonsubstantive amendments were printed as Chapter 194 despite the repeal of Chapter 194 by the 71st Legislature and continued to exist in law as that chapter until 1999. In 1999, Section 13.06, Chapter 62, Acts of the 76th
Legislature, Regular Session, incorporated one section of Chapter 194 into Chapter 193, Local Government Code, and repealed the remaining sections of Chapter 194, stating that the provisions were superseded by Subtitle C, Title 6, Local Government Code.

Although Section 137(d), Texas Probate Code, was amended in 1995 by Section 3, Chapter 642, Acts of the 74th Legislature, Regular Session, to, in part, move a reference to an affidavit recorded as "an official public record under Chapter 194, Local Government Code," from Section 137(a), Texas Probate Code, to Section 137(d), Texas Probate Code, the retention of that reference was inaccurate. The only remaining provisions of Chapter 194 at that time were those enacted as technical, nonsubstantive amendments in 1989, and a reference solely to those provisions was nonsensical.

The revised law omits all references to "Chapter 194, Local Government Code," and substitutes references to "Subtitle C, Title 6, Local Government Code," because it is clear that Subtitle C, Title 6, Local Government Code, now regulates the maintenance, microfilming, and destruction of local government records and supersedes the system authorized by former Chapter 194. In addition, the revised law substitutes a requirement that an affidavit be "maintained as a local government record" for the requirement that the affidavit be "recorded as an official public record" for consistency with the terminology used in Subtitle C, Title 6, Local Government Code.

Revised Law 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. (Tex. Prob. Code, Sec.
137(c).)

Source Law

(c) Title to a decedent's homestead that is the
only real property in a decedent's estate may be
transferred on an affidavit that meets the
requirements of this section. An affidavit that is
used to transfer title to a homestead under this
section must be recorded in the deed records of a
county in which the homestead is located. A bona fide
purchaser for value may rely on a recorded affidavit
under this section. A bona fide purchaser for value
without actual or constructive notice of an heir who is not
disclosed in a recorded affidavit under this
section acquires title to a homestead free of the
interests of the undisclosed heir, but the bona fide
purchaser remains subject to any claim a creditor of
the decedent has by law. A purchaser has constructive
notice of an heir who is not disclosed in a recorded
affidavit under this section if an affidavit, judgment
of heirship, or title transaction in the chain of title
in the deed records identifies the heir of the decedent
who is not disclosed in the affidavit as an heir of the
decedent. An heir who is not disclosed in a recorded
affidavit under this section may recover from an heir
who receives consideration from a purchaser in a
transfer for value of title to a homestead passing
under the affidavit.
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. (Tex. Prob. Code, Sec. 138.)

Sec. 138. The person making payment, delivery, transfer or issuance pursuant to the affidavit described in the preceding Section shall be released to the same extent as if made to a personal representative of the decedent, and shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit, but the distributees to whom payment, delivery, transfer, or issuance is made shall be answerable therefor to any person having a prior right and be accountable to any personal representative thereafter appointed. In addition, the person or persons who execute the affidavit shall be liable for any damage or loss to any person which arises from any payment, delivery, transfer, or issuance made in reliance on such affidavit. If the person to whom such affidavit is delivered refuses to pay, deliver, transfer, or issue the property as above provided,
such property may be recovered in an action brought for such purpose by or on behalf of the distributees entitled thereto, upon proof of the facts required to be stated in the affidavit.

Revised Law

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. (Tex. Prob. Code, Sec. 137(b).)

Source Law

(b) This section does not affect the disposition of property under the terms of a will or other testamentary document nor, except as provided by Subsection (c) of this section, does it transfer title to real property.

[Chapters 206-250 reserved for expansion]

SUBTITLE F. WILLS

CHAPTER 251. FUNDAMENTAL REQUIREMENTS AND PROVISIONS RELATING TO WILLS

SUBCHAPTER A. WILL FORMATION

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Sec. 251.002. INTERESTS THAT MAY PASS BY WILL; DISINHERITANCE ......................... 282

[Sections 251.003-251.050 reserved for expansion]

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[Sections 251.053-251.100 reserved for expansion]

SUBCHAPTER C. SELF-PROVED WILLS

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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. (Tex. Prob. Code, Sec. 57.)

Sec. 57. Every person who has attained the age of eighteen years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof or of the maritime service at the time the will is made, being of sound mind, shall have the right and power to make a last will and testament, under the rules and limitations prescribed by law.

Revisor's Note

(1) Section 57, Texas Probate Code, provides that a person may execute a will if the person is or has been "lawfully married." Throughout this chapter, the revised law omits "lawfully" in this context as unnecessary. The requirement that the person was or had been married is sufficient to convey that the marriage must have met the legal requirements for a marriage.
(2) Section 57, Texas Probate Code, provides that a member of the "maritime service" may execute a
Throughout this chapter, the revised law substitutes "United States Maritime Service" for "maritime service" for consistency of terminology throughout this code.

Revised Law

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. (Tex. Prob. Code, Secs. 58(a), (b).)

Source Law

Sec. 58. (a) Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title, and interest in property the person has at the time of the person's death, subject to the limitations prescribed by law.

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

1. disinherit an heir; and

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

Revisor's Note

Section 58(a), Texas Probate Code, describes the rights and interests in property that a competent person may "devise and bequeath" by last will and testament. The revised law omits the reference to "bequeath" as unnecessary. Traditionally, "devise" referred to the disposition of real property by a will; "bequeath" usually refers to the disposition of personal property by a will. Black's Law Dictionary (revised eighth edition, 2004). Section 3(h), Texas Probate Code, revised as Section 22.008 of this code, provides that "devise" means "to dispose of real or personal property, or of both, by will." The revised
law therefore omits "bequeath" because the meaning of
that term is included within the meaning of "devise."

[Sections 251.003-251.050 reserved for expansion]

SUBCHAPTER B. WILL REQUIREMENTS

Revised Law

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. (Tex. Prob.
Code, Sec. 59(a) (part).)

Source Law

Sec. 59. (a) Every last will and testament, except where otherwise provided by law, shall be in
writing and signed by the testator in person or by
another person for him by his direction and in his
presence, and shall, . . . be attested by two or more
credible witnesses above the age of fourteen years who
shall subscribe their names thereto in their own
handwriting in the presence of the testator. . . .

Revisor's Note

Section 59(a), Texas Probate Code, provides that
a will must be attested by two or more witnesses
"above" the age of 14. The revised law substitutes "at
least" 14 years of age for "above" the age of 14 for
consistency of terminology throughout this chapter.
Another provision of Section 59(a), Texas Probate
Code, revised in this chapter as Section 251.104(e),
sets out a statutorily prescribed form for a
self-proving affidavit, which provides that a
subscribing witness be "at least" 14 years of age.
Revised Law

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. (Tex. Prob. Code, Secs. 59(a) (part), 60 (part).)

Source Law

Sec. 59. (a) Every last will and testament shall, if not wholly in the handwriting of the testator, be attested by witnesses. . . .

Sec. 60. Where the will is written wholly in the handwriting of the testator, the attestation of the subscribing witnesses may be dispensed with. . . .

[Sections 251.053-251.100 reserved for expansion]

SUBCHAPTER C. SELF-PROVED WILLS

Revised Law

Sec. 251.101. SELF-PROVED WILL. A will to which a self-proving affidavit subscribed and sworn to by the testator and witnesses is attached or annexed is a self-proved will. (Tex. Prob. Code, Sec. 59(b) (part).)

Source Law

(b) A will with a self-proving affidavit subscribed and sworn to by the testator and witnesses attached or annexed to the will is a "self-proved will." . . .

Revised Law

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 the testator and witnesses execute a self-proving affidavit.

(b) A self-proved will may not otherwise be treated differently than a will that is not self-proved. (Tex. Prob. Code, Secs. 59(a) (part), (c) (part).)

Source Law

(a) . . . the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, [made before an officer authorized to administer oaths under the laws of this State.] . . .

(c) A self-proved will may be admitted to
probate without the testimony of any subscribing
witness, but otherwise it shall be treated no
differently than a will not self-proved. . . .

Revised Law
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. (Tex. Prob. Code, Sec. 59(a) (part).)

Source Law
(a) . . . Such a will or testament may, at the
time of its execution or at any subsequent date during
the lifetime of the testator and the witnesses, be made
self-proved, and . . . .

Revised Law
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 under the laws of this state. 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)

(Tex. Prob. Code, Secs. 59(a) (part), (b) (part).)
(a) [a will or testament may . . . be made self-proved] . . . by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths under the laws of this State. Provided that nothing shall require an affidavit or certificate of any testator or testatrix as a prerequisite to self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS
COUNTY OF ________________

Before me, the undersigned authority, on this day personally appeared _______________, _______________, and _______________, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said _______________, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

__________________________
Testator

__________________________
Witness

__________________________
Witness

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

(SEAL)

(Signed) ______________________________
(Official Capacity of Officer)

(b) An affidavit in form and content substantially as provided by Subsection (a) of this section is a "self-proving affidavit." . . . Substantial compliance with the form of such affidavit shall suffice to cause the will to be self-proved. For this purpose, an affidavit that is subscribed and acknowledged by the testator and subscribed and sworn to by the witnesses would suffice as being in substantial compliance. . . .

Revisor’s Note

(1) Section 59(a), Texas Probate Code, provides
that no other affidavit or certificate is required of a
testator or "testatrix" to self-prove a will other
than the statutorily prescribed form of an affidavit.
The revised law omits the reference to "testatrix" as
archaic. Traditionally, "testatrix" referred to a
female testator. In modern usage, "testator" is
interpreted to apply to both sexes. Black's Law

(2) Section 59(a), Texas Probate Code,
describes the statutorily prescribed form of the
self-proving affidavit as "the certificate set out
below" and requires that the "affidavits . . . be
evidenced by a certificate." For consistency of
terminology, the revised law refers only to
self-proving affidavits because it is clear from the
context of Section 59(a) that the terms "affidavit"
and "certificate" refer to the same document.
Additionally, to the extent that Section 59(a) uses
the term "certificate" to mean the jurat and other
prescribed language concerning when and before what
authority the affidavit was made, the form of the
statutorily prescribed affidavit includes those
items. The revised law is drafted accordingly.

Revised Law
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. (Tex. Prob. Code,
Sec. 59(b) (part).)

Source Law
(b) . . . 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, but in that case, the
will may not be considered a self-proved will.
Revised Law

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. (Tex. Prob. Code, Sec. 59(c) (part).)

Source Law

(c) In particular and without limiting the generality of the foregoing, a self-proved will may be contested, or revoked or amended by a codicil in exactly the same fashion as a will not self-proved.

Revisor's Note

Section 59(c), Texas Probate Code, provides that "in particular and without limiting the generality of the foregoing," a self-proved will may be contested, revoked, or amended in the same manner as a will that is not self-proved. The revised law omits the quoted language because under Section 311.021(2), Government Code (Code Construction Act), applicable to the revised law, it is presumed that all parts of a statute are intended to be effective. Any applicable limitations apply by their own terms.

Revised Law

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. (Tex. Prob. Code, Sec. 60 (part).)

Source Law

Sec. 60. [Where the will is written wholly in the handwriting of the testator,] ... Such a will may be made self-proved at any time during the testator’s lifetime by the attachment or annexation thereto of an affidavit by the testator to the effect that the instrument is his last will; that he was at least eighteen years of age when he executed it (or, if under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service); that he was of sound mind; and that he has not revoked such instrument.

Revisor’s Note

Section 60, Texas Probate Code, provides for the self-proving of a holographic will. For the convenience of the reader, the revised law clarifies that Section 60 is an exception to Section 59, Texas Probate Code, revised in relevant part in various provisions of this subchapter, which provides for the self-proving of an attested will.

CHAPTER 252. SAFEKEEPING AND CUSTODY OF WILLS

SUBCHAPTER A. DEPOSIT OF WILL WITH COUNTY CLERK

Sec. 252.001. WILL DEPOSIT; CERTIFICATE .......... 291
Sec. 252.002. SEALED WRAPPER REQUIRED .......... 292
Sec. 252.003. NUMBERING OF FILED WILLS AND CORRESPONDING CERTIFICATES .......... 292
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[Sections 252.005-252.050 reserved for expansion]

SUBCHAPTER B. WILL DELIVERY DURING LIFE OF TESTATOR

Sec. 252.051. WILL DELIVERY .......... 293
Sec. 252.052. SURRENDER OF CERTIFICATE OF DEPOSIT; EXCEPTION .......... 293
[Sections 252.053-252.100 reserved for expansion]

SUBCHAPTER C. ACTIONS BY COUNTY CLERK ON DEATH OF TESTATOR

Sec. 252.101. NOTIFICATION BY COUNTY CLERK .......... 294
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. (Tex. Prob. Code, Sec. 71(a) (part).)
deposit, the clerk may require such proof as shall be
satisfactory to him concerning the testator's identity
and residence. The clerk, on being paid a fee of Five
Dollars therefor, shall receive and keep the will, and
shall give a certificate of deposit for it. . . .

Revisor's Note

Section 71(a), Texas Probate Code, refers to the
deposit of a will by a "person making it." Throughout
the Texas Probate Code, a person who makes a will is
more commonly referred to as a "testator." The revised
law substitutes "testator" for the quoted language for
consistency of terminology throughout this code.

Revised Law

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. (Tex. Prob. Code, Sec. 71(b).)

Source Law

(b) How Will Shall Be Enclosed. Every will
intended to be deposited with a county clerk shall be
enclosed in a sealed wrapper, which shall have
indorsed thereon "Will of," followed by the name,
address and signature of the testator. The wrapper
must also be indorsed with the name and current address
of each person who shall be notified of the deposit of
the will after the death of the testator.

Revised Law

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. (Tex. Prob. Code, Sec.
71(a) (part).)
(a) All wills so filed shall be numbered by the clerk in consecutive order, and all certificates of deposit shall bear like numbers respectively.

Sec. 252.004. INDEX. A county clerk shall keep an index of all wills deposited with the clerk under Section 252.001. (Tex. Prob. Code, Sec. 71(c).)

(c) Each county clerk shall keep an index of all wills so deposited with him.

[Sections 252.005-252.050 reserved for expansion]

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. (Tex. Prob. Code, Sec. 71(d) (part).)

(d) To Whom Will Shall Be Delivered. During the lifetime of the testator, a will so deposited shall be delivered only to the testator, or to another person authorized by him by a sworn written order.

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. (Tex. Prob. Code, Sec. 71(d) (part).)
Source Law

(d) . . . Upon delivery of the will to the testator or to a person so authorized by him, the certificate of deposit issued for the will shall be surrendered by the person to whom delivery of the will is made; provided, however, that in lieu of the surrender of such certificate, the clerk may, in his discretion, accept and file an affidavit by the testator to the effect that the certificate of deposit has been lost, stolen, or destroyed.

[Sections 252.053-252.100 reserved for expansion]

SUBCHAPTER C. ACTIONS BY COUNTY CLERK ON DEATH OF TESTATOR

Revised Law

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. (Tex. Prob. Code, Sec. 71(e) (part).)

Source Law

(e) . . . upon request, he shall deliver the will to such person or persons, taking a receipt therefor. . . .
Revised Law
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. (Tex. Prob. Code, Sec. 71(e) (part).)

Source Law
(e) . . . If the notice by registered mail is returned undelivered, or if a clerk has accepted a will which does not specify on the wrapper the person or persons to whom it shall be delivered, the clerk shall open the wrapper and inspect the will. . . .

Revised Law
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. (Tex. Prob. Code, Sec. 71(e) (part).)

Source Law
(e) . . . If an executor is named in the will, he shall be notified by registered mail, with return receipt requested, that the will is on deposit, and, upon request, the clerk shall deliver the will to the person so named as executor. . . .

Revised Law
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). (Tex. Prob. Code, Sec. 71(e) (part).)

Source Law

Revisor's Note

Section 71(e), Texas Probate Code, refers to "devisees and legatees" named in a will. The revised law omits the reference to "legatees" because Section 3(i), Texas Probate Code, revised as Section 22.009 of this code, provides that "devisee" includes "legatee."

[Sections 252.106-252.150 reserved for expansion]

SUBCHAPTER D. LEGAL EFFECT OF WILL DEPOSIT

Revised Law

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. (Tex. Prob. Code, Sec. 71(f) (part).)

Source Law

(f) Depositing Has No Legal Significance. These provisions for the depositing of a will during the lifetime of a testator are solely for the purpose of
providing a safe and convenient repository for such a will, and no will which has been so deposited shall be treated for purposes of probate any differently than any will which has not been so deposited. . . .

Revised Law

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. (Tex. Prob. Code, Sec. 71(f) (part).)

Source Law

(f) . . . In particular, and without limiting the generality of the foregoing, a will which is not deposited shall be admitted to probate upon proof that it is the last will and testament of the testator, notwithstanding the fact that the same testator has on deposit with the court a prior will which has been deposited in accordance with the provisions of this Code.

Revisor's Note

(1) Section 71(f), Texas Probate Code, provides that "[i]n particular, and without limiting the generality of the foregoing," a will that is not deposited shall be admitted to probate on proof that it is the last will and testament of the testator, notwithstanding that a prior will of the testator has been deposited. The revised law omits the quoted language because under Section 311.021(2), Government Code (Code Construction Act), applicable to the revised law, it is presumed that all parts of a statute are intended to be effective. Any applicable limitations apply by their own terms.

(2) Section 71(f), Texas Probate Code, refers to a will that has been deposited in accordance with the provisions of "this Code," meaning the Texas Probate Code. Other portions of Section 71, Texas Probate Code, provide the procedures for the deposit of a will. The revised law substitutes a reference to "Subchapter A" of this chapter for the reference to "this Code"
because the relevant provisions of Section 71 are revised as that subchapter.

Revised Law

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. (Tex. Prob. Code, Sec. 71(g).)

Source Law

(g) Depositing Does Not Constitute Notice. The fact that a will has been deposited as provided herein shall not constitute notice of any character, constructive or otherwise, to any person as to the existence of such will or as to the contents thereof.

[Sections 252.154-252.200 reserved for expansion]

SUBCHAPTER E. DUTY AND LIABILITY OF CUSTODIAN OF ESTATE PAPERS

Revised Law

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. (Tex. Prob. Code, Sec. 75 (part).)

Source Law

Sec. 75. Upon receiving notice of the death of a testator, the person having custody of the testator's will shall deliver it to the clerk of the court which has jurisdiction of the estate.

Revised Law

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.

(Tex. Prob. Code, Sec. 75 (part).)
Sec. 75. . . . On sworn written complaint that any person has the last will of any testator, or any papers belonging to the estate of a testator or intestate, the county judge shall cause said person to be cited by personal service to appear before him and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator. . . .

Revisor's Note

Section 75, Texas Probate Code, provides that the "county judge" shall cause a person who has custody of a decedent's will or other estate papers to appear under certain circumstances. Section 3(f), Texas Probate Code, defines "county judge," "probate judge," and "judge" identically as interchangeable terms, with each term meaning the presiding judge of a court having original jurisdiction over probate proceedings. The definition specifically includes the judge of a district court exercising jurisdiction in contested probate matters. See the revisor's note to Section 22.019 of this code for an analysis of the amendment history of Sections 3(f) and 5, Texas Probate Code, that resulted in the inclusion of a district judge in the definition. Section 22.019 of this code, which is the revision of Section 3(f), Texas Probate Code, omits the terms "county judge" and "probate judge" because those terms are synonymous with the term "judge," and defining "county judge" and "probate judge" to mean, in part, a "district judge" is misleading. The revisor's note to that section indicates that throughout this code, the term "judge" will be substituted for references to "county judge" or "probate judge." Accordingly, the revised law in this section substitutes "judge" for "county judge."

Revised Law

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. (Tex. Prob. Code, Sec. 75 (part).)

Source Law

Sec. 75. . . . Upon the return of such citation
served, unless delivery is made or good cause shown, if
satisfied that such person had such will or papers at
the time of filing the complaint, such judge may cause
him to be arrested and imprisoned until he shall so
deliver them. . . .

Revised Law

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. (Tex. Prob. Code, Sec. 75 (part).)

Source Law

Sec. 75. . . . Any person refusing to deliver
such will or papers shall also be liable to any person
aggrieved for all damages sustained as a result of such
refusal, which damages may be recovered in any court of
competent jurisdiction.

CHAPTER 253. CHANGE AND REVOCATION OF WILLS

Sec. 253.001. COURT MAY NOT PROHIBIT CHANGING A WILL

Sec. 253.002. REVOCATION OF WILL

CHAPTER 253. CHANGE AND REVOCATION OF WILLS

Revised Law

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. (Tex. Prob. Code, Sec. 69A.)

Source Law

Sec. 69A. (a) A court may not prohibit a person
from executing a new will or a codicil to an existing will.

(b) Notwithstanding Section 3(g) of this code, in this section, "court" means a constitutional county court, district court, or statutory county court, including a statutory probate court.

Revised Law

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. (Tex. Prob. Code, Sec. 63.)

Source Law

Sec. 63. No will in writing, and no clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil, or declaration in writing, executed with like formalities, or by the testator destroying or canceling the same, or causing it to be done in his presence.

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

Sec. 254.001. DEVISES TO TRUSTEES .................. 301

Sec. 254.002. BEQUESTS TO CERTAIN SUBSCRIBING WITNESSES .................. 304

Sec. 254.003. DEVISES TO CERTAIN ATTORNEYS AND OTHER PERSONS .................. 305

Sec. 254.004. CONTRACTS CONCERNING WILLS OR DEVISES; JOINT OR RECIPROCAL WILLS ............... 306

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

Revised Law

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

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(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. (Tex. Prob. Code, Sec. 58a.)

Source Law

Sec. 58a. (a) A testator may validly devise or
bequeath property in a will to the trustee of a trust
established or to be established:

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

or

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

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

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

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

Revisor's Note
Section 58a, Texas Probate Code, refers to a "devise or bequest" of property, to the ability to "devise or bequeath" property, and to property "devised or bequeathed." Traditionally, "devise" referred to a testamentary disposition of real property; "bequest" usually refers to a testamentary disposition of personal property. Black's Law Dictionary (revised eighth edition, 2004). Section 3(h), Texas Probate Code, revised as Section 22.008 of this code, provides that "devise" includes "a testamentary disposition of real or personal property, or of both." Therefore, throughout this chapter, the revised law omits "bequest" when the term is used in conjunction with the term "devise" because the meaning of "bequest" is included within the meaning of "devise." For that reason, the revised law throughout this chapter also omits other variations of the term "bequest" when used in conjunction with a variation of the term "devise."
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. (Tex. Prob. Code, Secs. 61, 62.)

Sec. 61. Should any person be a subscribing witness to a will, and also be a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to as much of such share as shall not exceed the value of the bequest to him in the will.

Sec. 62. In the situation covered by the preceding Section, the bequest to the subscribing witness shall not be void if his testimony proving the will is corroborated by one or more disinterested and credible persons who testify that the testimony of the subscribing witness is true and correct, and such subscribing witness shall not be regarded as an incompetent or non-credible witness under Section 59 of this Code.
Revisor's Note

Section 61, Texas Probate Code, refers to a "legatee or devisee" under a will. The revised law omits the reference to "legatee" because Section 3(i), Texas Probate Code, revised as Section 22.009 of this code, provides that "devisee" includes "legatee."

Revised Law

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. (Tex. Prob. Code, Sec. 58b.)

Source Law

Sec. 58b. (a) A devise or bequest of property in a will is void if the devise or bequest is made to:
(1) an attorney who prepares or supervises the preparation of the will;
(2) a parent, descendant of a parent, or employee of the attorney described by Subdivision (1) of this subsection; or
(3) a spouse of an individual described by Subdivision (1) or (2) of this subsection.
(b) This section does not apply to:
(1) a devise or bequest made to a person who:
(A) is the testator's spouse;
(B) is an ascendant or descendant of the testator; or
(C) is related within the third degree by consanguinity or affinity to the testator; or
degree by consanguinity or affinity to the testator;

or

(2) a bona fide purchaser for value from a devisee in a will.

Revisor's Note

Section 58B, Texas Probate Code, refers to the spouse of an "individual," meaning a natural person. The revised law substitutes "person" for "individual" for consistency of terminology throughout this section. Under Section 3(x), Texas Probate Code, revised as Section 22.027 of this code, "person" includes natural persons and corporations. In this context, however, "person" necessarily means a natural person.

Revised Law

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. (Tex. Prob. Code, Sec. 59A.)

Source Law

Sec. 59A. (a) A contract to make a will or devise, or not to revoke a will or devise, if executed or entered into on or after September 1, 1979, can be established only by:

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

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

(b) The execution of a joint will or reciprocal wills does not by itself suffice as evidence of the existence of a contract.
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CHAPTER 255. CONSTRUCTION AND INTERPRETATION OF WILLS

SUBCHAPTER A. CERTAIN PERSONAL PROPERTY EXCLUDED FROM DEVISE OR

LEGACY

Revised Law

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

property.
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. (Tex. Prob. Code, Sec. 58(d).)

Source Law

(d) In this section:
   (1) "Contents" means tangible personal property, other than titled personal property, found inside of or on a specifically bequeathed or devised item. The term includes clothing, pictures, furniture, coin collections, and other items of tangible personal property that do not require a formal transfer of title and that are located in another item of tangible personal property such as a cedar chest or other furniture.
   (2) "Titled personal property" includes all tangible personal property represented by a certificate of title, certificate of ownership, written label, marking, or designation that signifies ownership by a person. The term includes a motor vehicle, motor home, motorboat, or other similar property that requires a formal transfer of title.

Revisor's Note

Section 58(d), Texas Probate Code, refers to a "bequeathed or devised" item. Traditionally, "devise" referred to a testamentary disposition of real property; "bequest" usually refers to a testamentary disposition of personal property. Black's Law Dictionary (revised eighth edition, 2004). Section 3(h), Texas Probate Code, revised as Section 22.008 of this code, provides that "devise" includes "a testamentary disposition of real or personal property, or of both." Therefore, throughout this chapter, the revised law omits "bequest" when the term is used in conjunction with the term "devise" because the meaning of "bequest" is included within the meaning of "devise." For that reason, the revised law throughout this chapter also omits other variations of the term "bequest" when used in conjunction with a variation of
the term "devise."

Revised Law

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. (Tex. Prob. Code, Sec. 58(c) (part).)

Source Law

(c) . . . 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.

Revised Law

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. (Tex. Prob. Code, Sec. 58(c) (part).)

Source Law

(c) A legacy of personal property does not include any contents of the property unless the will directs that the contents are included in the legacy. . . .

[Sections 255.004-255.050 reserved for expansion]

SUBCHAPTER B. SUCCESSION BY PRETERMITTED CHILD

Revised Law

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. (Tex. Prob. Code, Sec. 67(c).)

Source Law

(c) A "pretermitted child," as used in this section, means a child of a testator who, during the
lifetime of the testator, or after his death, is born
or adopted after the execution of the will of the
testator.

Revised Law

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. (Tex. Prob. Code, Secs. 67(a)
(part), (d).)

Source Law

Sec. 67. (a) Whenever a pretermitted child is
not mentioned in the testator's will, provided for in
the testator's will, or otherwise provided for by the
testator, the pretermitted child shall succeed to a
portion of the testator's estate as provided by
Subsection (a)(1) or (a)(2) of this section.

(d) For the purposes of this section, a child is
provided for or a provision is made for a child if a
disposition of property to or for the benefit of the
pretermitted child, whether vested or contingent, is
made:

(1) in the testator's will, including a
devise or bequest to a trustee as authorized by Section
58(a) of this code; or
(2) outside the testator's will and is
intended to take effect at the testator's death.

Revisor's Note

Section 67(d)(1), Texas Probate Code, refers to a
devise or bequest to a trustee authorized by "Section
58(a)" of that code. The provision of the Texas
Probate Code that governs a devise or bequest to a
trustee is Section 58a, not Section 58(a). Section 58a
is revised in this code as Section 254.001. The revised law accordingly substitutes a reference to Section 254.001 for the reference to Section 58(a).

Revised Law

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.

(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. (Tex. Prob. Code, Sec. 67(a)(1).)

Source Law

(1) If the testator has one or more children living when he executes his last will, and:

(A) No provision is made therein for any such child, a pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse.
entitled pursuant to Section 38(a) of this code had the
testator died intestate without a surviving spouse
owning only that portion of his estate not devised or
bequeathed to the parent of the pretermitted child.
(B) Provision, whether vested or
contingent, is made therein for one or more of such
children, a pretermitted child is entitled to share in
the testator's estate as follows:
(i) The portion of the
testator's estate to which the pretermitted child is
entitled is limited to the disposition made to
children under the will.
(ii) The pretermitted child
shall receive such share of the testator's estate, as
limited in Subparagraph (i), as he would have received
had the testator included all pretermitted children
with the children upon whom benefits were conferred
under the will, and given an equal share of such
benefits to each such child.
(iii) To the extent that it is
feasible, the interest of the pretermitted child in
the testator's estate shall be of the same character,
whether an equitable or legal life estate or in fee, as
the interest that the testator conferred upon his
children under the will.

Revised Law
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.

(Tex. Prob. Code, Sec. 67(a)(2).)

Source Law
(2) If the testator has no child living
when he executes his last will, the pretermitted child
succeeds to the portion of the testator's separate and
community estate to which the pretermitted child would
have been entitled pursuant to Section 38(a) of this
code had the testator died intestate without a
surviving spouse owning only that portion of his
estate not devised or bequeathed to the parent of the
pretermitted child.

Revised Law
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.
(Tex. Prob. Code, Sec. 67(b).)

Source Law

(b) The pretermitted child may recover the share
of the testator's estate to which he is entitled either
from the other children under Subsection (a)(1)(B) or
the testamentary beneficiaries under Subsections
(a)(1)(A) and (a)(2) other than the parent of the
pretermitted child, ratably, out of the portions of
such estate passing to such persons under the will. In
abating the interests of such beneficiaries, the
character of the testamentary plan adopted by the
testator shall be preserved to the maximum extent
possible.

[Sections 255.056-255.100 reserved for expansion]

SUBCHAPTER C. LIFETIME GIFTS AS SATISFACTION OF DEVISE

Revised Law

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. (Tex. Prob. Code,
Sec. 37C(a).)

Source Law

Sec. 37C. (a) Property given to a person by a
testator during the testator's lifetime is considered
a satisfaction, either wholly or partly, of a devise to
the person if:

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

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

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

Revised Law
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. (Tex. Prob. Code, Sec. 37C(b).)

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

[Sections 255.103-255.150 reserved for expansion]

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

Revised Law
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. (Tex. Prob. Code, Sec. 68(e).)

Source Law
(e) This section applies unless the testator's last will and testament provides otherwise. For example, a devise or bequest in the testator's will such as "to my surviving children" or "to such of my children as shall survive me" prevents the application of Subsection (a) of this section.

Revised Law
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. (Tex. Prob. Code, Secs. 68(b), (c), (d).)

Source Law

(b) Except as provided by Subsection (a) of this
section, if a devise or bequest, other than a residuary
devise or bequest, fails for any reason, the devise or
bequest becomes a part of the residuary estate.

(c) Except as provided by Subsection (a) of this
section, if the residuary estate is devised to two or
more persons and the share of one of the residuary
devisees fails for any reason, the residuary devisee's
share passes to the other residuary devisees, in
proportion to the residuary devisee's interest in the
residuary estate.

(d) Except as provided by Subsection (a) of this
section, if all residuary devisees are dead at the time
of the execution of the will, fail to survive the
testator, or are treated as if they predeceased the
testator, the residuary estate passes as if the
testator had died intestate.

Revised Law

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. (Tex. Prob.
Code, Sec. 68(a) (part).)

**Source Law**

Sec. 68. (a) If a devisee who is a descendant of
the testator or a descendant of a testator's parent is
deceased at the time of the execution of the will,
fails to survive the testator, or is treated as if the
devisee predeceased the testator by Section 47 of this
code or otherwise, the descendants of the devisee who
survived the testator by 120 hours take the devised
property in place of the devisee. The property shall
be divided into as many shares as there are surviving
descendants in the nearest degree of kinship to the
devisee and deceased persons in the same degree whose
descendants survived the testator. Each surviving
descendant in the nearest degree receives one share,
and the share of each deceased person in the same
degree is divided among his descendants by
representation. . . .

**Revised Law**

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. (Tex. Prob. Code, Sec. 68(a) (part).)

**Source Law**

(a) . . . For purposes of this section, a
person who would have been a devisee under a class gift
if the person had survived the testator is treated as a
devisee unless the person died before the date the will
was executed.

[Sections 255.155-255.200 reserved for expansion]

**SUBCHAPTER E. WILL PROVISION FOR MANAGEMENT OF SEPARATE PROPERTY**

BY SURVIVING SPOUSE

**Revised Law**

Sec. 255.201. MANAGEMENT OF SEPARATE PROPERTY BY SURVIVING
SPOUSE. (a) Subject to Subsection (b) and any other restrictions
imposed by the will, a spouse by last will and testament may give to
the survivor of the marriage the power to:
(1) keep the testator's separate property together until each distributee becomes of legal age; and
(2) manage and control the separate property under the provisions of law relating to community property.

(b) A child or distributee entitled to any portion of the separate property described by Subsection (a) is entitled to receive the child's or distributee's distributive portion of the estate at any time after the child or distributee becomes of legal age. (Tex. Prob. Code, Sec. 70.)

Source Law

Sec. 70. The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep testator's separate property together until each of the several distributees shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and subject to such other restrictions as are imposed by such will; provided, that any child or distributee entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate.

Revisor's Note

Section 70, Texas Probate Code, refers to a distributee becoming of "lawful age" and "of age." The revised law substitutes "legal age" for the quoted phrases in this context because the terms are synonymous and "legal age" is more consistent with modern usage.

[Sections 255.202-255.250 reserved for expansion]

SUBCHAPTER F. DEVISE OF SECURITIES

Revised Law

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. (Tex. Prob. Code, Sec. 70A(c).)

Source Law

(c) In this section:

(1) "Securities" has the meaning assigned
by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), and its subsequent amendments.

(2) "Stock" means securities.

Revisor's Note

Section 70A(c)(1), Texas Probate Code, refers to The Securities Act (Article 581-4, Vernon's Texas Civil Statutes) "and its subsequent amendments." The revised law omits "and its subsequent amendments" because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

Revised Law

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. (Tex. Prob. Code, Sec. 70A(a).)
Sec. 70A. (a) Unless the will clearly provides otherwise, a devise of securities that are owned by the testator on the date of execution of the will includes the following additional securities subsequently acquired by the testator as a result of the testator's ownership of the devised securities:

1. securities of the same organization acquired because of action initiated by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment; and

2. securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment.

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. (Tex. Prob. Code, Sec. 70A(b).)

(b) Unless the will clearly provides otherwise, a devise of securities does not include a cash distribution relating to the securities and accruing before death, whether or not the distribution is paid before death.

[Sections 255.254-255.300 reserved for expansion]

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. (Tex. Prob. Code, Sec. 71A(a).)
Sec. 71A. (a) Except as provided by Subsection (b) of this section, a specific devise passes to the devisee subject to each debt secured by the property that exists on the date of the testator's death, and the devisee has no right to exoneration from the testator's estate for payment of the debt.

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. (Tex. Prob. Code, Sec. 71A(b).)

Sec. 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). (Tex. Prob. Code, Sec. 71A(c).)

Subsection (a) of this section does not affect the rights of creditors provided under this code or the rights of other persons or entities provided under Part 3, Chapter VIII, of this code. If a creditor elects to have a debt described by Subsection (a) of this section allowed and approved as a matured secured claim, the claim shall be paid in accordance with Section 306(c-1) of this code.

(1) Section 71A(c), Texas Probate Code, refers
to the rights of creditors provided under "this code,"
meaning the Texas Probate Code. The revised law
substitutes a reference to "this title" for the
reference to "this code" because the provisions of the
Texas Probate Code that relate to the rights of
creditors in regard to decedents' estates are revised
in, or redesignated as part of, Title 2 of this code,
and this chapter is included in that title.

(2) Section 71A(c), Texas Probate Code, refers
to "Part 3, Chapter VIII, of this code," meaning Part
3, Chapter VIII, Texas Probate Code. Part 3, Chapter
VIII, consists of Sections 270 through 293, Texas
Probate Code, which are revised in this code in
Chapters 102 and 353. The revised law is drafted
accordingly.

[Sections 255.304-255.350 reserved for expansion]

SUBCHAPTER H. EXERCISE OF POWER OF APPOINTMENT THROUGH WILL

Revised Law

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. (Tex. Prob. Code, Sec. 58c.)

Source Law

Sec. 58c. A testator may not exercise a power of
appointment through a residuary clause in the
testator’s will or through a will providing for general
disposition of all the testator's property unless:

(1) the testator makes a specific
reference to the power in the will; or

(2) there is some other indication in
writing that the testator intended to include the
property subject to the power in the will.
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CHAPTER 256. PROBATE OF WILLS GENERALLY
SUBCHAPTER A. EFFECTIVENESS OF WILL; PERIOD FOR PROBATE
Revised Law
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. (Tex. Prob. Code, Sec. 94.)
Source Law
Sec. 94. Except as hereinafter provided with
respect to foreign wills, no will shall be effectual
for the purpose of proving title to, or the right to
the possession of, any real or personal property
disposed of by the will, until such will has been
admitted to probate.
Revisor's Note
(1) Section 94, Texas Probate Code, provides
that "[e]xcept as hereinafter provided" with respect
to foreign wills, a will is not effective for certain
purposes until probated. The revised law substitutes
"Except as provided by Subtitle K" for the quoted
language because the provisions of the Texas Probate Code applicable to foreign wills are Sections 95 through 107A, and those sections are revised as Subtitle K of this code.

(2) Section 94, Texas Probate Code, refers to "real or personal property." Throughout this chapter, the revised law omits the reference to "real or personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

Revised Law
Sec. 256.002. PROBATE BEFORE DEATH VOID. The probate of a will of a living person is void. (Tex. Prob. Code, Sec. 72(a) (part).)

Source Law
Sec. 72. (a) The probate of a will or . . . of a living person shall be void; . . . .

Revised Law
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. (Tex. Prob. Code, Sec. 73.)

Source Law

Sec. 73. (a) No will shall be admitted to probate after the lapse of four years from the death of the testator unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator. (b) If any person shall purchase real or personal property from the heirs of a decedent more than four years from the date of the death of the decedent, for value, in good faith, and without knowledge of the existence of a will, such purchaser shall be held to have good title to the interest which such heir or heirs would have had in the absence of a will, as against the claims of any devisees or legatees under any will which may thereafter be offered for probate.

Revisor's Note

Section 73(b), Texas Probate Code, refers to "devisees or legatees" under a will. The revised law omits the reference to "legatees" because Section 3(i), Texas Probate Code, revised as Section 22.009 of this code, provides that "devisee" includes "legatee."

[Sections 256.004-256.050 reserved for expansion]

SUBCHAPTER B. APPLICATION REQUIREMENTS

Revised Law

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. (Tex.Prob. Code, Sec. 76 (part).)
Sec. 76. An executor named in a will or any interested person may make application to the court of a proper county:

(a) For an order admitting a will to probate, whether the same is written or unwritten, in his possession or not, is lost, is destroyed, or is out of the State. . . .

An application for probate may be combined with an application for the appointment of an executor or administrator; and a person interested in either the probate of the will or the appointment of a personal representative may apply for both.

Revisor's Note

Section 76, Texas Probate Code, in part provides that a person may apply to the "court of a proper county" to admit a will to probate. Section 6, Texas Probate Code, redesignated as Section 6 of this code, prescribes the venue for the admission of a will to probate. That provision applies by its terms to an application described by this section, and an explicit statement requiring that the application be filed in the "proper county" is unnecessary. For that reason, the revised law omits the reference to "proper county."

Revised Law

Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF WRITTEN WILL GENERALLY. (a) An application for the probate of a written will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant's name and domicile;

(2) the testator's name, domicile, and, if known, age, on the date of the testator's death;

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

(4) facts showing that the court with which the application is filed has venue;

(5) that the testator owned property, including a statement generally describing the property and the property's probable value;
An application for probate of a written will shall state:

(1) The name and domicile of each applicant.

(2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.

(3) Facts showing that the court has venue.

(4) That the decedent owned real or personal property, or both, describing the same generally, and stating its probable value.

(5) The date of the will, the name and residence of the executor named therein, if any, and if none be named, then the name and residence of the person to whom it is desired that letters be issued, and also the names and residences of the subscribing witnesses, if any.

(6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.

(7) That such executor or applicant, or other person to whom it is desired that letters be
issued, is not disqualified by law from accepting letters. (8) Whether the decedent was ever
divorced, and if so, when and from whom. (9) Whether the state, a governmental
agency of the state, or a charitable organization is named by the will as a devisee.
The foregoing matters shall be stated and averred in the application to the extent that they are known to
the applicant, or can with reasonable diligence be ascertained by him, and if any of such matters is not
stated or averred in the application, the application shall set forth the reason why such matter is not so
stated and averred.

Revisor's Note
Section 81(a), Texas Probate Code, requires an application for the probate of a written will to
contain specified information concerning the "decedent." In this context, it is clear that the
decedent is the person who executed the will that is the subject of the application, and that person is more
commonly referred to as a testator. For that reason, the revised law substitutes references to the
"testator" for references to the "decedent" for consistency of terminology.

Revised Law
Sec. 256.053. FILING OF WRITTEN WILL WITH APPLICATION FOR
PROBATE GENERALLY REQUIRED. (a) An applicant for the probate of a
written will shall file the will with the application if the will is in the applicant's control.
(b) A will filed under Subsection (a) must remain in the custody of the county clerk unless removed from the clerk's custody by a court order. (Tex. Prob. Code, Sec. 81(a) (part).)

Source Law
Sec. 81. (a) For Probate of a Written Will. A written will shall, if within the control of the applicant, be filed with the application for its probate, and shall remain in the custody of the county clerk unless removed therefrom by order of a proper court. . . .

Revisor's Note
Section 81(a), Texas Probate Code, refers to an order of a "proper court." General laws of jurisdiction prescribe which courts have jurisdiction
of the matters with respect to which the referenced order would be rendered, making those courts the proper courts to render orders in those matters. See, for example, Sections 4 and 5, Texas Probate Code, redesignated as Sections 4 and 5 of this code, and Section 25.0003, Government Code, which provide for certain courts' jurisdiction of probate proceedings. A court may render an enforceable order with respect to a matter only if the court has jurisdiction of the matter, and an explicit statement requiring that the court rendering the order be a "proper" court is unnecessary. For that reason, the revised law omits the term "proper."

Revised Law

Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WRITTEN WILL IS PRODUCED. In addition to the requirements for an application under Section 256.052, if an applicant for the probate of a written will cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;
(2) the contents of the will, as far as known; and
(3) the name, age, marital status, and address, if known, and the relationship to the testator, if any, of:
   (A) each devisee;
   (B) each person who would inherit as an heir of the testator in the absence of a valid will; and
   (C) in the case of partial intestacy, each heir of the testator. (Tex. Prob. Code, Sec. 81(b).)

Source Law

(b) For Probate of Written Will Not Produced. When a written will cannot be produced in court, in addition to the requirements of Subsection (a) hereof, the application shall state:
   (1) The reason why such will cannot be produced.
   (2) The contents of such will, as far as known.
   (3) The date of such will and the executor appointed therein, if any, as far as known.
Revisor's Note

(1) Section 81(b)(3), Texas Probate Code, requires an applicant for the probate of a written will who cannot produce the will in court to include in the application the "date of such will and the executor appointed therein, if any, as far as known." The revised law omits the quoted language as duplicative because Section 81(a)(5), Texas Probate Code, revised in this chapter in Section 256.052, requires an application for the probate of a will to state the date of the will and the name of any executor named in the will to the extent that information is known to the applicant or can with reasonable diligence be ascertained by the applicant.

(2) Section 81(b)(4), Texas Probate Code, requires an application for the probate of a written will that cannot be produced in court to contain specified information concerning the "decedent." The revised law substitutes a reference to the "testator" for the reference to the "decedent" for the reason stated in the revisor's note to Section 256.052 of this chapter.

[Sections 256.055-256.100 reserved for expansion]

SUBCHAPTER C. PROCEDURES FOR SECOND APPLICATION

Revised Law

Sec. 256.101. PROCEDURE ON FILING OF SECOND APPLICATION

WHEN ORIGINAL APPLICATION HAS NOT BEEN HEARD. 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. (Tex. Prob. Code, Sec. 83(a).)

Source Law

Sec. 83. (a) Where Original Application Has Not Been Heard. If, after an application for the probate of a will or for the appointment of a general personal representative has been filed, and before such application has been heard, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall hear both applications together and determine what instrument, if any, should be admitted to probate, or whether the decedent died intestate.

Revisor’s Note

Section 83(a), Texas Probate Code, refers to an application for the appointment of a "general personal representative." The revised law omits "general" because "personal representative" is the term defined by Section 3(aa), Texas Probate Code, revised in this code as Section 22.031, and no other provision of the Texas Probate Code refers to a "general" personal representative. It is clear from the context that the statute is referring to a personal representative as defined by Section 22.031 of this code.

Revised Law

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. (Tex. Prob. Code, Sec. 83(b).)

Source Law

(b) Where First Will Has Been Admitted to Probate. If, after a will has been admitted to probate, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall determine whether the former probate should be set aside, and whether such other will should be admitted to probate, or whether the decedent died intestate.

Revised Law

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. (Tex. Prob. Code, Sec. 83(c).)

Source Law

(c) Where Letters of Administration Have Been Granted. Whenever letters of administration shall have been granted upon an estate, and it shall
afterwards be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but, if no such executor be named in the will, or if the executor named be disqualified, be dead, or shall renounce the executorship, or shall fail or be unable to accept and qualify within twenty days after the date of the probate of the will, or shall fail for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, prior to the qualification of the executor or of the administrator with the will annexed, shall be as valid as if no such will had been discovered.

[Sections 256.104-256.150 reserved for expansion]

SUBCHAPTER D. REQUIRED PROOF FOR PROBATE OF WILL

Revised Law

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. (Tex. Prob. Code, Sec. 88(a) (part).)

Source Law

Sec. 88. (a) General Proof. Whenever an applicant seeks to probate a will . . . he must first prove to the satisfaction of the court:

1. That the person is dead, and that four years have not elapsed since his decease and prior to the application; and

2. That the court has jurisdiction and venue over the estate; and

3. That citation has been served and returned in the manner and for the length of time required by this Code; and

4. That the person for whom letters testamentary or of administration are sought is entitled thereto by law and is not disqualified.
Revisor's Note

(1) Section 88(a), Texas Probate Code, requires that an applicant for the probate of a will prove that "the person" is dead, and that a specified period has not elapsed since "his" death. It is clear from the context that the quoted references are to the person who executed the will. That person is commonly referred to as a "testator." For clarity and the convenience of the reader, the revised law substitutes references to the "testator" and the "testator's" death for the quoted references.

(2) Section 88(a)(3), Texas Probate Code, requires an applicant for the probate of a will to prove that citation has been served and returned in the manner and for the period required by "this Code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this Code" because the citation requirements for the probate of a will are revised in Title 2 of this code, and this section is included in that title.

Revised Law

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 as provided by this title, the testator:

(A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and

(B) at the time of executing the will, was of sound mind and:

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(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 this title 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. (Tex. Prob. Code, Secs. 84(a), 88(b).)

Source Law

Sec. 84. (a) Self-Proved Will. If a will is self-proved as provided in this Code, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will shall be necessary.

[Sec. 88]

(b) Additional Proof for Probate of Will. To obtain probate of a will, the applicant must also prove to the satisfaction of the court:

(1) If the will is not self-proved as provided by this Code, that the testator, at the time of executing the will, was at least eighteen years of age, or was or had been lawfully married, or was a member of the armed forces of the United States or of the auxiliaries thereof, or of the Maritime Service of the United States, and was of sound mind; and

(2) If the will is not self-proved as provided by this Code, that the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will; and

(3) That such will was not revoked by the testator.

Revisor's Note

(1) Sections 84(a) and 88(b)(1) and (2), Texas Probate Code, refer to a will that is not self-proved, or is self-proved, as provided in "this Code," meaning the Texas Probate Code. Throughout this chapter, the revised law substitutes a reference to "this title" for the reference to "this Code" when used in this context because the provisions of the Texas Probate Code that specify the requirements for a will to be considered self-proved are revised in Title 2 of this code, and this chapter is included in that title.
Section 88(b)(1), Texas Probate Code, requires proof in certain circumstances that the testator was or had been "lawfully married." The revised law omits "lawfully" in this context as unnecessary because the requirement that the testator was or had been married is sufficient to convey that the marriage must have met the legal requirements for a marriage.

Revised Law

Sec. 256.153. AUTHORIZED METHODS OF PROVING ATTESTED WRITTEN WILL. (a) An attested written will produced in court that is not self-proved as provided by this title may be proved in the manner provided by this section.

(b) A will described by Subsection (a) may be proved by the sworn testimony or affidavit of one or more of the subscribing witnesses to the will taken in open court.

(c) If all the witnesses to a will described by Subsection (a) are nonresidents of the county or the witnesses who are residents of the county are unable to attend court, the will may be proved:

(1) by the sworn testimony of one or more of the witnesses by written or oral deposition taken in the same manner and under the same rules as depositions are taken in other civil actions;

(2) if no opposition in writing to the will is filed on or before the date set for the hearing on the will, by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition as provided by Subdivision (1), to the signature or the handwriting evidenced by the signature of:

(A) one or more of the attesting witnesses; or

(B) the testator, if the testator signed the will; or

(3) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one
witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature, or the handwriting evidenced by a signature, described by Subdivision (2).

(d) If none of the witnesses to a will described by Subsection (a) are living, or if each of the witnesses is a member of the armed forces or the armed forces reserves of the United States, an auxiliary of the armed forces or armed forces reserves, or the United States Maritime Service and is beyond the court's jurisdiction, the will may be proved:

(1) by two witnesses to the handwriting of one or both of the subscribing witnesses to the will or the testator, if the testator signed the will, by:

(A) sworn testimony or affidavit taken in open court; or

(B) written or oral deposition taken in the same manner and under the same rules as depositions are taken in other civil actions; or

(2) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature or the handwriting described by Subdivision (1). (Tex. Prob. Code, Sec. 84(b).)

Source Law

(b) Attested Written Will. If not self-proved as provided in this Code, an attested written will produced in court may be proved:

(1) By the sworn testimony or affidavit of one or more of the subscribing witnesses thereto, taken in open court.

(2) If all the witnesses are non-residents of the county, or those who are residents are unable to attend court, by the sworn testimony of any one or more of them by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions; or, if no opposition in writing to such will is filed on or before the date set for hearing thereof, then by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition in the manner provided herein, to the
signature or the handwriting evidenced thereby of one
or more of the attesting witnesses, or of the testator,
if he signed the will; or, if it be shown under oath to
the satisfaction of the court that, diligent search
having been made, only one witness can be found who can
make the required proof, then by the sworn testimony or
affidavit of such one taken in open court, or by
deposition in the manner provided herein, to such
signatures or handwriting.

(3) If none of the witnesses is living, or
if all of such witnesses are members of the armed
forces of the United States of America or of any
auxiliary thereof, or of the armed forces reserve of
the United States of America or of any auxiliary
thereof, or of the Maritime Service, and are beyond the
jurisdiction of the court, by two witnesses to the
handwriting of one or both of the subscribing
witnesses thereto, or of the testator, if signed by
him, and such proof may be either by sworn testimony or
affidavit taken in open court, or by deposition,
either written or oral, taken in the same manner and
under the same rules as depositions taken in other
civil actions; or, if it be shown under oath to the
satisfaction of the court that, diligent search having
been made, only one witness can be found who can make
the required proof, then by the sworn testimony or
affidavit of such one taken in open court, or by
deposition in the manner provided herein, to such
signatures or handwriting.

Revised Law
Sec. 256.154. AUTHORIZED METHODS OF PROVING HOLOGRAPHIC
WILL. 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 the same manner and under the same rules as
depositions are taken in other civil actions. (Tex. Prob. Code,
Sec. 84(c).)

Source Law

(c) Holographic Will. If not self-proved as
provided in this Code, a will wholly in the handwriting
of the testator may be proved by two witnesses to his
handwriting, which evidence may be by sworn testimony
or affidavit taken in open court, or, if such witnesses
are non-residents of the county or are residents who
are unable to attend court, by deposition, either
written or oral, taken in the same manner and under the
same rules as depositions taken in other civil
actions.
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 under the same rules as depositions in other civil actions, applies if no contest has been filed with respect to an application for the probate of a will.

(b) Depositions for the purpose of establishing a will may be taken in the manner provided by Section 51.203 for the taking of depositions when there is no opposing party or attorney of record on whom notice and copies of interrogatories may be served. (Tex. Prob. Code, Sec. 84(d).)

Source Law

(d) Depositions if No Contest Filed. If no contest has been filed, depositions for the purpose of establishing a will may be taken in the same manner as provided in this Code for the taking of depositions where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served; and, in such event, this Subsection, rather than the preceding portions of this Section which provide for the taking of depositions under the same rules as depositions in other civil actions, shall be applicable.

Revisor's Note

Section 84(d), Texas Probate Code, provides that if no contest to an application for the probate of a will has been filed, depositions for the purpose of establishing a will may be taken in the same manner provided by "this Code," meaning the Texas Probate Code, 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. For the convenience of the reader, the revised law substitutes a reference to Section 51.203 for the reference to "this Code" because the provisions for taking depositions in that circumstance are contained in Section 22, Texas Probate Code, and that section is revised as Section 51.203 of this code.
Sec. 256.156. PROOF OF WRITTEN WILL NOT PRODUCED IN COURT.

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

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

(1) the cause of the nonproduction of a written will not produced in court must be proved, which must be sufficient to satisfy the court that the will cannot by any reasonable diligence be produced; and

(2) the contents of the will must be substantially proved by the testimony of a credible witness who has read the will, has heard the will read, or can identify a copy of the will. (Tex. Prob. Code, Sec. 85.)

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). (Tex. Prob. Code, Sec. 87.)

Source Law
Sec. 87. All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed, and sworn to in open court by the witness or witnesses, and filed by the clerk; provided, however, that in any contested case, the court may, upon agreement of the parties, and in the event of no agreement on its own motion, dismiss this requirement.

[Sections 256.158-256.200 reserved for expansion]

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

Revised Law
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. (Tex. Prob. Code, Sec. 89.)

Source Law
Sec. 89. Upon the completion of hearing of an application for the probate of a will, if the Court be satisfied that such will should be admitted to probate, an order to that effect shall be entered. Certified copies of such will and the order, or of the record thereof, and the record of testimony, may be recorded in other counties, and may be used in evidence, as the original might be, on the trial of the same matter in any other court, when taken there by appeal or otherwise.

Revised Law
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. (Tex. Prob. Code, Sec. 90.)

**Source Law**

Sec. 90. All original wills, together with the probate thereof, shall be deposited in the office of the county clerk of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed for inspection to another place upon order by the court where probated. If the court shall order an original will to be removed to another place for inspection, the person removing such original will shall give a receipt therefor, and the clerk of the court shall make and retain a copy of such original will.

**Revised Law**

Sec. 256.203. ESTABLISHING CONTENTS OF WILL NOT IN COURT'S CUSTODY. If for any reason a written will is not in the court's custody, the court shall find the contents of the will by written order. Certified copies of the contents as established by the order may be:

(1) recorded in other counties; and

(2) used in evidence, as certified copies of written wills in the custody of the court may be used. (Tex. Prob. Code, Sec. 91.)

**Source Law**

Sec. 91. If for any reason a written will is not in the custody of the court, the court shall find the contents thereof by written order, and certified copies of same as so established by the court may be recorded in other counties, and may be used in evidence, as in the case of certified copies of written wills in the custody of the court.
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. (Tex. Prob. Code, Sec. 93.)

Sec. 93. After a will has been admitted to probate, any interested person may institute suit in the proper court to contest the validity thereof, within two years after such will shall have been admitted to probate, and not afterward, except that any interested person may institute suit in the proper court to cancel a will for forgery or other fraud within two years after the discovery of such forgery or fraud, and not afterward. Provided, however, that incapacitated persons shall have two years after the removal of their disabilities within which to institute such contest.

Section 93, Texas Probate Code, provides that a person may commence a suit "in the proper court." The revised law omits the reference to a "proper" court as unnecessary. General laws of jurisdiction prescribe which courts have jurisdiction with respect to the referenced types of suits, making those courts the proper courts in which to bring suit. See, for example, Sections 4 and 5, Texas Probate Code, redesignated as Sections 4 and 5 of this code, and Section 25.0003, Government Code, which provide for certain courts' jurisdiction of probate proceedings. A person may only bring a suit in a court that has jurisdiction, and an explicit statement requiring the court to be "proper" is unnecessary. In addition, the
revised law omits the reference to "court" as unnecessary in this context because a suit may be filed only in a court.

CHAPTER 257. PROBATE OF WILL AS MUNIMENT OF TITLE

SUBCHAPTER A. AUTHORIZATION

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CHAPTER 257. PROBATE OF WILL AS MUNIMENT OF TITLE

SUBCHAPTER A. AUTHORIZATION

Revised Law

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. (Tex. Prob. Code, Sec. 89C(a).)
Sec. A89C. (a) In each instance where the court is satisfied that a will should be admitted to probate, and where the court is further satisfied that there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate, or for other reason finds that there is no necessity for administration upon such estate, the court may admit such will to probate as a muniment of title.

[Sections 257.002-257.050 reserved for expansion]

SUBCHAPTER B. APPLICATION AND PROOF REQUIREMENTS

Sec. A257.051. 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 the testator was ever divorced 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. (Tex. Prob. Code, Sec. 89A(a) (part).)

Source Law

(a) . . . An application for probate of a will as a muniment of title shall state:
   (1) The name and domicile of each applicant.
   (2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.
   (3) Facts showing that the court has venue.
   (4) That the decedent owned real or personal property, or both, describing the property generally, and stating its probable value.
   (5) The date of the will, the name and residence of the executor named in the will, if any, and the names and residences of the subscribing witnesses, if any.
   (6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.
   (7) That there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate.
   (8) Whether the decedent was ever divorced, and if so, when and from whom.
   (9) Whether the state, a governmental agency of the state, or a charitable organization is named by the will as a devisee.

The foregoing matters shall be stated and averred in the application to the extent that they are known to the applicant, or can with reasonable diligence be ascertained by the applicant, and if any of such matters is not stated or averred in the application, the application shall set forth the reason why such matter is not so stated and averred.

Revisor's Note

(1) Section 89A(a), Texas Probate Code, requires an application for the probate of a will as a muniment of title to contain specified information concerning the "decedent." In this context, it is clear that the decedent is the person who executed the will that is the subject of the application, and that person is more commonly referred to as a testator. For that reason, the revised law throughout this chapter substitutes references to the "testator" for
references to the "decedent" for consistent use of terminology.

(2) Section 89A(a)(4), Texas Probate Code, refers to a decedent who owned "real or personal property." Throughout this chapter, the revised law omits "real or personal" in this context as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

Revised Law
Sec. 257.052. FILING OF WRITTEN WILL WITH APPLICATION GENERALLY REQUIRED. (a) An applicant for the probate of a written will as a muniment of title shall file the will with the application if the will is in the applicant's control.

(b) A will filed under Subsection (a) must remain in the custody of the county clerk unless removed from the clerk's custody by court order. (Tex. Prob. Code, Sec. 89A(a) (part).)

Source Law
Sec. 89A. (a) A written will shall, if within the control of the applicant, be filed with the application for probate as a muniment of title, and shall remain in the custody of the county clerk unless removed from the custody of the clerk by order of a proper court. . . .

Revisor's Note
Section 89A(a), Texas Probate Code, refers to an order of a "proper court." General laws of jurisdiction prescribe which courts have jurisdiction of the matters with respect to which the referenced order would be rendered, making those courts the proper courts to render orders in those matters. See, for example, Sections 4 and 5, Texas Probate Code, redesignated as Sections 4 and 5 of this code, and Section 25.0003, Government Code, which provide for certain courts' jurisdiction of probate proceedings. A court may render an enforceable order with respect to
a matter only if the court has jurisdiction of the matter, and an explicit statement requiring that the court rendering the order be a "proper" court is unnecessary. For that reason, the revised law omits the term "proper."

Revised Law
Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WRITTEN WILL IS PRODUCED. In addition to the requirements for an application under Section 257.051, if an applicant for the probate of a written will as a muniment of title cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;
(2) the contents of the will, to the extent known; and
(3) the name, age, marital status, and address, if known, and the relationship to the testator, if any, of:
   (A) each devisee;
   (B) each person who would inherit as an heir of the testator in the absence of a valid will; and
   (C) in the case of partial intestacy, each heir of the testator. (Tex. Prob. Code, Sec. 89A(b).)

Source Law
(b) When a written will cannot be produced in court, in addition to the requirements of Subsection (a) of this section, the application shall state:
(1) The reason why such will cannot be produced.
(2) The contents of such will, to the extent known.
(3) The date of such will and the executor appointed in the will, if any, to the extent known.
(4) The name, age, marital status, and address, if known, and the relationship to the decedent, if any, of each devisee, and of each person who would inherit as an heir in the absence of a valid will, and, in cases of partial intestacy, of each heir.

Revisor's Note
Section 89A(b)(3), Texas Probate Code, requires an applicant for the probate of a written will as a muniment of title who cannot produce the will in court to include in the application the "date of such will and the executor appointed in the will, if any, to the
extent known." The revised law omits the quoted language as duplicative because Section 89A(a), Texas Probate Code, revised in this chapter as Section 257.051, requires any application for probate of a will as a muniment of title to state the date of the will and the name of any executor named in the will to the extent that information is known to the applicant or can with reasonable diligence be ascertained by the applicant.

Revised Law

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. (Tex. Prob. Code, Sec. 89B.)

Source Law

Sec. 89B. (a) General Proof. Whenever an applicant seeks to probate a will as a muniment of title, the applicant must first prove to the satisfaction of the court:

(1) That the person is dead, and that four years have not elapsed since the person's death and prior to the application; and

(2) That the court has jurisdiction and venue over the estate; and

(3) That citation has been served and returned in the manner and for the length of time required by this Code; and

(4) That there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate.

(b) To obtain probate of a will as a muniment of title, the applicant must also prove to the satisfaction of the court:

(1) If the will is not self-proved as provided by this Code, that the testator, at the time of executing the will, was at least 18 years of age, or was or had been lawfully married, or was a member of the armed forces of the United States or of the auxiliaries of the armed forces of the United States, or of the Maritime Service of the United States, and was of sound mind; and

(2) If the will is not self-proved as provided by this Code, that the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will; and

(3) That such will was not revoked by the testator.

Revisor's Note

(1) Section 89B(a)(1), Texas Probate Code, refers to a "person [who] is dead." The revised law substitutes a reference to "testator" for the quoted language for the reason stated in Revisor's Note (1) to Section 257.051.

(2) Section 89B(a)(3), Texas Probate Code, requires citation to be served and returned in the manner and for the period required by "this Code," meaning the Texas Probate Code. Section 89B(b), Texas Probate Code, refers to a will that is not self-proved as provided by "this Code," meaning the Texas Probate Code. The revised law substitutes references to "this title" for the references to "this Code" because the
citation requirements and the requirements for a will
to be considered self-proved are revised in Title 2 of
this code, and this section is included in that title.

(3) Section 89B(b)(1), Texas Probate Code,
requires proof in certain circumstances that the
testator was or had been "lawfully married." The
revised law omits "lawfully" in this context because
the word does not add to the clear meaning of the law.
The requirement that the testator was or had been
married is sufficient to convey that the marriage must
have met the legal requirements for a marriage.

[Sections 257.055–257.100 reserved for expansion]

SUBCHAPTER C. ORDER ADMITTING WILL; REPORT

Revised Law

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. (Tex. Prob. Code, Sec. 89C(b).)

Source Law

(b) If a person who is entitled to property
under the provisions of the will cannot be ascertained
solely by reference to the will or if a question of
construction of the will exists, on proper application
and notice as provided by Chapter 37, Civil Practice
and Remedies Code, the court may hear evidence and
include in the order probating the will as a muniment of title a declaratory judgment construing the will or
determining those persons who are entitled to receive
property under the will and the persons' shares or
interests in the estate. The judgment is conclusive in
any suit between any person omitted from the judgment
and a bona fide purchaser for value who has purchased
real or personal property after entry of the judgment
without actual notice of the claim of the omitted
person to an interest in the estate. Any person who
has delivered property of the decedent to a person
declared to be entitled to the property under the
judgment or has engaged in any other transaction with
the person in good faith after entry of the judgment is
not liable to any person for actions taken in reliance
on the judgment.

Revisor’s Note

Section 89C(b), Texas Probate Code, authorizes a
court in certain circumstances to hear evidence and
include certain declaratory judgments in an order
probating a will as a muniment of title "on proper
application and notice as provided by Chapter 37,
Civil Practice and Remedies Code." The revised law
omits "proper" in this context because the word does
not add to the clear meaning of the law. The
requirement that the application and notice conform to
Chapter 37, Civil Practice and Remedies Code, is
sufficient to convey that the application and notice
must have met the requirements of that chapter.

Revised Law

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. (Tex. Prob. Code, Sec. 89C(c).)

Source Law

The order admitting a will to probate as a muniment of title shall constitute sufficient legal authority to all persons owing any money to the estate of the decedent, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer, without liability, to the persons described in such will as entitled to receive the particular asset without administration. The person or persons entitled to property under the provisions of such wills shall be entitled to deal with and treat the properties to which they are so entitled in the same manner as if the record of title thereof were vested in their names.

Revised Law

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. (Tex. Prob. Code, Sec. 89C(d).)
Source Law

(d) Unless waived by the court, before the 181st day, or such later day as may be extended by the court, after the date a will is admitted to probate as a muniment of title, the applicant for probate of the will shall file with the clerk of the court a sworn affidavit stating specifically the terms of the will that have been fulfilled and the terms of the will that have been unfulfilled. Failure of the applicant for probate of the will to file such affidavit shall not otherwise affect title to property passing under the terms of the will.

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

Sec. 258.002. CITATION ON APPLICATION FOR PROBATE OF WILL NOT PRODUCED IN COURT

Sec. 258.003. COURT ACTION PROHIBITED BEFORE SERVICE OF CITATION

[Sections 258.004-258.050 reserved for expansion]

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

Sec. 258.051. NOTICE TO HEIRS

Sec. 258.052. APPOINTMENT OF ATTORNEY AD LITEM

Sec. 258.053. PREVIOUSLY PROBATED WILL

[Sections 258.054-258.100 reserved for expansion]

SUBCHAPTER C. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE

Sec. 258.101. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE

Chapter 258. CITATIONS AND NOTICES RELATING TO PROBATE OF WILL

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

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
(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. (Tex. Prob. Code, Sec. 128(a) (part).)

Source Law
Sec. 128. (a) Where Application Is for Probate of a Written Will Produced in Court or for Letters of Administration. When an application for the probate of a written will produced in court, or... is filed with the clerk, he shall issue a citation to all parties interested in such estate, which citation shall be served by posting and shall state:

(1) That such application has been filed, and the nature of it.
(2) The name of the deceased and of the applicant.
(3) The time when such application will be acted upon.
(4) That all persons interested in the estate should appear at the time named therein and contest said application, should they desire to do so.

Revisor's Note
Section 128(a), Texas Probate Code, requires that a citation issued on the filing of an application for the probate of certain written wills state the name of the "deceased." A person who dies leaving a will is more commonly referred to as a "testator." In addition, Section 128(b), Texas Probate Code, revised in this chapter as Section 258.002, refers to the heirs of the "testator." The revised law therefore substitutes "testator" for "deceased" for accuracy and consistency of terminology in this chapter.

Revised Law
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. (Tex. Prob. Code, Sec. 128(b).)

Source Law
(b) Where Application Is for Probate of a Written Will Not Produced. When the application is for the probate of a written will which cannot be produced in court, the clerk shall issue a citation to all parties interested in such estate, which citation shall contain substantially the statements made in the application for probate, and the time when, place where, and the court before which such application will be acted upon. If the heirs of the testator be residents of this state, and their residence be known, the citation shall be served upon them by personal service. Service of such citation may be made by publication in the following cases:

(1) When the heirs are non-residents of this state; or
(2) When their names or their residences are unknown; or
(3) When they are transient persons.

Revisor's Note
Section 128(b), Texas Probate Code, refers to "residents of this state" whose "residence[s] be known." In context, it is clear that the reference to "residents of this state" concerns the legal residency
status of the persons described, and the subsequent reference to "residence[s]" describes the location where those persons live. Consequently, the revised law substitutes "address[es]" for "residence[s]" because the former term is more consistent with modern usage in that context. Similarly, Section 128(b) also refers to persons whose "names or . . . residences are unknown." The revised law substitutes "addresses" for "residences" in that context for consistency of terminology throughout the section.

Revised Law
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. (Tex. Prob. Code, Sec. 128(c) (part).)

Source Law
(c) No Action Until Service Is Had. No application for the probate of a will or . . . shall be acted upon until service of citation has been made in the manner provided herein.

Revisor's Note
Section 128(c), Texas Probate Code, refers to service of citation made in the manner provided "herein," meaning Section 128, Texas Probate Code. The revised law substitutes "by this subchapter" for "herein" because the relevant portion of Section 128, Texas Probate Code, is revised as this subchapter.

[Sections 258.004-258.050 reserved for expansion]

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

Revised Law
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.
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. (Tex. Prob. Code, Secs. 128B(a), (b), (c).)

Source Law
Sec. 128B. (a) Except as provided by Subsection (b) of this section, an applicant for the probate of a will under Section 73(a) of this code must give notice by service of process to each of the testator's heirs whose address can be ascertained by the applicant with reasonable diligence. The notice must be given before the probate of the testator's will.

(b) Notice under Subsection (a) of this section is not required to be provided to an heir who has delivered to the court an affidavit signed by the heir stating that the heir does not object to the offer of the testator's will for probate.

(c) The notice required by this section and an affidavit described by Subsection (b) of this section must also contain a statement that:

(1) the testator's property will pass to the testator's heirs if the will is not admitted to probate; and

(2) the person offering the testator's will for probate may not be in default for failing to present the will for probate during the four-year period immediately following the testator's death.

Revised Law
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). (Tex. Prob.
Code, Sec. 128B(d).)

Source Law
(d) If the address of any of the testator's heirs
cannot be ascertained by the applicant with reasonable
diligence, the court shall appoint an attorney ad
litem to protect the interests of the unknown heirs
after an application for the probate of a will is made
under Section 73(a) of this code.

Revised Law
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.
(Tex. Prob. Code, Sec. 128B(e).)

Source Law
(e) In the case of an application for the
probate of a will of a testator who has had another
will admitted to probate, this section applies to a
beneficiary of the testator's probated will instead of
the testator's heirs.

Revisor's Note
(1) Section 128B(e), Texas Probate Code, refers
to an "application for the probate of a will." The
revised law adds "under Section 256.003(a)" to the
quoted language for clarity and for consistency with
the language used in the portions of Section 128B,
Texas Probate Code, revised in this subchapter as
Sections 258.051 and 258.052.

(2) Section 128B(e), Texas Probate Code,
provides in part that Section 128B "applies" under
certain conditions "to a beneficiary of the testator's
probated will instead of the testator's heirs."
Section 128B imposes notice requirements with which an
applicant for the probate of the testator's will must
comply. It is clear from the context that Section 128B
does not "apply" to the heirs or beneficiaries of a
testator but rather to the applicant for the probate of the testator's will, and that the effect of Subsection (e) is to require the provision of notice to the testator's beneficiaries instead of to the testator's heirs. The revised law is drafted accordingly.

[Sections 258.054-258.100 reserved for expansion]

SUBCHAPTER C. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE

Revised Law

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. (Tex. Prob. Code, Sec. 129A.)

Source Law

Sec. 129A. Notwithstanding any other provisions of this part of this chapter, if an attempt to make service under this part of this chapter is unsuccessful, service may be made in the manner provided by Rule 109 or 109a, Texas Rules of Civil Procedure, for the service of a citation on a party by publication or other substituted service.

Revisor's Note

Section 129A, Texas Probate Code, refers to any other provisions of "this part of this chapter," meaning Part 4, Chapter V, Texas Probate Code. Although only portions of Part 4, Chapter V, are revised in this chapter, the revised law substitutes "this chapter" for "this part of this chapter" and does not reference the provisions revising other affected portions of Part 4 because Section 129A is also revised in the chapter of this code that contains the revision of those other portions.

Revisor's Note

(End of Chapter)

Section 129, Texas Probate Code, validated certain actions regarding service of citation in
conjunction with wills admitted to probate under prior
state laws. The revised law omits this provision as
executed law because the provision served its purpose
on the day it took effect. Section 311.031(a)(2),
Government Code (Code Construction Act), applicable in
this context as a result of Section 311.002(3),
Government Code (Code Construction Act), provides that
the repeal of a statute does not affect any validation
previously made under the statute. That section
applies to the revised law. The omitted law reads:

Sec. 129. (a) In all cases where
written wills produced in court have been
probated prior to June 14, 1927, after
publication of citation as provided by the
then Article 28 of the Revised Civil
Statutes of Texas (1925), without service
of citation, the action of the courts in
admitting said wills to probate is hereby
validated in so far as service of citation
is concerned.

(b) In all cases where written wills
produced in court have been probated or
letters of administration have been granted
prior to May 18, 1939, after citation, as
provided by the then Article 3334, Title 54,
of the Revised Civil Statutes of Texas
(1925), without service of citation as
provided for in the then Article 3336, Title
54, of the Revised Civil Statutes of Texas
(1925) as amended by Acts 1935, 44th
Legislature, page 659, Chapter 273, Section
1, such service of citation and the action
of the court in admitting said wills to
probate and granting administration upon
estates, are hereby validated in so far as
service of citation is concerned.

(c) In all cases where written wills
have been probated or letters of
administration granted, prior to June 12,
1941, upon citation or notice duly issued by
the clerk in conformance with the
requirements of the then Article 3333 of
Title 54 of the Revised Civil Statutes of
Texas (1925), as amended, but not directed
to the sheriff or any constable of the
county wherein the proceeding was pending,
and such citation or notice having been duly
posted by the sheriff or any constable of
said county and returned for or in the time,
manner, and form required by law, such
citation or notice and return thereof and
the action of the court in admitting said
wills to probate or granting letters of
administration upon estates, are hereby
validated in so far as said citation or
notice, and the issuance, service and
return thereof are concerned.
[Chapters 259-300 reserved for expansion]

SUBTITLE G. INITIAL APPOINTMENT OF PERSONAL REPRESENTATIVE AND OPENING OF ADMINISTRATION

CHAPTER 301. APPLICATION FOR LETTERS TESTAMENTARY OR OF ADMINISTRATION

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CHAPTER 301. APPLICATION FOR LETTERS TESTAMENTARY OR OF ADMINISTRATION

SUBCHAPTER A. PERIOD FOR APPLICATION FOR LETTERS

Revised Law

Sec. 301.001. ADMINISTRATION BEFORE DEATH VOID. The administration of an estate of a living person is void. (Tex. Prob. Code, Sec. 72(a) (part).)

Source Law

Sec. 72. (a) The . . . administration of an estate of a living person shall be void; . . . .

Revised Law

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. (Tex. Prob. Code, Sec. 74.)

Source Law

Sec. 74. All applications for the grant of letters testamentary or of administration upon an estate must be filed within four years after the death of the testator or intestate; provided, that this section shall not apply in any case where administration is necessary in order to receive or recover funds or other property due to the estate of the decedent.

Revisor's Note

(1) Section 74, Texas Probate Code, refers to the death of the "testator or intestate." The revised law substitutes a reference to the "decedent's" death for the reference to the death of the testator or intestate for consistency of terminology and because a "decedent" includes a person who dies leaving a will, referred to as a "testator," and a person who dies without a will, referred to as an "intestate."
Section 74, Texas Probate Code, provides that the section does not apply if administration of an estate is necessary to receive or recover "funds or other property" due a decedent's estate. Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property. In addition, Section 3(z), Texas Probate Code, revised in this code as Section 22.028, defines "personal property" as including money. In this context, the terms "money" and "funds" are synonymous. For these reasons, the revised law refers to "property" and omits the reference to "funds" as unnecessary.

[Sections 301.003-301.050 reserved for expansion]

SUBCHAPTER B. APPLICATION REQUIREMENTS

Revised Law
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. (Tex. Prob. Code, Sec. 76(part).)

Source Law
Sec. 76. An executor named in a will or any interested person may make application to the court of a proper county:

(b) For the appointment of the executor named in the will.

(c) For the appointment of an administrator, if no executor is designated in the will, or if the person so named is disqualified, or refuses to serve, or is dead, or resigns, or if there is no will.

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Revisor's Note

Section 76, Texas Probate Code, in part provides that a person may apply to the "court of a proper county" for the appointment of an executor or administrator. Section 6, Texas Probate Code, redesignated as Section 6 of this code, prescribes the venue for the appointment of a personal representative. That provision applies by its terms to an application described by this section, and an explicit statement requiring that the application be filed in the "proper county" is unnecessary. For that reason, the revised law omits the reference to "proper county."

Revised Law

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. (Tex. Prob. Code, Sec. 82.)

Source Law

Sec. 82. An application for letters of  
administration when no will is alleged to exist shall state:  
(a) The name and domicile of the  
applicant, relationship to the decedent, if any, and  
that the applicant is not disqualified by law to act as  
administrator;  
(b) The name and intestacy of the  
decedent, and the fact, time and place of death;  
(c) Facts necessary to show venue in the  
court to which the application is made;  
(d) Whether the decedent owned real or  
personal property, with a statement of its probable  
value;  
(e) The name, age, marital status and  
address, if known, and the relationship, if any, of  
each heir to the decedent;  
(f) If known by the applicant at the time  
of the filing of the application, whether children  
were born to or adopted by the decedent, with the name  
and the date and place of birth of each;  
(g) If known by the applicant at the time  
of the filing of the application, whether the decedent  
was ever divorced, and if so, when and from whom; and  
(h) That a necessity exists for  
administration of the estate, alleging the facts which  
show such necessity.

Revisor’s Note

(1) Section 82(d), Texas Probate Code, refers to  
"real or personal property." The revised law omits the  
reference to "real or personal" as unnecessary because  
Section 311.005(4), Government Code (Code  
Construction Act), applicable to the revised law,  
defines "property" to mean real and personal property.  
(2) Section 82(e), Texas Probate Code, requires  
an application for letters of administration to state  
the relationship, "if any," of each heir to the  
decedent. The revised law omits the quoted language as  
unnecessary because an heir necessarily has a
relationship with the decedent. Section 3(o), Texas Probate Code, revised in this code as Section 22.015, defines "heir" as a person, including a surviving spouse, who is entitled to the estate of an intestate. Section 38, Texas Probate Code, revised in this code as Sections 201.001 and 201.002, specifies the persons to whom the estate of an intestate passes, and each of those persons is a relative or spouse of the decedent.

[Sections 301.053-301.100 reserved for expansion]

SUBCHAPTER C. OPPOSITION TO CERTAIN APPLICATIONS

Revised Law

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. (Tex. Prob. Code, Sec. 179.)

Source Law

Sec. 179. When application is made for letters of administration, any interested person may at any time before the application is granted, file the person's opposition thereto in writing, and may apply for the grant of letters to the person or to any other person; and, upon the trial, the court shall grant letters to the person that may seem best entitled to them, having regard to applicable provisions of this Code, without further notice than that of the original application.

[Sections 301.102-301.150 reserved for expansion]

SUBCHAPTER D. REQUIRED PROOF FOR ISSUANCE OF LETTERS

Revised Law

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. (Tex. Prob. Code, Sec. 88(a) (part).)

Source Law
Sec. 88. (a) General Proof. Whenever an
applicant seeks . . . or to obtain issuance of letters
testamentary or of administration, he must first prove
to the satisfaction of the court:
(1) That the person is dead, and that four
years have not elapsed since his decease and prior to
the application; and
(2) That the court has jurisdiction and
venue over the estate; and
(3) That citation has been served and
returned in the manner and for the length of time
required by this Code; and
(4) That the person for whom letters
testamentary or of administration are sought is
entitled thereto by law and is not disqualified.

Revisor's Note
Section 88(a)(3), Texas Probate Code, requires an
applicant for the issuance of letters to prove that
citation has been served and returned in the manner and
for the period required by "this Code," meaning the
Texas Probate Code. The revised law substitutes a
reference to "this title" for the reference to "this
Code" because the citation requirements for the
issuance of letters are revised in Title 2 of this
code, and this section is included in that title.

Revised Law
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. (Tex. Prob. Code, Sec. 88(c).)

Source Law

(c) Additional Proof for Issuance of Letters Testamentary. If letters testamentary are to be granted, it must appear to the court that proof required for the probate of the will has been made, and, in addition, that the person to whom the letters are to be granted is named as executor in the will.

Revised Law

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). (Tex. Prob. Code, Secs. 88(d), 180.)
shall constitute sufficient legal authority to all
persons owing any money, having custody of any
property, or acting as registrar or transfer agent of
any evidence of interest, indebtedness, property, or
right belonging to the estate, and to persons
purchasing or otherwise dealing with the estate, for
payment or transfer to the distributees of the
decedent, and such distributees shall be entitled to
enforce their right to such payment or transfer by
suit.

Revisor's Note

Section 180, Texas Probate Code, refers to the
"distributees of the decedent." The revised law omits
"of the decedent" as unnecessary because Section 3(j),
Texas Probate Code, revised in this code as Section
22.010, defines "distributee" as a person entitled to
the estate of a decedent.

Revised Law

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. (Tex. Prob. Code, Sec. 88(e).)

Source Law

(e) Proof Required Where Prior Letters Have Been
Granted. If letters testamentary or of administration
have previously been granted upon the estate, the
applicant need show only that the person for whom
letters are sought is entitled thereto by law and is
not disqualified.

[Sections 301.155-301.200 reserved for expansion]

SUBCHAPTER E. PREVENTION OF ADMINISTRATION

Revised Law

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. (Tex. Prob. Code, Secs. 80(a),
(b) (part).)

Source Law

Sec. 80. (a) Method of Prevention. When
application is made for letters of administration upon
an estate by a creditor, and other interested persons
do not desire an administration thereupon, they can
defeat such application:
   (1) By the payment of the claim of such
   creditor; or
   (2) By proof to the satisfaction of the
court that such claim is fictitious, fraudulent,
   illegal, or barred by limitation; or
   (3) By executing a bond payable to, and to
   be approved by, the judge in double the amount of such
   creditor's debt, conditioned that the obligors will
   pay the debt of such applicant upon the establishment
   thereof by suit in any court in the county having
   jurisdiction of the amount.

   (b) Filing of Bond. The bond provided for, when
given and approved, shall be filed with the county
clerk, and . . . .

Revisor's Note

Sections 80(a)(1) and (2), Texas Probate Code,
refer to a creditor's "claim," and Section 80(a)(3),
Texas Probate Code, refers to the creditor's "debt."
It is clear from the context that the terms "claim" and
"debt" are synonymous. Therefore, throughout this
subchapter, the revised law substitutes "claim" for
"debt" for consistency of terminology.

Revised Law

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. (Tex. Prob. Code, Sec. 80(b) (part).)
(b) any creditor for whose protection it was executed may sue thereon in his own name for the recovery of his debt.

Revised Law

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. (Tex. Prob. Code, Sec. 80(c).)

(c) Bond Secured by Lien. A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided for herein.

Revisor's Note

(1) Section 80(c), Texas Probate Code, refers to the estate in the "hands" of the distributees. The revised law substitutes "possession" for "hands" because the terms are synonymous in context and "possession" is more consistent with modern usage.

(2) Section 80(c), Texas Probate Code, refers to an estate and the distributees "of such estate." The revised law omits the quoted phrase for the reason stated in the revisor's note to Section 301.153 of this chapter.

[Chapter 302 reserved for expansion]

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

Sec. 303.001. CITATION ON APPLICATION FOR ISSUANCE OF LETTERS OF ADMINISTRATION

Sec. 303.002. COURT ACTION PROHIBITED BEFORE SERVICE OF CITATION

Sec. 303.003. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE
CHAPTER 303. CITATIONS AND NOTICES IN GENERAL ON OPENING OF ADMINISTRATION

Revised Law

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. (Tex. Prob. Code, Sec. 128(a) (part).)

Source Law

Sec. 128. (a) Where Application Is for Probate of a Written Will Produced in Court or for Letters of Administration. When an application . . . for letters of administration, is filed with the clerk, he shall issue a citation to all parties interested in such estate, which citation shall be served by posting and shall state:

(1) That such application has been filed, and the nature of it.
(2) The name of the deceased and of the applicant.
(3) The time when such application will be acted upon.
(4) That all persons interested in the estate should appear at the time named therein and contest said application, should they desire to do so.

Revisor's Note

Section 128(a), Texas Probate Code, refers to "the deceased." Throughout the Texas Probate Code, a deceased person is more commonly referred to as a "decedent." The revised law substitutes a reference to a "decedent" for the reference to the "deceased" for consistency of terminology throughout this code.
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. (Tex. Prob. Code, Sec. 128(c) (part).)

(c) No Action Until Service Is Had. No application . . . for the issuance of letters shall be acted upon until service of citation has been made in the manner provided herein.

Revisor's Note

(1) Section 128(c), Texas Probate Code, provides that an application for the issuance of "letters" may not be acted on until service of citation has been made. Section 128(a), Texas Probate Code, revised in relevant part as Section 303.001 of this chapter, states the requirements for the citation and its service on the filing of an application for "letters of administration." Because it is clear that the letters to which Section 128(c) is referring are the letters of administration addressed by Section 128(a), the revised law substitutes "letters of administration" for "letters." See Subchapter A, Chapter 258, of this code for the revision of the portion of Section 128, Texas Probate Code, that addresses the service of citation on the filing of an application for the probate of a will.

(2) Section 128(c), Texas Probate Code, refers to service of citation made in the manner provided "herein," meaning Section 128, Texas Probate Code. The revised law substitutes "by this chapter" for "herein" because the relevant portion of Section 128, Texas Probate Code, is revised as this chapter.

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. (Tex. Prob. Code, Sec. 129A.)

Source Law

Sec. 129A. Notwithstanding any other provisions of this part of this chapter, if an attempt to make service under this part of this chapter is unsuccessful, service may be made in the manner provided by Rule 109 or 109a, Texas Rules of Civil Procedure, for the service of a citation on a party by publication or other substituted service.

Revisor's Note

Section 129A, Texas Probate Code, refers to any other provisions of "this part of this chapter," meaning Part 4, Chapter V, Texas Probate Code. Although only portions of Part 4, Chapter V, are revised in this chapter, the revised law substitutes "this chapter" for "this part of this chapter" and does not reference the provisions revising other affected portions of Part 4 because Section 129A is also revised in the chapter of this code that contains the revision of those other portions.

CHAPTER 304. PERSONS WHO MAY SERVE AS PERSONAL REPRESENTATIVES

Sec. 304.001. ORDER OF PERSONS QUALIFIED TO SERVE AS PERSONAL REPRESENTATIVE

Revised Law

Sec. 304.001. ORDER OF PERSONS QUALIFIED TO SERVE AS PERSONAL REPRESENTATIVE. (a) The court shall grant letters testametary or of administration to persons qualified to act, in
the following order:

(1) the person named as executor in the decedent's will;
(2) the decedent's surviving spouse;
(3) the principal devisee of the decedent;
(4) any devisee of the decedent;
(5) the next of kin of the decedent;
(6) a creditor of the decedent;
(7) any person of good character residing in the county who applies for the letters; and
(8) any other person who is not disqualified under Section 304.003.

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

(1) shall grant the letters to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously; or
(2) may grant the letters to two or more of those applicants. (Tex. Prob. Code, Sec. 77.)

Source Law

Sec. 77. Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

(a) To the person named as executor in the will of the deceased.
(b) To the surviving husband or wife.
(c) To the principal devisee or legatee of the testator.
(d) To any devisee or legatee of the testator.
(e) To the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes a person and his descendants who legally adopted the deceased or who have been legally adopted by the deceased.
To a creditor of the deceased.

To any person of good character residing in the county who applies therefor.

To any other person not disqualified under the following Section. When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

Revisor's Note

(1) Sections 77(c) and (d), Texas Probate Code, refer to a "devisee or legatee" of a testator. The revised law omits the reference to "legatee" because Section 3(i), Texas Probate Code, revised as Section 22.009 of this code, provides that "devisee" includes a legatee.

(2) Section 77(h), Texas Probate Code, refers to "any other person not disqualified under the following Section." The reference to "the following Section" is a reference to Section 78, Texas Probate Code, which is revised in this chapter as Section 304.003. The revised law is drafted accordingly.

Revised Law

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. (Tex. Prob. Code, Sec. 79.)

Source Law

Sec. 79. The surviving husband or wife, or, if there be none, the heirs or any one of the heirs of the deceased to the exclusion of any person not equally entitled, may, in open court, or by power of attorney duly authenticated and filed with the county clerk of the county where the application is filed, renounce his right to letters testamentary or of administration in favor of another qualified person, and thereupon the court may grant letters to such person.
Revisor's Note

Section 79, Texas Probate Code, refers to a power of attorney that has been "duly authenticated" and filed with the county clerk. The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The requirement that the power of attorney be authenticated is sufficient to convey that the power of attorney must have met the requirements for authentication.

Revised Law

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. (Tex. Prob. Code, Sec. 78.)

Source Law

Sec. 78. No person is qualified to serve as an executor or administrator who is:

(a) An incapacitated person;

(b) A convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia, unless
such person has been duly pardoned, or his civil rights
restored, in accordance with law;
(c) A non-resident (natural person or
corporation) of this State who has not appointed a
resident agent to accept service of process in all
actions or proceedings with respect to the estate, and
caused such appointment to be filed with the court;
(d) A corporation not authorized to act as a
fiduciary in this State; or
(e) A person whom the court finds unsuitable.

Revisor's Note
(1) Section 78(b), Texas Probate Code, refers to
the laws of "any state or territory of the United
States, or of the District of Columbia." The
references to any "territory" and to "the District of
Columbia" are omitted from the revised law because
under Section 311.005(7), Government Code (Code
Construction Act), applicable to the revised law,
"state," when referring to a part of the United States,
is defined to include a district or territory of the
United States.
(2) Section 78(b), Texas Probate Code, refers to
a person who has been "duly pardoned . . . in
accordance with law." The revised law omits "duly" in
this context because the word does not add to the clear
meaning of the law. The requirement that the person
has been pardoned "in accordance with law" is
sufficient to convey that the pardon must have met the
legal requirements for a pardon.

CHAPTER 305. QUALIFICATION OF PERSONAL REPRESENTATIVES

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CHAPTER 305. QUALIFICATION OF PERSONAL REPRESENTATIVES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 305.001. DEFINITIONS. In this chapter:

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"Bond" means a bond required by this chapter to be given by a person appointed to serve as a personal representative.

"Oath" means an oath required by this chapter to be taken by a person appointed to serve as a personal representative.

(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.

Revisor's Note
The definitions of "bond" and "oath" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law
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) given the required bond;

(3) obtained the judge's approval of the bond; and

(4) filed the bond with the clerk.

(b) An executor who is not required to give a bond is considered to have qualified when the executor has taken and filed the oath prescribed by Subchapter B. (Tex. Prob. Code, Sec. 189.)

Source Law
Sec. 189. A personal representative shall be deemed to have duly qualified when he shall have taken and filed his oath and made the required bond, had the same approved by the judge, and filed it with the clerk. In case of an executor who is not required to make bond, he shall be deemed to have duly qualified when he shall have taken and filed his oath required by law.

Revisor's Note
(1) Section 189, Texas Probate Code, prescribes the actions that a personal representative must take to be considered to have "duly qualified." The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The
requirement that the representative take the prescribed actions to qualify is sufficient to convey that the actions must be taken before the representative may exercise the powers of that position.

(2) Section 189, Texas Probate Code, refers to "his oath" and "his oath required by law," meaning the oath required to be taken by a personal representative. The revised law adds a reference to Subchapter B of this chapter for the convenience of the reader because that subchapter addresses the specific requirements applicable to the oath.

Revised Law
Sec. 305.003. PERIOD FOR TAKING OATH AND GIVING BOND. An oath may be taken and subscribed and a bond may be given and approved at any time before:

(1) the 21st day after the date of the order granting letters testamentary or of administration, as applicable; or
(2) the letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed. (Tex. Prob. Code, Sec. 192 (part).)

Source Law
Sec. 192. The oath of a personal representative may be taken and subscribed, or his bond may be given and approved, at any time before the expiration of twenty days after the date of the order granting letters testamentary or of administration, as the case may be, or before such letters shall have been revoked for a failure to qualify within the time allowed. . . . .

[Sections 305.004-305.050 reserved for expansion]

SUBCHAPTER B. OATHS

Revised Law
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
190(a).)

Sec. 190. (a) Executor, or Administrator With
Will Annexed. Before the issuance of letters
testamentary or of administration with the will
annexed, the person named as executor, or appointed
administrator with the will annexed, shall take and
subscribe an oath in form substantially as follows: "I
do solemnly swear that the writing which has been
offered for probate is the last will of ______, so far
as I know or believe, and that I will well and truly
perform all the duties of executor of said will (or of
administrator with the will annexed, as the case may
be) of the estate of said ______."

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
deceded. (Tex. Prob. Code, Sec. 190(b).)

(b) Administrator. Before the issuance of
letters of administration, the person appointed
administrator shall take and subscribe an oath in form
substantially as follows: "I do solemnly swear that
__________, deceased, died without leaving any lawful will
(or that the named executor in any such will is dead or
has failed to offer the same for probate, or to accept
and qualify as executor, within the time required, as
the case may be), so far as I know or believe, and that
I will well and truly perform all the duties of
administrator of the estate of said deceased."
Revised Law

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. (Tex. Prob. Code, Sec. 190(c).)

Source Law

(c) Temporary Administrator. Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of _______, deceased, in accordance with the law, and with the order of the court appointing me such administrator."

Revised Law

Sec. 305.054. ADMINISTRATION OF OATH. An oath may be taken before any person authorized to administer oaths under the laws of this state. (Tex. Prob. Code, Secs. 190(d) (part), 192 (part).)

Source Law

[Sec. 190]
(d) Filing and Recording of Oaths. All such oaths may be taken before any officer authorized to administer oaths, and . . . .

Sec. 192. . . . All such oaths may be taken before any person authorized to administer oaths under the laws of this State.

Revisor's Note

Section 190(d), Texas Probate Code, provides that an oath may be taken before "any officer authorized to administer oaths," and Section 192, Texas Probate Code, provides that an oath may be taken before "any person authorized to administer oaths under the laws of this State." The revised law omits "any officer authorized to administer oaths" as included within the meaning of "any person authorized to administer oaths.
Revised Law

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 minutes of that court. (Tex. Prob. Code, Sec. 190(d) (part).)

Source Law

(d) All such oaths . . . shall be filed with the clerk of the court granting the letters, and shall be recorded in the minutes of such court.

Revisor's Note

Section 190(d), Texas Probate Code, requires a personal representative's oath to be filed with the clerk of the court granting "the letters." The revised law substitutes "the letters testamentary or of administration" because, in context, it is clear that the letters to which the section refers are the letters testamentary or of administration.

[Sections 305.056-305.100 reserved for expansion]

SUBCHAPTER C. GENERAL PROVISIONS RELATING TO BONDS

Revised Law

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. (Tex. Prob. Code, Secs. 194 (part), 195.)
Sec. 194. Except when bond is not required under the provisions of this Code, before the issuance of letters testamentary or of administration, the recipient of letters shall enter into bond. . . .

Sec. 195. (a) By Will. Whenever any will probated in a Texas court directs that no bond or security be required of the person or persons named as executors, the court finding that such person or persons are qualified, letters testamentary shall be issued to the persons so named, without requirement of bond.

(b) Corporate Fiduciary Exempted From Bond. If a personal representative is a corporate fiduciary, as said term is defined in this Code, no bond shall be required.

Revisor's Note

(1) Section 194, Texas Probate Code, requires certain persons to enter into a bond before issuance of letters testamentary or of administration, except when a bond is not required by the provisions of "this Code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this Code" because the provisions of the Texas Probate Code that relate to estates of decedents, including any exceptions to bond requirements, are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

(2) Section 195(b), Texas Probate Code, refers to a corporate fiduciary, "as said term is defined in this Code," meaning the Texas Probate Code. The revised law omits the quoted language as unnecessary. Section 3(d), Texas Probate Code, revised in this code as Section 22.006, defines "corporate fiduciary" and applies by its own terms to this section.

Revised Law

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

Source Law

Sec. 214. Where no bond is required of an
executor appointed by will, any person having a debt,
claim, or demand against the estate, to the justice of
which oath has been made by himself, his agent, or
attorney, or any other person interested in such
estate, whether in person or as the representative of
another, may file a complaint in writing in the court
where such will is probated, and the court shall
thereupon cite such executor to appear and show cause
why he should not be required to give bond.

Sec. 215. Upon hearing such complaint, if it
appears to the court that such executor is wasting,
mismanaging, or misapplying such estate, and that
thereby a creditor may probably lose his debt, or that
thereby some person's interest in the estate may be
diminished or lost, the court shall enter an order
requiring such executor to give bond within ten days
from the date of such order.

Sec. 216. Such bond shall be for an amount
sufficient to protect the estate and its creditors, to
be approved by, and payable to, the judge, conditioned
that said executor will well and truly administer such
estate, and that he will not waste, mismanage, or
misapply the same.

Sec. 217. Should the executor fail to give such
bond within ten days after the order requiring him to
do so, then if the judge does not extend the time, he
shall, without citation, remove such executor and
appoint some competent person in his stead who shall
administer the estate according to the provisions of
such will or the law, and who, before he enters upon
the administration of said estate, shall take the oath
required of an administrator with the will annexed,
and shall give bond in the same manner and in the same
amount provided in this Code for the issuance of
original letters of administration.

Revisor's Note

Section 217, Texas Probate Code, requires a
person appointed under that section to take the oath
required of an administrator with the will annexed.
For the convenience of the reader, the revised law adds
a reference to Section 305.051 of this chapter, which
is the provision that specifically addresses the
relevant oath. Section 217 also requires the
appointed person to give a bond in the same manner and
amount as is required for the issuance of original letters of administration in "this Code," meaning the Texas Probate Code. The revised law substitutes a reference to "this chapter" for "this Code" because the provisions of the Texas Probate Code that relate to bonds of personal representatives are revised in this chapter.

Revised Law

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. (Tex. Prob. Code, Sec. 198.)

Source Law

Sec. 198. When two or more persons are appointed representatives of the same estate or person and are required by the provisions of this Code or by the court to give a bond, the court may require either a separate bond from each or one joint bond from all of them.

Revisor's Note

(1) Section 198, Texas Probate Code, refers to persons appointed as "representatives." The revised law throughout this chapter substitutes "personal representatives" for initial references to "representatives" for consistency of terminology throughout this chapter.

(2) Section 198, Texas Probate Code, refers to persons appointed as representatives "of the same estate or person," meaning representatives of the same estate of a decedent or representatives of the same incapacitated person subject to a guardianship. The revised law omits the reference to "person" to correct an obsolete and unnecessary reference.

When the legislature enacted Section 198, Texas
Probate Code, in Chapter 55, Acts of the 54th Legislature, Regular Session, 1955, that section applied to both decedents' estates and guardianship matters. Subsequently, the legislature enacted Chapter 957, Acts of the 73rd Legislature, Regular Session, 1993, which separated the decedents' estates statutes and guardianship statutes into distinct portions of the Texas Probate Code. Section 706, Texas Probate Code, redesignated as Section 706 of this code, which addresses the bonds of joint guardians of an incapacitated person subject to a guardianship using language virtually identical to the language used in Section 198, was added to the code by Chapter 957.

In context, it is clear that the reference to a "person" for whom a representative is appointed in Section 198, Texas Probate Code, no longer serves any purpose. Since the separation of the decedents' estates statutes and the guardianship statutes in the Texas Probate Code, Section 198 has been the provision that applies in circumstances involving decedents' estates, and Section 706, Texas Probate Code, redesignated as Section 706 of this code, has been the provision that applies in circumstances involving guardianships.

(3) Section 198, Texas Probate Code, refers to the provisions of "this Code," meaning the Texas Probate Code, that require a personal representative to give a bond. The revised law substitutes a reference to "this chapter" for "this Code" for the reason stated in the revisor's note to Section 305.102 of this chapter.

Revised Law
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. (Tex. Prob. Code, Sec. 199.)

Source Law

Sec. 199. When a married person is appointed personal representative, the person may, jointly with, or without, his or her spouse, execute such bond as the law requires; and such bond shall bind the person's separate estate, but shall bind his or her spouse only if signed by the spouse.

Revised Law

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. (Tex. Prob. Code, Sec. 200.)

Source Law

Sec. 200. When a person under eighteen years of age who is or has been married shall accept and qualify as executor or administrator, any bond required to be executed by him shall be as valid and binding for all purposes as if he were of lawful age.

Revisor's Note

Section 200, Texas Probate Code, refers to the treatment of certain bonds of persons under 18 years of age as if the person were of "lawful age." The revised law substitutes "legal" for "lawful" in this context because the terms are synonymous and "legal" is more consistent with modern usage.

Revised Law

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. (Tex. Prob. Code, Sec. 194 (part).)

Source Law

Sec. 194. . . . [the recipient of letters shall 
enter into bond] conditioned as required by law, 
payable to the county judge or probate judge of the 
county in which the probate proceedings are pending 
and to his successors in office. Such bonds shall bear 
the written approval of either of such judges in his 
oficial capacity, and shall be executed and approved 
in accordance with the following rules:

. . .

Revisor's Note

(1) Section 194, Texas Probate Code, refers to 
the "county judge or probate judge of the county in 
which the probate proceedings are pending." Section 
3(f), Texas Probate Code, defines "county judge," 
"probate judge," and "judge" identically as 
interchangeable terms, with each term meaning the 
presiding judge of a court having original 
jurisdiction over probate proceedings. The definition 
specifically includes the judge of a district court 
exercising jurisdiction in contested probate matters. 
See the revisor's note to Section 22.019 of this code 
for an analysis of the amendment history of Sections 
3(f) and 5, Texas Probate Code, that resulted in the 
 inclusion of a district judge in the definition. 
Section 22.019 of this code, which is the revision of 
Section 3(f), Texas Probate Code, omits the terms 
"county judge" and "probate judge" because those terms 
are synonymous with the term "judge," and defining 
"county judge" and "probate judge" to mean, in part, a 
"district judge" is misleading. The revisor's note to 
that section indicates that throughout this code, the 
term "judge" will be substituted for references to 
"county judge" or "probate judge." Accordingly, the
revised law in this section substitutes "judge" for "county judge or probate judge." In addition, the revised law omits "of the county in which the probate proceedings are pending" as unnecessary because it is clear from the context that the bond must be payable to the judge of the court in which the probate proceedings are pending, and it is clear from the definition of "judge" in Section 22.019 of this code that that judge is the judge of the court in the county with probate jurisdiction.

(2) Section 194, Texas Probate Code, provides that a personal representative's bond shall be executed and approved "in accordance with the following rules," meaning provisions set out in Subdivisions 1 through 14 of that section. The revised law substitutes "in accordance with this chapter" for accuracy and clarity. The provisions set out in Subdivisions 1 through 14 are not properly considered as "rules," but rather are statutes that apply without any associated rulemaking process. Also, referring only to those provisions in this context would be misleading because other provisions not set out in Section 194 are equally applicable to the execution and approval of a personal representative's bond. For example, see Section 197, Texas Probate Code, revised in this chapter as Sections 305.107 and 305.109, which requires that a bond be subscribed by both principals and sureties and be filed with the clerk.

Revised Law 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. (Tex. Prob. Code, Sec. 197 (part).)
Source Law
Sec. 197. All bonds required by preceding provisions of this Code shall be subscribed by both principals and sureties, and, . . .

Revisor's Note
Section 197, Texas Probate Code, refers to bonds "required by preceding provisions of this Code." In context, it is clear that the quoted language refers to Sections 189 through 196, Texas Probate Code, which are the sections in Part 2, Chapter VII, Texas Probate Code, that precede Section 197. Although Section 197 refers to the "preceding provisions" collectively, only the introductory language in Section 194, revised in Section 305.101 of this chapter, directly imposes the requirement that a personal representative provide a bond. The revised law is drafted accordingly.

Revised Law
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. (Tex. Prob. Code, Sec. 196.)
Sec. 196. The following form, or the same in substance, may be used for the bonds of personal representatives:

"The State of Texas

"County of ______

"Know all men by these presents that we, A. B., as principal, and E. F., as sureties, are held and firmly bound unto the county (or probate) judge of the County of ______, and his successors in office, in the sum of ______ Dollars; conditioned that the above bound A. B., who has been appointed executor of the last will and testament of J. C., deceased (or has been appointed by the said judge of ______ County, administrator with the will annexed of the estate of J. C., deceased, or has been appointed by the said judge of ______ County, administrator of the estate of J. C., deceased, or has been appointed by the said judge of ______ County, temporary administrator of the estate of J. C., deceased, as the case may be), shall well and truly perform all of the duties required of him by law under said appointment."

(1) Section 196, Texas Probate Code, prescribes a form that may be used for providing a personal representative's bond, and states within that form that the principal and sureties are "bound unto the county (or probate) judge of the County of ______." The revised law substitutes "bound unto the judge of ______ (insert reference to appropriate judge)" for the quoted language. As explained in Revisor's Note (1) to Section 305.106 of this chapter, references to "county judge" or "probate judge" are replaced throughout this code with references to "judge." The revised law omits "of the County of ______" for the reason stated in that revisor's note and substitutes the blank and parenthetical language to maintain the specific identification of the judge to whom the principal and sureties are bound.

(2) Section 196, Texas Probate Code, prescribes a form that may be used for providing a personal representative's bond, and refers within that form to an administrator with the will annexed, an administrator, or a temporary administrator
"appointed by the said judge of _____ County." The
revised law omits the quoted language as unnecessary.
Other language in the form identifies the judge to whom
the principal and sureties are bound under the bond,
and it would be duplicative to identify that judge as
the appointing officer. The omission of the quoted
language is also consistent with other language in the
form that references an executor without identifying
the appointing officer.

Revised Law
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. (Tex. Prob. Code, Sec. 197 (part).)

Source Law
Sec. 197. All bonds required by preceding
provisions of this Code shall . . . when approved by
the court, be filed with the clerk.

Revisor's Note
Section 197, Texas Probate Code, refers to bonds
"required by preceding provisions of this Code." The
revised law substitutes "required under Section
305.101" for the quoted language for the reason stated
in the revisor's note to Section 305.107 of this
chapter.

Revised Law
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. (Tex. Prob.
Code, Sec. 213.)

Source Law
Sec. 213. If at any time a personal
representative fails to give bond as required by the
court, within the time fixed by this Code, another
person may be appointed in his stead.

Revisor's Note
Section 213, Texas Probate Code, refers to a
personal representative's failure to give a bond in the period prescribed by "this Code," meaning the Texas Probate Code. The revised law substitutes a reference to "this chapter" for "this Code" for the reason stated in the revisor's note to Section 305.102 of this chapter.

Revised Law

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. (Tex. Prob. Code, Sec. 218.)

Source Law

Sec. 218. The bonds of personal representative shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

[Sections 305.112-305.150 reserved for expansion]

SUBCHAPTER D. AMOUNT OF BOND AND ASSOCIATED DEPOSITS

Revised Law

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. (Tex. Prob. Code, Sec. 194, Subdivs. 1, 2.)

Source Law

1. Court to Fix Penalty. The penalty of the bond shall be fixed by the judge, in an amount deemed sufficient to protect the estate and its creditors, as hereinafter provided.

2. Bond to Protect Creditors Only, When. If the person to whom letters testamentary or of administration is granted is also entitled to all of the decedent's estate, after payment of debts, the bond shall be in an amount sufficient to protect creditors.
only, notwithstanding the rules applicable generally to bonds of personal representatives of estates.

Revisor's Note

(1) Subdivision 1, Section 194, Texas Probate Code, refers to the "penalty of the bond" that the judge shall set in a prescribed amount. The revised law omits the reference to the "penalty" and refers only to the "amount of a bond." In context, it is clear that the "penalty of the bond" is synonymous with the "amount of the bond," and the latter is more consistent with modern usage. Throughout this chapter, the revised law makes similar changes to other language that refers to "the penalty" of a bond.

(2) Subdivision 2, Section 194, Texas Probate Code, refers to "rules" generally applicable to a personal representative's bond, meaning the various provisions revised in this chapter relating to such a bond. As explained in Revisor's Note (2) to Section 305.106 of this chapter, the provisions are not properly considered as "rules." The revised law is drafted accordingly.

Revised Law

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;
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. (Tex. Prob. Code, Sec. 194, Subdiv. 3.)

Source Law

3. Before Fixing Penalty, Court to Hear Evidence. In any case where a bond is, or shall be, required of a personal representative of an estate, the court shall, before fixing the penalty of the bond, hear evidence and determine:

(a) The amount of cash on hand and where deposited, and the amount of cash estimated to be needed for administrative purposes, including operation of a business, factory, farm or ranch owned by the estate, and expenses of administration for one year; and

(b) The revenue anticipated to be received in the succeeding twelve (12) months from dividends, interest, rentals, or use of real or personal property belonging to the estate and the aggregate amount of any installments or periodical payments to be collected; and

(c) The estimated value of certificates of stock, bonds, notes, or securities of the estate or ward, the name of the depository, if any, in which said assets are held for safekeeping, the face value of life insurance or other policies payable to the person on whose estate administration is sought, or to such estate, and such other personal property as is owned by the estate, or by one under disability; and

(d) The estimated amount of debts due and owing by the estate or ward.

Revisor's Note

(1) Subdivision 3, Section 194, Texas Probate Code, provides that a court must hear evidence and make certain determinations relevant to setting the amount of a bond "[i]n any case where a bond is, or shall be, required of a personal representative of an estate."
The revised law omits the quoted language as unnecessary. The revised law provides that the hearing must occur and the determinations must be made...
before the court sets the amount of the bond. That provision is sufficient to require that those procedures occur in each case in which a bond is required and is inapplicable in cases in which a bond is not required.

(2) Subdivision 3(b), Section 194, Texas Probate Code, refers to "real or personal property." Except where otherwise noted, the revised law throughout this chapter omits references to "real or personal" in this context as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

(3) Subdivision 3(c), Section 194, Texas Probate Code, refers to the "ward" and "one under disability," and Subdivision 3(d), Section 194, Texas Probate Code, refers to the "ward." The revised law omits the quoted language for the reason stated in Revisor's Note (2) to Section 305.103 of this chapter. Each reference relates to guardianship matters, and, as explained in the cited revisor's note, in 1993 statutes relating to guardianship matters were separated from statutes relating to decedents' estates and placed in Chapter XIII, Texas Probate Code. Section 703, Texas Probate Code, redesignated as Section 703 of this code, was added to the code at that time and addresses a guardian's bond using language comparable to Section 194. References to guardianship matters in Section 194 are accordingly obsolete and unnecessary.

(4) Subdivision 3(c), Section 194, Texas Probate Code, refers to the name of the depository, if any, in which assets "are held for safekeeping." The revised law substitutes "are deposited" for "are held
for safekeeping." As discussed in Revisor's Note (2) to Section 305.153 of this chapter, the terms have the same meaning in this context, and the substitution of "deposited" in this section provides for consistent use of terminology in this chapter.

(5) Subdivision 3(c), Section 194, Texas Probate Code, refers to "such other personal property as is owned by the estate." The revised law adds "the estimated value of" to the quoted language for consistency with the reference in Subdivision 3(c) to "the estimated value of certificates of stock, bonds, notes, or securities."

Revised Law

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. (Tex. Prob. Code, Sec. 194, Subdivs. 4, 13.)

Source Law

4. Penalty of Bond. The penalty of the bond shall be fixed by the judge in an amount equal to the estimated value of all personal property belonging to the estate, or to the person under disability, together with an additional amount to cover revenue anticipated to be derived during the succeeding twelve (12) months from interest, dividends, collectible claims, the aggregate amount of any installments or periodical payments exclusive of income derived or to be derived from federal social security payments, and rentals for use of real and personal property; provided, that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by order of court, or voluntarily made by the representative or by his sureties as hereinafter provided in Subdivisions 6 and 7 hereof.

13. Bonds of Temporary Appointees. In case of a temporary administrator, the bond shall be in such sum as the judge shall direct.

Revisor's Note

(1) Subdivision 4, Section 194, Texas Probate Code, refers to "the person under disability," meaning a person who may be subject to a guardianship. The revised law omits the quoted language for the reason stated in Revisor's Note (3) to Section 305.152 of this chapter.

(2) Subdivision 4, Section 194, Texas Probate Code, refers to cash, securities, or other assets "deposited or placed in safekeeping." Throughout this chapter, the revised law omits "placed in safekeeping" and other references to "safekeeping" as unnecessary because, in this context, the concept of placing cash, securities, or other assets "in safekeeping" has the same meaning as "depositing" the assets. There is no substantive distinction between the terms, as further indicated by the fact that other provisions of the Texas Probate Code revised in this chapter refer only to the "deposit" of assets. See Subdivisions 7 and 12,
Section 194, Texas Probate Code, revised in Sections 305.156 and 305.207 of this chapter, respectively.

(3) Subdivision 4, Section 194, Texas Probate Code, refers to the amount of cash or value of securities or other assets "made by" the personal representative or by the sureties on the representative's bond in accordance with other specified provisions. The revised law substitutes "deposited" for "made" for clarity and consistency with other terminology in Subdivision 4.

Revised Law
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.

(Tex. Prob. Code, Sec. 194, Subdiv. 5.)
Source Law

5. Agreement as to Deposit of Assets. It shall be lawful, and the court may require such action when deemed in the best interest of an estate, for a personal representative to agree with the surety or sureties, either corporate or personal, for the deposit of any or all cash, and safekeeping of other assets of the estate in a financial institution as defined by Section 201.101, Finance Code, with its main office or a branch office in this state and qualified to act as a depository in this State under the laws of this State or of the United States, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or an order of the court made on such notice to the surety as the court shall direct. No such agreement shall in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

Revisor's Note

Subdivision 5, Section 194, Texas Probate Code, refers to the withdrawal of "such moneys." The revised law substitutes "cash" for "money" for consistency with other terminology in Subdivision 5 that refers to "any or all cash."

Revised Law

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. (Tex. Prob. Code, Sec. 194, Subdiv. 6.)

Source Law

6. Deposits Authorized or Required, When.

Cash or securities or other personal assets of an estate or which an estate is entitled to receive may, and if deemed by the court in the best interest of such estate shall, be deposited or placed in safekeeping as the case may be, in one or more of the depositories hereinabove described upon such terms as shall be prescribed by the court. The court in which the proceedings are pending, upon its own motion, or upon written application of the representative or of any other person interested in the estate may authorize or require additional assets of the estate then on hand or as they accrue during the pendency of the probate proceedings to be deposited or held in safekeeping as provided above. The amount of the bond of the personal representative shall be reduced in proportion to the cash so deposited, or the value of the securities or other assets placed in safekeeping. Such cash so deposited, or securities or other assets held in safekeeping, or portions thereof, may be withdrawn from a depository only upon order of the court, and the bond of the personal representative shall be increased in proportion to the amount of cash or the value of securities or other assets so authorized to be withdrawn.

Revisor's Note

Subdivision 6, Section 194, Texas Probate Code, refers to the deposit of cash, securities, or other personal assets of an estate in a depository "hereinabove described." Subdivision 5, Section 194, Texas Probate Code, revised in relevant part in this chapter as Section 305.154(c), is the provision of the Texas Probate Code preceding Subdivision 6 that describes depositories. The revised law therefore substitutes "described by Section 305.154(c)" for "hereinabove described."
Sec. A305.156. 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. (Tex. Prob. Code, Sec. 194, Subdivs. 7, 8(b), (c), (d).)

Source Law

7. Representative May Deposit Cash or Securities of His Own in Lieu of Bond. It shall be lawful for the personal representative of an estate, in lieu of giving surety or sureties on any bond which shall be required of him, or for the purpose of reducing the amount of such bond, to deposit out of his own assets cash or securities acceptable to the court, with a depository such as named above or with any other corporate depository approved by the court, if such deposit is otherwise proper, said deposit to be equal in amount or value to the amount of the bond required, or the bond reduced by the value of assets so deposited.
(b) The amount of cash or securities on deposit may be increased or decreased, by order of
the court from time to time, as the interest of the estate shall require.
(c) Deposits in lieu of sureties on bonds, whether of cash or securities, may be withdrawn
or released only on order of a court having jurisdiction.
(d) Creditors shall have the same rights against the representative and such deposits as are provided for recovery against sureties on a bond.

Reviser's Note

Subdivision 7, Section 194, Texas Probate Code, refers to the deposit of cash or securities with a depository "such as named above." The revised law substitutes "described by Section 305.154(c)" for the quoted language for the reason stated in the revisor's note to Section 305.155 of this chapter.

Revised Law
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. (Tex. Prob. Code, Sec. 194, Subdiv. 8(a).)

Source Law
8. Rules Applicable to Making and Handling Deposits in Lieu of Bond or to Reduce Penal Sum of Bond. (a) A receipt for a deposit in lieu of surety or sureties shall be issued by the depository, showing the amount of cash or, if securities, the amount and description thereof, and agreeing not to disburse or deliver the same except upon receipt of a certified copy of an order of the court in which the proceedings are pending, and such receipt shall be attached to the representative's bond and be delivered to and filed by the county clerk after approval by the judge.
Revisor's Note

Subdivision 8(a), Section 194, Texas Probate Code, refers to "a deposit in lieu of surety or sureties." In context, it is clear that the quoted language refers to the deposit made by a personal representative under Subdivision 7, Section 194, Texas Probate Code, revised in this chapter in Section 305.156. Accordingly, the revised law adds a reference to that section for the convenience of the reader.

Revised Law

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. (Tex. Prob. Code, Sec. 194, Subdiv. 8(e).)

Source Law

(e) The court may on its own motion, or upon written application by the representative or...
by any other person interested in the estate, require
that adequate bond be given by the representative in
lieu of such deposit, or authorize withdrawal of the
deposit and substitution of a bond with sureties
therefor. In either case, the representative shall
file a sworn statement showing the condition of the
estate, and unless the same be filed within twenty (20)
days after being personally served with notice of the
filing of an application by another, or entry of the
court's motion, he shall be subject to removal as in
other cases. The deposit may not be released or
withdrawn until the court has been satisfied as to the
condition of the estate, has determined the amount of
bond, and has received and approved the bond.

Revisor's Note

Subdivision 8(e), Section 194, Texas Probate
Code, refers to "such deposit" and "the deposit." In
context, it is clear that the quoted language refers to
the deposit made by a personal representative under
Subdivision 7, Section 194, Texas Probate Code,
revised in this chapter in Section 305.156.
Accordingly, the revised law adds a reference to that
section for the convenience of the reader.

Revised Law

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. (Tex. Prob. Code, Sec. 194, Subdiv. 9.)

Source Law

9. Withdrawal of Deposits When Estate
Closed. Upon the closing of an estate, any such
deposit or portion thereof remaining on hand, whether
of the assets of the representative, or of the assets
of the estate, or of the surety, shall be released by
order of court and paid over to the person or persons
entitled thereto. No writ of attachment or
garnishment shall lie against the deposit, except as

to claims of creditors of the estate being
administered, or persons interested therein,
including distributees and wards, and then only in the
event distribution has been ordered by the court, and
to the extent only of such distribution as shall have
been ordered.

Revised Law

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. (Tex. Prob. Code, Sec. 194, Subdiv. 14.)

Source Law

14. Increased or Additional Bonds When
Property Sold, Rented, Leased for Mineral Development,
or Money Borrowed or Invested. The provisions in this
Section with respect to deposit of cash and
safekeeping of securities shall cover, so far as they
may be applicable, the orders to be entered by the
court when real or personal property of an estate has
been authorized to be sold or rented, or money borrowed
thereon, or when real property, or an interest
therein, has been authorized to be leased for mineral
development or subjected to unitization, the general
bond having been found insufficient.

[Sections 305.161-305.200 reserved for expansion]

SUBCHAPTER E. BOND SURETIES

Revised Law

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:
execute an affidavit in the manner provided by this subchapter; and

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. (Tex. Prob. Code, Sec. 194, Subdivs. 10, 12 (part).)

Source Law

10. Who May Act as Sureties. The surety or sureties on said bonds may be authorized corporate sureties, or personal sureties.

12. Qualifications of Personal Sureties. If the sureties be natural persons, there shall not be less than two (2), each of whom shall make affidavit in the manner prescribed in this Code, and the judge shall be satisfied that he owns property within this State, over and above that exempt by law, sufficient to qualify as a surety as required by law. Except as provided by law, only one surety is required if the surety is an authorized corporate surety; provided, . . . .

Revisor's Note

Subdivision 12, Section 194, Texas Probate Code, requires a surety on a personal representative's bond to execute an affidavit in the manner prescribed in "this Code," meaning the Texas Probate Code. The revised law substitutes a reference to "this subchapter" for "this Code" because the provisions of the Texas Probate Code that relate to a surety's affidavit are revised in this subchapter.

Revised Law

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. (Tex. Prob. Code, Sec. 194, Subdiv. 11.)
11. Procedure When Bond Exceeds Fifty Thousand Dollars ($50,000). When any such bond shall exceed Fifty Thousand Dollars ($50,000) in penal sum, the court may require that such bond be signed by two (2) or more authorized corporate sureties, or by one such surety and two (2) or more good and sufficient personal sureties. The estate shall pay the cost of a bond with corporate sureties.

Revised Law
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.

(Tex. Prob. Code, Sec. 201(a).)

Source Law
Sec. 201. (a) Affidavit of Personal Surety. Before the judge may consider a bond with personal sureties, each person offered as surety shall execute an affidavit stating the amount of his assets, reachable by creditors, of a value over and above his liabilities, the total of the worth of such sureties to be equal to at least double the amount of the bond, and such affidavit shall be presented to the judge for his consideration and, if approved, shall be attached to and form part of the bond.

Revised Law
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,
(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. (Tex. Prob. Code, Secs. 201(b), 202.)

Source Law

[Sec. 201]
(b) Lien on Specific Property, When Required. If the judge finds that the estimated value of personal property of the estate which cannot be deposited or held in safekeeping as hereinabove provided is such that personal sureties cannot be accepted without the creation of a specific lien on real property of such sureties, he shall enter an order requiring that each surety designate real property owned by him within this State subject to execution, of a value over and above all liens and unpaid taxes, equal at least to the amount of the bond, giving an adequate legal description of such property, all of which shall be incorporated in an affidavit by the surety, approved by the judge, and be attached to and form part of the bond. If compliance with such order is not had, the judge may in his discretion require that the bond be signed by an authorized corporate surety, or by such corporate surety and two (2) or more personal sureties.

Sec. 202. When a personal surety has been required by the court to create a lien on specific real property as a condition of his acceptance as surety on a bond, a lien on the real property of the surety in this State which is described in the affidavit of the surety, and only upon such property, shall arise as security for the performance of the obligation of the bond. The clerk of the court shall, before letters are issued to the representative, cause to be mailed to the office of the county clerk of each county in which is located any real property as set forth in the affidavit of the surety, a statement signed by the clerk, giving a sufficient description of such real property, the name of the principal and sureties, the amount of the bond, and the name of the estate and the court in which the bond is given. The county clerk to whom such statement is sent shall record the same in the deed records of the county. All such recorded statements shall be duly indexed in such manner that the existence and character of the liens may conveniently be determined, and such recording and indexing of such statement shall constitute and be constructive notice to all persons of the existence of such lien on such real property situated in such county, effective as of date of such indexing.

Revisor's Note
(1) Section 201(b), Texas Probate Code, refers to personal property of the estate deposited "as
hereinabove provided." Subdivisions 4, 5, and 6, Section 194, Texas Probate Code, revised in this chapter in Subchapter D, are the provisions of the Texas Probate Code preceding Section 201(b) that provide for the deposit of personal property of the estate. The revised law therefore substitutes "as provided by Subchapter D" for "as hereinabove provided."

(2) Section 202, Texas Probate Code, requires the court clerk to take a specified action before issuing "letters" to certain personal representatives. The revised law substitutes "letters testamentary or of administration" for the reason stated in the revisor's note to Section 305.055 of this chapter.

(3) Section 202, Texas Probate Code, requires that certain recorded statements be "duly" indexed in a specified manner. The revised law omits "duly" in this context because it does not add to the clear meaning of the law. The requirement that the statements be indexed in the specified manner is a sufficient statement of the necessary action.

Revised Law

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. (Tex. Prob. Code, Sec. 201(c).)
Source Law

(c) Subordination of Lien Authorized. If a personal surety who has been required to create a lien on specific real estate desires to lease such property for mineral development, he may file his written application in the court in which the proceedings are pending, requesting subordination of such lien to the proposed lease, and the judge of such court may, in his discretion, enter an order granting such application. A certified copy of such order, filed and recorded in the deed records of the proper county, shall be sufficient to subordinate such lien to the rights of a lessee, in the proposed lease.

Revisor's Note

Section 201(c), Texas Probate Code, refers to "a personal surety who has been required to create a lien on specific real estate." For the convenience of the reader, the revised law adds a reference to Section 305.204 of this chapter, which is the provision under which a personal surety may be required to create a lien. The revised law also substitutes "real property" for "real estate" for consistency with the terminology used in Section 305.204 of this chapter.

Revised Law

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. (Tex. Prob. Code, Secs. 211, 212.)

Source Law

Sec. 211. If a personal surety who has given a lien on specific real property as security applies to the court to have the lien released, the court shall order the release requested, if the court is satisfied that the bond is sufficient without the lien on such property, or if sufficient other real or personal property of the surety is substituted on the same terms and conditions required for the lien which is to be released. If such personal surety who requests the release of the lien does not offer a lien on other real or personal property, and if the court is not satisfied of the sufficiency of the bond without the substitution of other property, the court shall order the personal representative to appear and give a new bond.

Sec. 212. A certified copy of the court's order describing the property, and releasing the lien, filed with the county clerk of the county where the property is located, and recorded in the deed records, shall have the effect of cancelling the lien on such property.

Revisor's Note

(1) Section 211, Texas Probate Code, refers to "a personal surety who has given a lien on specific real property as security." The revised law adds a reference to Section 305.204 of this chapter for the reason stated in the revisor's note to Section 305.205 of this chapter.

(2) Section 211, Texas Probate Code, refers to the substitution of other real or personal property of the surety. In most circumstances, the revised law omits "real or personal" as unnecessary for the reason stated in Revisor's Note (2) to Section 305.152 of this chapter. In this provision, however, the revised law retains "real or personal" to maintain the distinction between the real property subject to the original lien and the real or personal property that may be substituted.

(3) Section 211, Texas Probate Code, refers to
the "terms and conditions" required for a lien that is
to be released. The revised law omits the reference to
"conditions" because "conditions" is included in the
meaning of "terms."

(4) Section 212, Texas Probate Code, refers to
the recording "in the deed records" of a court order
releasing a lien. The revised law adds to the quoted
language a reference to "of that county," meaning the
county in which the property is located, for clarity
and consistency with the provision in Section 212 that
requires the order to be filed with the county clerk of
the county in which the property is located.

Revised Law

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. (Tex. Prob. Code, Sec. 194, Subdiv. 12 (part).)

Source Law

12. ... a personal surety, instead of
making affidavit, or creating a lien on specific real
estate when such is required, may, in the same manner
as a personal representative, deposit his own cash or
securities, in lieu of pledging real property as
security, subject, so far as applicable, to the
provisions covering such deposits when made by
personal representatives.

Revisor's Note

Subdivision 12, Section 194, Texas Probate Code,
refers to "making affidavit." For the convenience of
the reader, the revised law adds a reference to Section
305.203 of this chapter, which is the provision that
addresses the relevant affidavit. Subdivision 12 also
refers to "creating a lien on specific real estate."
The revised law substitutes "creating a lien under
Section 305.204" for the convenience of the reader
because that is the provision of this chapter that
addresses the relevant lien.

[Sections 305.208-305.250 reserved for expansion]

SUBCHAPTER F. NEW BONDS

Revised Law

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, moves out 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. (Tex. Prob. Code, Secs. 203, 204.)

Source Law

Sec. 203. A personal representative may be required to give a new bond in the following cases:

(a) When the sureties upon the bond, or any one of them, shall die, remove beyond the limits of the state, or become insolvent; or
(b) When, in the opinion of the court, the sureties upon any such bond are insufficient; or
(c) When, in the opinion of the court, any
such bond is defective; or
(d) When the amount of any such bond is insufficient; or
(e) When the sureties, or any one of them, petitions the court to be discharged from future liability upon such bond; or
(f) When the bond and the record thereof have been lost or destroyed.
Sec. 204. Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the probate proceedings are pending, alleging that the bond of the personal representative is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such representative to be cited to appear and show cause why he should not give a new bond.

Revised Law
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. (Tex. Prob. Code, Secs. 205, 206(a).)

Source Law
Sec. 205. When it shall be known to him that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, the judge shall:
(1) without delay and without notice enter an order requiring the representative to give a new bond; or
(2) without delay cause the representative
to be cited to show cause why he should not give a new
bond.

Sec. 206. (a) The order entered under Section
205(1) of this code must state the reasons for
requiring a new bond, the amount of the new bond, and
the time within which the new bond must be given, which
may not be earlier than the 10th day after the date of
the order. If the personal representative opposes the
order, the personal representative may demand a
hearing on the order. The hearing must be held before
the expiration of the time within which the new bond
must be given.

Revised Law
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.
(Tex. Prob. Code, Sec. 206(b).)

Source Law
(b) Upon the return of a citation ordering a
personal representative to show cause why he should
not give a new bond, the judge shall, on the day named
therein for the hearing of the matter, proceed to
inquire into the sufficiency of the reasons for
requiring a new bond; and, if satisfied that a new
bond should be required, he shall enter an order to
that effect, stating in such order the amount of such
new bond, and the time within which it shall be given,
which shall not be later than twenty days from the date
of such order.

Revised Law
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. (Tex. Prob. Code, Sec. 207.)

Source Law

Sec. 207. When a personal representative is required to give a new bond, the order requiring such bond shall have the effect to suspend his powers, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved.

Revised Law

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. (Tex. Prob. Code, Sec. 208.)

Source Law

Sec. 208. A personal representative required to give bond may at any time file with the clerk a written application to the court to have his bond reduced. Forthwith the clerk shall issue and cause to be posted notice to all persons interested and to the surety or sureties on the bond, apprising them of the fact and nature of the application and of the time when the judge will hear the application. The judge, in his discretion, upon the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the estate, and upon the approval of an accounting filed at the time of the application, may permit the filing of a new bond in a reduced amount.
Revisor's Note

Section 208, Texas Probate Code, requires the clerk to "[f]orthwith" issue and have notice posted regarding the filing of an application for bond reduction. The revised law substitutes "promptly" for "[f]orthwith" because the terms have the same meaning in this context and "promptly" is more consistent with modern usage.

Revised Law

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. (Tex. Prob. Code, Sec. 210.)

Source Law

Sec. 210. The sureties upon the bond of a personal representative, or any one of them, may at any time file with the clerk a petition to the court in which the proceedings are pending, praying that such representative be required to give a new bond and that petitioners be discharged from all liability for the future acts of such representative; whereupon, such representative shall be cited to appear and give a new bond.

Revised Law

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. (Tex. Prob. Code, Sec. 209.)

Source Law

Sec. 209. When a new bond has been given and approved, an order shall be entered discharging the sureties upon the former bond from all liability for the future acts of the principal.
Chapter 306. Granting and Issuance of Letters

Sec. 306.001. Granting of Letters Testamentary

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.

Sec. 306.002. Granting of Letters of Administration

Subject to Subsection (b), the court hearing an application under

Revised Law

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. (Tex. Prob. Code, Secs. 178(a), (c).)

Source Law

Sec. 178. (a) Letters Testamentary. When a will has been probated, the court shall, within twenty days thereafter, grant letters testamentary, if permitted by law, to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law.

(c) Failure to Issue Letters Within Prescribed Time. Failure of a court to issue letters testamentary within the twenty day period prescribed by this Section shall not affect the validity of any letters testamentary which are issued subsequent to such period, in accordance with law.

Revised Law

Sec. 306.002. Granting of Letters of Administration. (a)
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. (Tex. Prob. Code, Sec. 178(b).)

Source Law

(b) Letters of Administration. When a person shall die intestate, or where no executor is named in a will, or where the executor is dead or shall fail to accept and qualify within twenty days after the probate of the will, or shall fail for a period of thirty days after the death of the testator to present the will for probate and the court finds there was no good cause for not presenting the will for probate during that period, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator, shall be granted, should administration appear to be necessary. No administration of any estate shall be granted unless there exists a necessity therefor, such necessity to be determined by the court hearing the application. Such necessity shall be deemed to exist
if two or more debts exist against the estate, or if or
when it is desired to have the county court partition
the estate among the distributees, or if the
administration is necessary to receive or recover
funds or other property due the estate, but mention of
these three instances of necessity for administration
shall not prevent the court from finding other
instances of necessity upon proof before it.

Revisor's Note

(1) Section 178(b), Texas Probate Code, refers
to a person who dies "intestate" and a "testator." The
revised law substitutes "decedent" for the quoted
terms for consistency of terminology and because a
"decedent" includes a person who dies without a will,
referred to as dying "intestate," and a person who dies
leaving a will, referred to as a "testator." In
addition, it is clear from the context of the
provisions whether the revised law is referring to a
decedent who died without a will or a decedent who died
leaving a will, and using the terms "intestate" and
"testator" is therefore unnecessary. Similar changes
are made throughout this chapter.

(2) Section 178(b), Texas Probate Code, refers
to a court hearing the "application," meaning an
application for letters of administration, and
requires that court to grant an administration of the
estate under certain circumstances. The revised law
refers to an "application under Chapter 301" of this
code, which is the chapter governing those
applications, for clarity and the convenience of the
reader.

Revised Law

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. (Tex. Prob. Code, Sec. 181.)

Sec. 181. When letters testamentary or of administration are granted, the court shall make an order to that effect, which shall specify:

(a) The name of the testator or intestate; and

(b) The name of the person to whom the grant of letters is made; and

(c) If bond is required, the amount thereof; and

(d) If any interested person shall apply to the court for the appointment of an appraiser or appraisers, or if the court deems an appraisal necessary, the name of not less than one nor more than three disinterested persons appointed to appraise the estate and return such appraisement to the court; and

(e) That the clerk shall issue letters in accordance with said order when the person to whom said letters are granted shall have qualified according to law.

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. (Tex. Prob. Code, Sec. 182.)

Sec. 182. Whenever an executor or administrator has been qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall forthwith issue and deliver the letters to such executor or administrator. When two or more persons qualify as executors or
administrators, letters shall be issued to each of them so qualifying.

Revisor's Note

Section 182, Texas Probate Code, provides that when an executor or administrator has qualified the clerk shall "forthwith" issue and deliver letters testamentary or of administration. The revised law substitutes "promptly" for "forthwith" because the terms are synonymous in context and "promptly" is more consistent with modern usage.

Revised Law

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. (Tex. Prob. Code, Sec. 183.)

Source Law

Sec. 183. Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that the executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification, and the name of the deceased.

Revisor's Note

Section 183, Texas Probate Code, requires that letters testamentary or of administration state the executor or administrator has "duly qualified as such as the law requires." For clarification, the revised law substitutes "qualified as executor or administrator in the manner required by law." The revised law omits "duly" in this context because "duly" is included in the meaning of "in the manner
required by law."

Revised Law
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. (Tex. Prob. Code, Sec. 187.)

Source Law
Sec. 187. When letters have been destroyed or lost, the clerk shall issue other letters in their stead, which shall have the same force and effect as the original letters. The clerk shall also issue any number of letters as and when requested by the person or persons who hold such letters.

Revisor's Note
Section 187, Texas Probate Code, refers to the "force and effect" of letters issued to replace original letters testamentary or of administration.

The revised law omits the reference to "force" because, in context, the meaning of the term is included within the meaning of "effect."

Revised Law
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. (Tex. Prob. Code, Sec. 186.)

Source Law
Sec. 186. Letters testamentary or of administration or a certificate of the clerk of the court which granted the same, under the seal of such court, that said letters have been issued, shall be sufficient evidence of the appointment and
qualification of the personal representative of an
estate and of the date of qualification.

CHAPTER 307. VALIDITY OF CERTAIN ACTS OF EXECUTORS AND
ADMINISTRATORS

Sec. 307.001. RIGHTS OF GOOD FAITH PURCHASERS ............. 432
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CHAPTER 307. VALIDITY OF CERTAIN ACTS OF EXECUTORS AND
ADMINISTRATORS

Revised Law

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. (Tex.
Prob. Code, Sec. 188.)

Source Law

Sec. 188. When an executor or administrator,
legally qualified as such, has performed any acts as
such executor or administrator in conformity with his
authority and the law, such acts shall continue to be
valid to all intents and purposes, so far as regards
the rights of innocent purchasers of any of the
property of the estate from such executor or
administrator, for a valuable consideration, in good
faith, and without notice of any illegality in the
title to the same, notwithstanding such acts or the
authority under which they were performed may
afterward be set aside, annulled, and declared
invalid.

Revisor's Note

Section 188, Texas Probate Code, refers to an
executor or administrator who is "legally" qualified.
The revised law omits "legally" in this context
because the word does not add to the clear meaning of
the law. The requirement that the executor or
administrator be qualified is sufficient to convey
that the executor or administrator must have met the
requirements for qualification.

Revised Law
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. (Tex. Prob. Code, Sec. 240.)

Source Law
Sec. 240. Should there be more than one executor
or administrator of the same estate at the same time,
the acts of one of them as such executor or
administrator shall be as valid as if all had acted
jointly; and, in case of the death, resignation or
removal of an executor or administrator, if there be a
co-executor or co-administrator of such estate, he
shall proceed with the administration as if no such
death, resignation or removal had occurred. Provided,
however, that this Section shall not be construed to
authorize one of several executors or administrators
to convey real estate, but in such case all the
executors or administrators who have qualified as such
and are acting as such shall join in the conveyance,
unless the court, after due hearing, authorizes less
than all to act.

Revisor's Note
Section 240, Texas Probate Code, provides that
the section "shall not be construed to authorize one of
several executors or administrators to convey real
estate." The revised law omits the quoted language
because the revised law is written in a manner that in
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 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. (Tex. Prob. Code, Sec. 128A(a), as amended Ch. 801, Acts 80th Leg., R.S., 2007.)

Sec. 128A. (a) In this section, "beneficiary" means a person, entity, state, governmental agency of...
the state, charitable organization, or trust entitled

to receive real or personal property 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.

Revisor's Note

(1) Section 128A(a), Texas Probate Code, as

amended by Chapter 801, Acts of the 80th Legislature,
Regular Session, 2007, refers to "real or personal
property." Throughout this chapter, the revised law
omits "real or personal" in this context as
unnecessary because Section 311.005(4), Government
Code (Code Construction Act), applicable to the
revised law, defines "property" to mean real and
personal property.

(2) Section 128A(a), Texas Probate Code, was

amended by Chapters 801 and 1170, Acts of the 80th
Legislature, Regular Session, 2007. Chapter 1170
repealed the authorization and specific requirements
for nuncupative wills and, as a conforming change,
amended Section 128A(a) for the limited purpose of
repealing a reference to a nuncupative will, which was
made obsolete by the repeal of the authorization for a
nuncupative will. Chapter 801 was a comprehensive
revision of Section 128A that substituted an entirely
new scheme for providing notice to beneficiaries after
the probate of a will for the more limited notice
requirements under the former text of Section 128A.

Under common law, acts on the same subject that are
enacted at the same session of the legislature shall be
construed together, if possible, so that effect may be
given to each. See, for example, Wright v. Broeter,
196 S.W.2d 82 (Tex. 1946). Because the purpose of the
amendment made to Section 128A(a) by Chapter 1170,
which was to repeal the reference to a nuncupative
will, and the purpose of the amendment made to Section
128A(a) by Chapter 801, which was to enact an entirely new notice scheme that also repealed the reference to a nuncupative will, are both given effect through revising Section 128A(a) as amended by Chapter 801, the revised law omits Section 128A(a) as amended by Chapter 1170. The omitted law reads:

Sec. 128A. (a) If the address of the entity can be ascertained with reasonable diligence, an applicant under Section 81 of this code shall give the state, a governmental agency of the state, or a charitable organization notice that the entity is named as a devisee in a written will or a written will not produced that has been admitted to probate.

Revised Law

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 trust, to the trustee, unless the representative is the trustee, in which case the representative shall give the notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in
existence on the date of the decedent's death;

(2) if the beneficiary has a court-appointed guardian or conservator, to that guardian or conservator;

(3) if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor; and

(4) if the beneficiary is a charity that for any reason cannot be notified, to the attorney general.

(c) A personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

(1) made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate; or

(2) received a copy of the will that was admitted to probate and waived the right to receive the notice in an instrument that:

(A) acknowledges the receipt of the copy of 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. (Tex. Prob. Code, Secs. 128A(b), (c), (d), (f).)

Source Law

(b) Except as provided by Subsection (d) of this section, not later than the 60th day after the date of an order admitting a decedent's will to probate, the personal representative of the decedent's estate, including an independent executor or independent administrator, shall give notice that complies with Subsection (e) of this section to each beneficiary named in the will whose identity and address are known to the personal representative or, through reasonable diligence, can be ascertained. If, after the 60th day after the date of the order, the personal representative becomes aware of the identity and address of a beneficiary who was not given notice on or before the 60th day, the personal representative shall give the notice as soon as possible after becoming aware of that information.

(c) Notwithstanding the requirement under Subsection (b) of this section that the personal representative give the notice to the beneficiary, the personal representative shall give the notice with respect to a beneficiary described by this subsection as follows:

(1) if the beneficiary is a trust, to the trustee, unless the personal representative is the
trustee, in which case the personal representative shall 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.

(d) A personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

(1) made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate; or

(2) received a copy of the will that was admitted to probate and waived the right to receive the notice in an instrument that:

(A) acknowledges the receipt of the copy of the will;

(B) is signed by the beneficiary; and

(C) is filed with the court.

(f) The notice required by this section must be sent by registered or certified mail, return receipt requested.

Revised Law
Sec. 308.003. CONTENTS OF NOTICE. The notice required by Section 308.002 must:

(1) state:

(A) 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;

(B) the decedent's name;

(C) that the decedent's will has been admitted to probate;

(D) that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will; and

(E) the personal representative's name and contact information; and

(2) contain as attachments a copy of the will admitted to probate and of the order admitting the will to probate. (Tex. Prob. Code, Sec. 128A(e).)
Source Law

(e) The notice required by this section must:
(1) state:
   (A) the name and address of the beneficiary to whom the notice is given or, for a
       beneficiary described by Subsection (c) of this section, the name and address of the beneficiary for
       whom the notice is given and of the person to whom the notice is given;
   (B) the decedent's name;
   (C) that the decedent's will has been admitted to probate;
   (D) that the beneficiary to whom or for whom the notice is given is named as a beneficiary
       in the will; and
   (E) the personal representative's name and contact information; and
(2) contain as attachments a copy of the will admitted to probate and the order admitting the
    will to probate.

Revised Law

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 who filed a waiver of the notice;
(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 or an application for an extension of the deadline to file
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). (Tex. Prob. Code, Secs. 128A(g), (h).)

Source Law

(g) Not later than the 90th day after the date of
an order admitting a will to probate, the personal
representative shall file with the clerk of the court
in which the decedent's estate is pending a sworn
affidavit of the personal representative, or a
certificate signed by the personal representative's
attorney, stating:
(1) for each beneficiary to whom notice
was required to be given under this section, the name
and address of the beneficiary to whom the personal
representative gave the notice or, for a beneficiary
described by Subsection (c) of this section, the name
and address of the beneficiary and of the person to
whom the notice was given;
(2) the name and address of each
beneficiary who filed a waiver of the notice;
(3) the name of each beneficiary whose
identity or address could not be ascertained despite
the personal representative's exercise of reasonable
diligence; and
(4) any other information necessary to
explain the personal representative's inability to
give the notice to or for any beneficiary as required
by this section.
(h) The affidavit or certificate required by
Subsection (g) of this section may be included with any
pleading or other document filed with the clerk of the
court, including the inventory, appraisement, and list
of claims or an application for an extension of the
deadline to file the inventory, appraisement, and list
of claims, provided that the pleading or other
document with which the affidavit or certificate is
included is filed not later than the date the affidavit
or certificate is required to be filed as provided by
Subsection (g) of this section.

[Sections 308.005-308.050 reserved for expansion]

SUBCHAPTER B. NOTICE TO CLAIMANTS

Revised Law

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. (Tex. Prob. Code, Secs. 294(a), (c).)

Source Law

Sec. 294. (a) Giving of Notice Required.
Within one month after receiving letters, personal
representatives of estates shall send to the comptroller of public accounts by certified or
registered mail if the decedent remitted or should have remitted taxes administered by the comptroller of
public accounts and publish in some newspaper, printed
in the county where the letters were issued, if there be one, a notice requiring all persons having claims
against the estate being administered to present the same within the time prescribed by law. The notice
shall include the date of issuance of letters held by the representative, the address to which claims may be
presented, and an instruction of the representative’s choice that claims be addressed in care of the representative, in care of the representative’s attorney, or in care of "Representative, Estate of
__________" (naming the estate).

(c) When No Newspaper Printed in the County.
When no newspaper is printed in the county, the notice
shall be posted and the return made and filed as required by this Code.

Revisor's Note

(1) Section 294(a), Texas Probate Code, refers
to a personal representative's receipt of "letters,"
meaning the letters testamentary or of administration
generated to a personal representative. For clarity and
the convenience of the reader, throughout this chapter
the revised law specifies that the revised law
concerns "letters testamentary or of administration"
to distinguish those letters from letters of
 guardianship.

(2) Section 294(a), Texas Probate Code, refers
to the "comptroller of public accounts." The revised
law substitutes "comptroller" for the quoted language
because Section 403.001, Government Code, defines
"comptroller" in any state statute to mean the
comptroller of public accounts of the State of Texas.

(3) Section 294(c), Texas Probate Code, refers
to the posting of notice and return as required by
"this Code." Throughout this chapter, the revised law
substitutes "this title" for "this Code" with respect
to requirements for notice or citation because the
provisions of the Texas Probate Code regarding notice
or citation in probate proceedings are revised in
Title 2 of this code and this chapter is included in
that title.

Revised Law

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. (Tex.
Prob. Code, Sec. 294(b).)

Source Law

(b) Proof of Publication. A copy of such
printed notice, together with the affidavit of the
publisher, duly sworn to and subscribed before a proper
officer, to the effect that the notice was
published as provided in this Code for the service of
citation or notice by publication, shall be filed in
the court where the cause is pending.

Revisor's Note
Section 294(b), Texas Probate Code, refers to an affidavit that is "duly sworn to . . . before a proper officer." The revised law omits "duly" in this context because the word does not add to the clear meaning of the law.

Revised Law
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. (Tex. Prob. Code, Sec. 295.)
Sec. 295. (a) When notice required for secured claimants. Within two months after receiving letters, the personal representative of an estate shall give notice of the issuance of such letters to each and every person known to the personal representative to have a claim for money against the estate of a decedent that is secured by real or personal property of the estate. Within a reasonable time after the personal representative obtains actual knowledge of the existence of a person having a secured claim for money and to whom notice was not previously given, the personal representative shall give notice to the person of the issuance of letters.

(b) How notice shall be given. The notice stating the original grant of letters shall be given by mailing same by certified or registered mail, with return receipt requested, addressed to the record holder of such indebtedness or claim at the record holder's last known post office address.

(c) Proof of service of notice. A copy of each notice required by Subsection (a) of this section and a copy of the return receipt and an affidavit of the representative, stating that said notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt, shall be filed with the clerk of the court from which letters were issued.

Revisor's Note
Section 295(a), Texas Probate Code, requires notice to "each and every" secured creditor. The revised law omits "and every" as redundant.

Revised Law
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 within four months after the date of the receipt of the notice or the claim is barred, if the claim is not barred by the general statutes of limitation; and

(2) include:

(A) the date the letters testamentary or of administration held by the personal representative were issued to the representative;
(B) the address to which the claim may be
presented; and

(C) an instruction of the representative's
choice that the claim be addressed in care of:

(i) the representative;

(ii) the representative's attorney; or

(iii) "Representative, Estate of _______"
(naming the estate). (Tex. Prob. Code, Sec. 294(d).)

Source Law

(d) Permissive Notice to Unsecured Creditors.
At any time before an estate administration is closed,
the personal representative may give notice by
certified or registered mail, with return receipt
requested, to an unsecured creditor having a claim for
money against the estate expressly stating that the
creditor must present a claim within four months after
the date of the receipt of the notice or the claim is
barred, if the claim is not barred by the general
statutes of limitation. The notice must include:

(1) the dates of issuance of letters held
by the representative;

(2) the address to which claims may be
presented; and

(3) an instruction of the representative's
choice that the claim be addressed in care of:

(A) the representative;

(B) the representative's attorney;

or

(C) "Representative, Estate of "
(naming the estate).

Revised Law

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. (Tex. Prob. Code, Sec. 296.)

Source Law

Sec. 296. If the notices required by the two
preceding Sections have been given by a former
representative, or by one where several are acting,
that shall be sufficient, and need not be repeated by
any successor or co-representative.

Revisor's Note

Section 296, Texas Probate Code, refers to notice
required by "the two preceding Sections," meaning
Sections 294 and 295, Texas Probate Code. The portions
of those sections regarding required notice are revised in this chapter as Sections 308.051 and 308.053. The revised law is drafted accordingly.

Revised Law

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. (Tex. Prob. Code, Sec. 297.)

Source Law

Sec. 297. If the representative fails to give the notices required in preceding Sections, or to cause such notices to be given, the representative and the sureties on the representative's bond shall be liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise.

Revisor's Note

Section 297, Texas Probate Code, refers to the liability of a personal representative who fails to give "the notices required in preceding Sections."

Section 297 is included in Part 4, Chapter VIII, Texas Probate Code. The sections of Part 4 that precede Section 297 and require notice are Sections 294 and 295, and the portions of those sections regarding required notice are revised in this chapter as Sections 308.051 and 308.053. The revised law is drafted accordingly.

CHAPTER 309. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

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CHAPTER 309. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

SUBCHAPTER A. APPRAISERS

Revised Law

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. (Tex. Prob. Code, Sec. 248, as amended Acts 79th Leg., R.S., Chs. 701, 765.)

Source Law
Sec. 248. [as amended Acts 79th Leg., R.S., Ch. 701] At any time after the grant of letters testamentary or of administration and on its own motion or on the motion of an interested person, the court for good cause shown shall appoint not less than one nor more than three disinterested persons, citizens of the county in which letters were granted, to appraise the property of the estate. In such event and when part of the estate is situated in a county other than the county in which letters were granted, if the court shall deem necessary it may appoint not less than one nor more than three disinterested persons, citizens of the county where such part of the estate is situated, to appraise the property of the estate situated therein.

Sec. 248. [as amended Acts 79th Leg., R.S., Ch. 765] At any time after the grant of letters testamentary or of administration, the court for good cause on its own motion or on the motion of an interested party shall appoint not less than one nor more than three disinterested persons, citizens of the county in which letters were granted, to appraise the property of the estate. In such event and when part of the estate is situated in a county other than the county in which letters were granted, if the court shall deem necessary it may appoint not less than one nor more than three disinterested persons, citizens of the county where such part of the estate is situated, to appraise the property of the estate situated therein.

Revisor's Note
(1) Section 248, Texas Probate Code, was amended by Chapters 701 and 765, Acts of the 79th Legislature,
Regular Session, 2005. The two versions are essentially identical except that Chapter 701 authorizes an "interested person" to move for the appointment of appraisers and Chapter 765 similarly authorizes an "interested party." The legislative intent is ambiguous, and the revised law preserves the ambiguity by revising both provisions.

(2) Section 248, Texas Probate Code, refers to "citizens" of certain counties. The revised law substitutes "residents" for "citizens" because, in context, the terms are synonymous and "residents" is more commonly used.

Revised Law
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. (Tex. Prob. Code, Sec. 253.)

Source Law
Sec. 253. Each appraiser appointed by the court, as herein authorized, shall be entitled to receive a minimum compensation of Five Dollars ($5) per day, payable out of the estate, for each day that he actually serves in performance of his duties as such.

Revised Law
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. (Tex. Prob. Code, Sec. 249.)

Source Law
Sec. 249. If any appraiser so appointed shall fail or refuse to act, the court shall by a like order or orders remove such appraiser and appoint another appraiser or appraisers, as the case shall require.

[Sections 309.004-309.050 reserved for expansion]
SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Revised Law

Sec. 309.051. INVENTORY AND APPRAISEMENT. (a) Except as provided by Subsection (c) or unless a longer period is granted by the court, before the 91st day after the date the personal representative qualifies, the representative shall 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:
   (A) which portion of the property, if any, is separate property and which, if any, is community property; and
   (B) if estate property is owned in common with others, the interest of the estate in that property and the names and relationship, if known, of the co-owners.

(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 under Subchapter A:
   (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. (Tex. Prob. Code, Sec. 
250.)

Source Law

Sec. 250. Within ninety days after his 
qualification, unless a longer time shall be granted 
by the court, the representative shall file with the 
clerk of court a verified, full and detailed 
inventory, in one written instrument, of all the 
property of such estate which has come to his 
possession or knowledge, which inventory shall 
include:

(a) all real property of the estate 
situated in the State of Texas;

(b) all personal property of the estate 
wherever situated. The representative shall set out 
in the inventory his appraisement of the fair market 
value of each item thereof as of the date of death in 
the case of grant of letters testamentary or of 
administration, as the case may be; provided that if 
the court shall appoint an appraiser or appraisers of 
the estate, the representative shall determine the 
fair market value of each item of the inventory with 
the assistance of such appraiser or appraisers and 
shall set out in the inventory such appraisement. The 
inventory shall specify what portion of the property, 
if any, is separate property and what portion, if any, 
is community property. If any property is owned in 
common with others, the interest owned by the estate 
shall be shown, together with the names and 
relationship, if known, of co-owners. Such inventory, 
when approved by the court and duly filed with the 
clerk of court, shall constitute for all purposes the 
inventory and appraisement of the estate referred to 
in this Code. The court for good cause shown may 
require the filing of the inventory and appraisement 
at a time prior to ninety days after the qualification 
of the representative.

Revisor's Note

(1) Section 250, Texas Probate Code, requires 
the "representative" to file with the court an 
inventory of estate property. Section 3(aa), Texas 
Probate Code, revised in this code as Section 22.031, 
defines "personal representative" and 
"representative" to be synonyms. For consistency of 
terminology, throughout this chapter, the revised law 
substitutes references to "personal representative" 
for initial references to "representative" in a 
provision.
(2) Section 250, Texas Probate Code, refers to the fair market value of certain items as of the date of death "in the case of grant of letters testamentary or of administration, as the case may be[.]") The revised law omits the quoted language to correct an obsolete and unnecessary reference.

When the legislature enacted Section 250, Texas Probate Code, in Chapter 55, Acts of the 54th Legislature, Regular Session, 1955, that section applied to both decedents' estates and guardianship matters. Subsequently the legislature enacted Chapter 957, Acts of the 73rd Legislature, Regular Session, 1993, which separated the decedents' estates statutes and guardianship statutes into distinct portions of the Texas Probate Code. Section 729, Texas Probate Code, redesignated as Section 729 of this code, which addresses the inventory and appraisement in guardianship matters, was added to the code by Chapter 957.

In context, it is clear that the phrase "in the case of grant of letters testamentary or of administration, as the case may be" in Section 250, Texas Probate Code, no longer serves any purpose. Since the separation of the decedents' estates statutes and the guardianship statutes in the Texas Probate Code, Section 250 has been the provision that applies in circumstances involving decedents' estates, and Section 729 has been the provision that applies in circumstances involving guardianships.

(3) Section 250, Texas Probate Code, refers to an inventory that has been "duly filed." The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The requirement that the inventory be filed is sufficient
to convey that the inventory must have met the requirements for filing.

(4) Section 250, Texas Probate Code, describes what constitutes the inventory and appraisement of a decedent's estate referred to in "this Code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this Code" because the provisions of the Texas Probate Code that relate to decedents' estates are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

Revised Law
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;
   (E) whether the claim is separate property or community property; and
   (F) if any portion of the claim is held in common with others, the interest of the estate in the claim and the names and relationships, if any, of the other part owners. (Tex. Prob. Code, Sec. 251.)

Source Law
Sec. 251. There shall also be made out and attached to said inventory a full and complete list of

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all claims due or owing to the estate, which shall
state:
(a) The name of each person indebted to the
estate and his address when known.
(b) The nature of such debt, whether by
note, bill, bond, or other written obligation, or by
account or verbal contract.
(c) The date of such indebtedness, and the
date when the same was or will be due.
(d) The amount of each claim, the rate of
interest thereon, and time for which the same bears
interest.
(e) In the case of decedent's estate, which
of such claims are separate property and which are of
the community.
(f) What portion of the claims, if any, is
held in common with others, giving the names and the
relationships, if any, of other part owners, and the
interest of the estate therein.

Revisor's Note

(1) Section 251, Texas Probate Code, refers to a
"full and complete" list of claims. The revised law
omits "full" as unnecessary because, in this context,
the meaning of that term is included within the meaning
of "complete."

(2) Section 251, Texas Probate Code, requires
that a list of claims be attached to "said inventory."
It is clear from the context that the inventory
referred to is the inventory required to be filed by
Section 250, Texas Probate Code, revised in this
chapter as Section 309.051. That section also requires
the inventory to set out the appraisement of property
included in the inventory. For accuracy and
consistency of terminology throughout this chapter,
the revised law substitutes references to "inventory
and appraisement" for references to "inventory."

(3) Section 251, Texas Probate Code, requires
that a list of claims state, "in the case of [a]
decedent's estate," which of the claims are separate
property and which of the claims are community
property. The revised law omits the quoted language to
correct an obsolete and unnecessary reference.

When the legislature enacted Section 251, Texas
Probate Code, in Chapter 55, Acts of the 54th
Legislature, Regular Session, 1955, that section
applied to both decedents' estates and guardianship
matters. At that time, the quoted language was
necessary to clarify that this particular requirement
for a list of claims applied only in the case of a
decedent's estate and not to a guardianship matter.
However, as described in Revisor's Note (2) following
Section 309.051, in 1993, the legislature separated
the decedents' estates statutes and guardianship
statutes into distinct portions of the Texas Probate
Code. As a result, Section 251, Texas Probate Code,
applies only to decedents' estates and the inclusion of
the phrase "[i]n the case of [a] decedent's estate" in
that section no longer serves any purpose.

Revised Law
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.
(Tex. Prob. Code, Sec. 252.)

Source Law
Sec. 252. The representative of the estate
shall also attach to such inventory and list of claims
his affidavit subscribed and sworn to before an
officer in the county authorized by law to administer
oaths, that the said inventory and list of claims are a
true and complete statement of the property and claims
of the estate that have come to his knowledge.

Revised Law
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. (Tex. Prob. Code, Sec. 255.)

Source Law

Sec. 255. Upon return of the inventory, appraisement, and list of claims, the judge shall examine and approve, or disapprove, them, as follows:

(a) Order of Approval. Should the judge approve the inventory, appraisement, and list of claims, he shall issue an order to that effect.

(b) Order of Disapproval. Should the judge not approve the inventory, appraisement, or list of claims, or any of them, an order to that effect shall be entered, and it shall further require the return of another inventory, appraisement, and list of claims, or whichever of them is disapproved, within a time specified in such order, not to exceed twenty days from the date of the order; and the judge may also, if deemed necessary, appoint new appraisers.

Revisor's Note

Section 255, Texas Probate Code, refers to the "return" of the inventory, appraisement, and list of claims. The revised law substitutes "filing" for "return" because Section 250, Texas Probate Code, revised in this chapter as Section 309.051, requires the personal representative to file the inventory and appraisement with the court clerk and Section 251, Texas Probate Code, revised as Section 309.052 of this chapter, requires a list of claims to be attached to the inventory and appraisement. Similar changes are made throughout this chapter.

Revised Law

Sec. 309.055. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO FILE 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.

(b) A personal representative who neglects to make or file an inventory, appraisement, and list of claims may not interfere with and does not have any power over the estate after another representative makes and files an inventory, appraisement, and list of claims.

(c) The personal representative who files the 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, 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. (Tex. Prob. Code, Sec. 260.)

Source Law

Sec. 260. If there be more than one representative qualified as such, any one or more of them, on the neglect of the others, may make and return an inventory and appraisement and list of claims; and the representative so neglecting shall not thereafter interfere with the estate or have any power over same; but the representative so returning shall have the whole administration, unless, within sixty days after the return, the delinquent or delinquents shall assign to the court in writing and under oath a reasonable excuse which the court may deem satisfactory; and if no excuse is filed or if the excuse filed is not deemed sufficient, the court shall enter an order removing any and all such delinquents and revoking their letters.

[Sections 309.056-309.100 reserved for expansion]

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

Revised Law

Sec. 309.101. DISCOVERY OF ADDITIONAL PROPERTY OR CLAIMS.

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. (Tex. Prob. Code, Sec. 256.)

Source Law

Sec. 256. If, after the filing of the inventory and appraisement, property or claims not included in the inventory shall come to the possession or knowledge of the representative, he shall forthwith file with the clerk of court a verified, full and detailed supplemental inventory and appraisement.

Revisor's Note

(1) Section 256, Texas Probate Code, refers to the "inventory and appraisement." Section 251, Texas Probate Code, revised as Section 309.052 of this chapter, requires a list of claims to be attached to the inventory and appraisement. For accuracy and consistency of terminology throughout this chapter, the revised law substitutes "inventory, appraisement, and list of claims" for "inventory and appraisement."

(2) Section 256, Texas Probate Code, requires certain personal representatives, after filing the inventory, appraisement, and list of claims, to "forthwith" file a supplemental inventory, appraisement, and list of claims. The revised law substitutes "promptly" for "forthwith" because the terms have the same meaning in this context and "promptly" is more consistent with modern usage.

Revised Law

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. (Tex.
Prob. Code, Sec. 257.)

Source Law

Sec. 257. Any representative of an estate, on
the written complaint of any interested person that
property or claims of the estate have not been included
in the inventory and list of claims filed, shall be
cited to appear before the court in which the cause is
pending and show cause why he should not be required to
make and return an additional inventory or list of
claims, or both. After hearing such complaint, and
being satisfied of the truth thereof, the court shall
enter its order requiring such additional inventory or
list of claims, or both, to be made and returned in
like manner as original inventories, and within such
time, not to exceed twenty days, from the date of said
order, as may be fixed by the court, but to include
only property or claims theretofore not inventoried or
listed.

Revised Law

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
filed for the estate to be erroneous or unjust in any particular
may:

(1) file a written complaint setting forth the alleged
erroneous or unjust item; and

(2) have the personal representative cited to appear
before the court and show cause why the item should not be
(b) On the hearing of the complaint, if the court is satisfied from the evidence that the inventory, appraisement, or list of claims is erroneous or unjust as alleged in the complaint, the court shall enter an order:

1. specifying the erroneous or unjust item and the corrections to be made; and

2. appointing 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. (Tex. Prob. Code, Sec. 258.)

Source Law
Sec. 258. Any person interested in an estate who deems an inventory, appraisement, or list of claims returned therein erroneous or unjust in any particular may file a complaint in writing setting forth and pointing out the alleged erroneous or unjust items, and cause the representative to be cited to appear before the court and show cause why such errors should not be corrected. If, upon the hearing of such complaint, the court be satisfied from the evidence that the inventory, appraisement, or list of claims is erroneous or unjust in any particular as alleged in the complaint, an order shall be entered specifying the erroneous or unjust items and the corrections to be made, and appointing appraisers to make a new appraisement correcting such erroneous or unjust items and requiring the return of said new appraisement within twenty days from the date of the order. The court may also, on its own motion or that of the personal representative of the estate, have a new appraisal made for the purposes above set out.

Revisor's Note
Section 258, Texas Probate Code, states that an interested person may file a complaint "setting forth and pointing out" an erroneous or unjust item in an inventory, appraisement, or list of claims. The revised law omits the reference to "pointing out" because, in context, the meaning of that phrase is included within the meaning of "setting forth."
Revised Law
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. (Tex. Prob. Code, Sec. 259.)

Source Law
Sec. 259. When any reappraisement is made, returned, and approved by the court, it shall stand in place of the original appraisement. Not more than one reappraisement shall be made, but any person interested in the estate may object to the reappraisement either before or after it is approved, and if the court finds that the reappraisement is erroneous or unjust, the court shall appraise the property upon the basis of the evidence before it.

[Sections 309.105-309.150 reserved for expansion]

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

Revised Law
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. (Tex. Prob. Code, Sec. 261.)

Source Law

Sec. 261. All inventories, appraisements, and lists of claims which have been taken, returned, and approved in accordance with law, or the record thereof, or copies of either the originals or the record thereof, duly certified under the seal of the county court affixed by the clerk, may be given in evidence in any of the courts of this State in any suit by or against the representative of the estate, but shall not be conclusive for or against him, if it be shown that any property or claims of the estate are not shown therein, or that the value of the property or claims of the estate actually was in excess of that shown in the appraisement and list of claims.

Revisor's Note

Section 261, Texas Probate Code, refers to certain copies that have been "duly certified." The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The requirement that the copies be certified is sufficient to convey that the copies must have met the requirements for certification.

CHAPTER 310. ALLOCATION OF ESTATE INCOME AND EXPENSES

Sec. 310.001. DEFINITION

Sec. 310.002. APPLICABILITY OF OTHER LAW

Sec. 310.003. ALLOCATION OF EXPENSES

Sec. 310.004. INCOME DETERMINATION AND DISTRIBUTION

Sec. 310.005. TREATMENT OF INCOME RECEIVED BY TRUSTEE

Sec. 310.006. FREQUENCY AND METHOD OF DETERMINING INTERESTS IN CERTAIN ESTATE ASSETS

Revised Law

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. (Tex. Prob. Code, Sec. 378B(h) (part).)
(h) In this section, "undistributed assets" includes funds used to pay debts, administration expenses, and federal and state estate, inheritance, succession, and generation-skipping transfer taxes until the date of payment of the debts, expenses, and taxes.

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. (Tex. Prob. Code, Sec. 378B(i).)

(i) Chapter 116, Property Code, prevails to the extent of any conflict between this section and Chapter 116, Property Code.

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. (Tex. Prob. Code, Sec. 378B(a).)
the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, penalties relating to estate taxes, and family allowances, shall be charged against the principal of the estate. Fees and expenses of an attorney, accountant, or other professional advisor, commissions and expenses of a personal representative, court costs, and all other similar fees or expenses relating to the administration of the estate and interest relating to estate taxes shall be allocated between the income and principal of the estate as the executor determines in its discretion to be just and equitable.

Revised Law

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. (Tex. Prob. Code, Secs. 378B(b), (c), (d).)

Source Law

(b) Unless the will provides otherwise, income from the assets of a decedent's estate that accrues after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined according to the rules applicable to a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code) and distributed as provided by Chapter 116, Property Code, and Subsections (c) and (d) of this section.

(c) The income from the property bequeathed or devised to a specific devisee shall be distributed to the devisee after reduction for property taxes, ordinary repairs, insurance premiums, interest accrued after the death of the testator, other expenses of management and operation of the property, and other taxes, including the taxes imposed on the income that accrues during the period of administration and that is payable to the devisee.

(d) The balance of the net income shall be distributed to all other devisees after reduction for the balance of property taxes, ordinary repairs, insurance premiums, interest accrued, other expenses of management and operation of all property from which the estate is entitled to income, and taxes imposed on income that accrues during the period of administration and that is payable or allocable to the devisees, in proportion to the devisees' respective interests in the undistributed assets of the estate.

Revisor's Note

Section 378B(c), Texas Probate Code, refers to property "bequeathed or devised" to a devisee. The revised law omits the reference to "bequeathed" as unnecessary. Traditionally, "devise" referred to the disposition of real property by a will; "bequeath" usually refers to the disposition of personal property by a will. Black's Law Dictionary (revised eighth edition, 2004). Section 3(h), Texas Probate Code, revised as Section 22.008 of this code, provides that "devise" means "to dispose of real or personal property, or of both, by will." The revised law therefore omits "bequeathed" because the meaning of that term is included within the meaning of "devised."

Revised Law

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. (Tex. Prob. Code, Sec. 378B(g).)

Source Law
(g) Income received by a trustee under this section shall be treated as income of the trust as provided by Section 116.101, Property Code.

Revised Law
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. (Tex. Prob. Code, Sec. 378B(h) (part).)

Source Law
(h) ... Except as required by Sections 2055 and 2056 of the Internal Revenue Code of 1986 (26 U.S.C. Secs. 2055 and 2056), and its subsequent amendments, the frequency and method of determining the beneficiaries' respective interests in the undistributed assets of the estate shall be in the executor's sole and absolute discretion. The executor may consider all relevant factors, including administrative convenience and expense and the interests of the various beneficiaries of the estate in order to reach a fair and equitable result among beneficiaries.

Revisor's Note
Section 378B(h), Texas Probate Code, refers to the Internal Revenue Code of 1986 and "its subsequent amendments." The revised law omits the reference to "its subsequent amendments" as unnecessary because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, or amendments of that statute unless
expressly provided otherwise. Those sections apply to
to any type of statute, including a federal
statute.

[Chapters 311-350 reserved for expansion]

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CHAPTER 351. POWERS AND DUTIES OF PERSONAL REPRESENTATIVES IN GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law
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. (Tex. Prob. Code, Sec. 32.)

Source Law
Sec. 32. The rights, powers and duties of executors and administrators shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State.

Revised Law
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. (Tex. Prob. Code, Sec. 29.)

Source Law
Sec. 29. When an appeal is taken by an executor or administrator, no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

Revised Law
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
when a personal representative neglects to perform a required duty or if a personal representative is removed for cause, the personal representative and the sureties on the personal representative's bond are liable for:

(1) costs of removal and other additional costs incurred that are not authorized expenditures, as defined by this code; and

(2) reasonable attorney's fees incurred in removing the personal representative or in obtaining compliance regarding any statutory duty the personal representative has neglected.

Revisor's Note

Section 245, Texas Probate Code, refers to "authorized expenditures, as defined by this code," meaning the Texas Probate Code. Section 3, Texas Probate Code, revised as Chapter 22 of this code, contains the general definitions applicable to the Texas Probate Code. Neither that section nor any other section of the Texas Probate Code defines "authorized expenditures." The revised law is drafted accordingly.

Additionally, throughout this chapter, the revised law substitutes a reference to "this title" for the reference to "this code" because the provisions of the Texas Probate Code that relate to estates of decedents are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

[Sections 351.004-351.050 reserved for expansion]

SUBCHAPTER B. GENERAL AUTHORITY OF PERSONAL REPRESENTATIVES

Revised Law

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.

(Tex. Prob. Code, Sec. 234(a).)

Source Law

Sec. 234. (a) Powers To Be Exercised Under
Order of the Court. The personal representative of the
estate of any person may, upon application and order
authorizing same, renew or extend any obligation owing
by or to such estate. When a personal representative
deems it for the interest of the estate, he may, upon
written application to the court, and by order
granting authority:

(1) Purchase or exchange property;

(2) Take claims or property for the use and
benefit of the estate in payment of any debt due or
owing to the estate;

(3) Compound bad or doubtful debts due or
owing to the estate;

(4) Make compromises or settlements in
relation to property or claims in dispute or
litigation;

(5) Compromise or pay in full any secured
claim which has been allowed and approved as required
by law against the estate by conveying to the holder of

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such claim the real estate or personalty securing the same, in full payment, liquidation, and satisfaction thereof, and in consideration of cancellation of notes, deeds of trust, mortgages, chattel mortgages, or other evidences of liens securing the payment of such claim;

(6) Abandon the administration of property of the estate that is burdensome or worthless. Abandoned real or personal property may be foreclosed by a secured party, trustee, or mortgagee without further order of the court.

Revisor's Note
Section 234(a)(6), Texas Probate Code, refers to "real or personal property." Throughout this chapter, the revised law omits the reference to "real or personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

Revised Law
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). (Tex. Prob. Code, Sec. 234(b).)

Source Law
(b) Powers To Be Exercised Without Court Order.
The personal representative of the estate of any person may, without application to or order of the court, exercise the powers listed below, provided, however, that a personal representative under court
control may apply and obtain an order if doubtful of the propriety of the exercise of any such powers:

(1) Release liens upon payment at maturity of the debt secured thereby;
(2) Vote stocks by limited or general proxy;
(3) Pay calls and assessments;
(4) Insure the estate against liability in appropriate cases;
(5) Insure property of the estate against fire, theft, and other hazards;
(6) Pay taxes, court costs, bond premiums.

Revised Law
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. (Tex. Prob. Code, Sec. 28.)

Source Law
Sec. 28. Pending appeals from orders or judgments appointing administrators or temporary administrators, the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate.

Revised Law
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. (Tex. Prob. Code, Sec. 233A.)

Source Law
Sec. 233A. Suits for the recovery of personal property, debts, or damages and suits for title or possession of lands or for any right attached to or growing out of the same or for injury or damage done
there may be instituted by executors or administrators appointed in this state; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator.

[Sections 351.055–351.100 reserved for expansion]

SUBCHAPTER C. POSSESSION AND CARE OF ESTATE PROPERTY

Revised Law

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. (Tex. Prob. Code, Sec. 230.)

Source Law

Sec. 230. The executor or administrator shall take care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in good repair, extraordinary casualties excepted, unless directed not to do so by an order of the court.

Revised Law

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. (Tex. Prob. Code, Sec. 232.)

Source Law

Sec. 232. The personal representative of an estate, immediately after receiving letters, shall collect and take into possession the personal
property, record books, title papers, and other business papers of the estate, and all such in his possession shall be delivered to the person or persons legally entitled thereto when the administration has been closed or a successor has received letters.

Revisor's Note

Section 232, Texas Probate Code, directs a personal representative to take certain actions "immediately after receiving letters" and to deliver certain property when a successor personal representative "has received letters." For clarity and the convenience of the reader, the revised law specifies that this section concerns "letters testamentary or of administration" to distinguish those letters from letters of guardianship.

Revised Law

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. (Tex. Prob. Code, Sec. 235.)

Source Law

Sec. 235. If the estate holds or owns any property in common, or as part owner with another, the representative of the estate shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common or joint owners would be entitled.

Revisor's Note

Section 235, Texas Probate Code, refers to "the representative of the estate." For consistency of terminology throughout this chapter, the revised law substitutes "personal representative" for initial references in a provision to "representative" for clarity and because, under Section 3(aa), Texas Probate Code, revised as Section 22.031 of this code, the terms are synonymous.
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.

(Tex. Prob. Code, Sec. 238A.)

Sec. 238A. If the decedent was a partner in a general partnership and the articles of partnership provide that, on the death of a partner, his or her executor or other personal representative shall be entitled to the place of the deceased partner in the firm, the executor or other personal representative so contracting to come into the partnership shall, to the extent allowed by law, be liable to third persons only to the extent of the deceased partner's capital in the partnership and the estate's assets held by the executor or other personal representative. This section does not exonerate an executor or other personal representative from liability for his or her negligence.

Revisor's Note

(1) Section 238A, Texas Probate Code, refers to "articles of partnership." The revised law adds a reference to a "partnership agreement" because the terms are synonymous and "partnership agreement" is the term used in the Business Organizations Code, which governs entities organized as partnerships in this state.

(2) Section 238A, Texas Probate Code, refers to an "executor or other personal representative."
Section 3(aa), Texas Probate Code, revised as Section 22.031 of this code, defines "personal representative" to include an executor. The revised law therefore omits the reference to "executor" as unnecessary.

Revised Law

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. (Tex. Prob. Code, Sec. 398A.)

Source Law

Sec. 398A. Unless otherwise provided by will, a personal representative may cause stocks, bonds, and other personal property of an estate to be registered and held in the name of a nominee without mention of the fiduciary relationship in any instrument or record constituting or evidencing title thereto. The personal representative is liable for the acts of the nominee with respect to any property so registered. The records of the personal representative shall at all times show the ownership of the property. Any property so registered shall be in the possession and control of the personal representative at all times and be kept separate from his individual property.

[Sections 351.106-351.150 reserved for expansion]

SUBCHAPTER D. COLLECTION OF CLAIMS; RECOVERY OF PROPERTY

Revised Law

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. (Tex. Prob. Code, Sec. 233(a).)

Source Law

Sec. 233. (a) Every personal representative of an estate shall use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate to which its owners have claim or title, provided there is a reasonable prospect of collecting such claims or of recovering such property. If he willfully neglects to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the amount of such claims or the value of such property as has been lost by such neglect.

Revisor's Note

Section 233(a), Texas Probate Code, refers to property of an estate to which "its owners" have claim or title. The revised law substitutes "the estate" for "its owners" for consistency of terminology throughout this subchapter. See Section 233(e), Texas Probate Code, revised in this chapter as Section 351.153.

Revised Law

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. (Tex. Prob. Code, Secs. 233(b), (c), (d).)

Source Law

(b) Except as provided by Subsection (c) of this section, a personal representative may enter into a contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof, for services of attorneys, subject only to approval of the court in which the estate is being administered. (c) A personal representative, including an independent executor or independent administrator, may convey or contract to convey for services of an attorney a contingent interest that exceeds one-third of the property sought to be recovered under this section only on the approval of the court in which the estate is being administered. The court must approve a
contract entered into or conveyance made under this section before an attorney performs any legal services. A contract entered into or conveyance made in violation of this section is void, unless the court ratifies or reforms the contract or documents relating to the conveyance to the extent necessary to cause the contract or conveyance to meet the requirements of this section.

(d) In approving a contract or conveyance under Subsection (b) or (c) of this section for services of an attorney, the court shall consider:

(1) the time and labor that will be required, the novelty and difficulty of the questions to be involved, and the skill that will be required to perform the legal services properly;

(2) the fee customarily charged in the locality for similar legal services;

(3) the value of property recovered or sought to be recovered by the personal representative under this section;

(4) the benefits to the estate that the attorney will be responsible for securing; and

(5) the experience and ability of the attorney who will be performing the services.

Revisor's Note

Section 233(c), Texas Probate Code, refers to "a contract entered into or conveyance made under this section," a "contract entered into or conveyance made in violation of this section," and modifications that allow "the contract or conveyance to meet the requirements of this section." In each case, the reference to "this section" means Section 233, Texas Probate Code, which is revised as this subchapter. However, the revised law retains the references to "this section" because the relevant parts of Section 233, Texas Probate Code, that relate to contracts and conveyances are revised in this section.

Revised Law

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. (Tex. Prob. Code, Sec.
(e) On satisfactory proof to the court, a personal representative of an estate is entitled to collect a claim or debt owed to the estate or in recovering or attempting to recover property to which the estate has a title or claim.

[Sections 351.154-351.200 reserved for expansion]

SUBCHAPTER E. OPERATION OF BUSINESS

Sec. 351.201. DEFINITION. In this subchapter, "business" includes a farm, ranch, or factory. (Tex. Prob. Code, Sec. 238(a).)

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. (Tex. Prob. Code, Secs. 238(b), (f).)

Source Law

(b) A court, after notice to all interested persons and a hearing, may order the personal representative of an estate to operate a business that is part of the estate and may grant the personal representative the powers to operate the business that the court determines are appropriate, after considering the factors listed in Subsection (f) of this section, if:
(1) the disposition of the business has not been specifically directed by the decedent's will;
(2) it is not necessary to sell the business at once for the payment of debts or other lawful purposes; and
(3) the court determines that the operation of the business by the personal representative is in the best interest of the estate.

(f) In determining which powers to grant a personal representative in an order entered under this section, the court shall consider the following factors:
(1) the condition of the estate and the business;
(2) the necessity that may exist for the future sale of the business or of business property to provide for payment of debts or claims against the estate or other lawful expenditures with respect to the estate;
(3) the effect of the order on the speedy settlement of the estate; and
(4) the best interests of the estate.

Revisor's Note

Section 238(f), Texas Probate Code, refers to "an order entered under this section," meaning Section 238, Texas Probate Code. The only order entered under Section 238, Texas Probate Code, is the order described by Section 238(b), Texas Probate Code, revised as Subsection (a) of this section. The revised law is drafted accordingly. Similar corresponding reference changes have been made throughout this subchapter.
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. (Tex. Prob. Code, Secs. 238(c), (d), (e)).

Source Law

(c) A personal representative who is granted the power to operate a business in an order entered under this section has the powers granted under Section 234(b) of this code, regardless of whether the order specifies that the personal representative has those powers, unless the order specifically provides that the personal representative does not have one or more of the powers listed in that section.

(d) In addition to the powers granted to the personal representative under Section 234(b) of this code, subject to any specific limitation on those powers in accordance with Subsection (c) of this section, an order entered under this section may grant the personal representative one or more of the following powers:

1. the power to hire, pay, and terminate the employment of employees of the business;
2. the power to incur debt on behalf of the business, including debt secured by liens against assets of the business or estate, if permitted or directed in the order;
3. the power to purchase and sell property in the ordinary course of the operation of the business, including the power to purchase and sell real property if the court finds that the principal purpose of the business is the purchasing and selling of real property and the order states that finding;
4. the power to enter into a lease or contract, the term of which may extend beyond the settlement of the estate, but only to the extent granting that power appears to be consistent with the speedy settlement of the estate; and
5. any other power the court finds is necessary with respect to the operation of the business.

(e) If the order entered under this section gives the personal representative the power to purchase, sell, lease, or otherwise encumber real or personal property:
1. the purchase, sale, lease, or encumbrance is governed by the terms of the order; and
2. the personal representative is not required to comply with any other provision of this code regarding the purchase, sale, lease, or encumbrance, including provisions requiring citation or notice.

Revised Law

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. (Tex. Prob. Code, Sec. 238(g).)

Source Law

(g) A personal representative who operates a business under an order entered under this section has the same fiduciary duties as a personal representative who does not operate a business that is part of an estate. The personal representative shall:

(1) in operating the business, consider:
   (A) the condition of the estate and the business;
   (B) the necessity that may exist for the future sale of the business or of business property to provide for payment of debts or claims against the estate or other lawful expenditures with respect to the estate;
   (C) the effect of the order on the speedy settlement of the estate; and
   (D) the best interests of the estate;

and

(2) report to the court with respect to the operation and condition of the business as part of the accounts required by Parts 11 and 12, Chapter VIII, of this code, unless the court orders the reports regarding the business to be made more frequently or in a different manner or form.

Revised Law

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

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(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.

(Tex. Prob. Code, Secs. 238(h), (i).)

(h) Before purchasing, selling, leasing, or otherwise encumbering any real property of the business in accordance with an order entered under this section, the personal representative shall file a notice in the real property records of the county in which the real property is located. The notice must state:

(1) the name of the decedent;

(2) the county of the court in which the decedent's estate is pending;

(3) the cause number assigned to the pending estate;

(4) that one or more orders have been entered under this section; and

(5) a description of the property that is the subject of the purchase, sale, lease, or other encumbrance.

(i) For purposes of determining a personal representative's powers with respect to a purchase, sale, lease, or other encumbrance of real property of a
business that is part of an estate, a third party who
deals in good faith with a personal representative
with respect to the transaction may rely on the notice
under Subsection (h) of this section and an order that
is entered under this section and filed as part of the
estate records maintained by the clerk of the court in
which the estate is pending.

[Sections 351.206-351.250 reserved for expansion]

SUBCHAPTER F. AUTHORITY TO ENGAGE IN CERTAIN BORROWING

Revised Law

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.

(Tex. Prob. Code, Sec. 329(a).)

Source Law

Sec. 329. (a) Circumstances Under Which Money
May Be Borrowed. Any real or personal property of an
estate may be mortgaged or pledged by deed of trust or
otherwise as security for an indebtedness, under order
of the court, when necessary for any of the following
purposes:

(1) For the payment of any ad valorem,
income, gift, estate, inheritance, or transfer taxes
upon the transfer of an estate or due from a decedent
or the estate, regardless of whether such taxes are
assessed by a state, or any of its political
subdivisions, or by the federal government or by a
foreign country; or

(2) For payment of expenses of
administration, including sums necessary for
operation of a business, farm, or ranch owned by the
estate; or

(3) For payment of claims allowed and
approved, or established by suit, against the estate;
or (4) To renew and extend a valid, existing lien.

Revisor's Note

Section 329(a), Texas Probate Code, refers to a "valid, existing lien." The revised law omits the reference to "valid" as unnecessary because the word does not add to the clear meaning of the law. A lien is not a lien if it does not comply with the legal requirements for establishing a lien.

Revised Law

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. (Tex. Prob. Code, Secs. 329(b), (c) (part).)

Source Law

(b) Procedure for Borrowing Money. When it is necessary to borrow money for any of the aforementioned purposes, or to create or extend a lien
upon property of the estate as security, a sworn
application for such authority shall be filed with the
court, stating fully and in detail the circumstances
which the representative of the estate believes make
necessary the granting of such authority. Thereupon,
the clerk shall issue and cause to be posted a citation
to all interested persons, stating the nature of the
application and requiring such persons, if they choose
so to do, to appear and show cause, if any, why such
application should not be granted.

(c) Order Authorizing Such Borrowing, or
Extension of Lien. The court, if satisfied by the
evidence adduced at the hearing upon said application
that it is to the interest of the estate to borrow
money, or to extend and renew an existing lien, shall
issue its order to that effect, setting out the terms
and conditions of the authority granted; . . . . If a
new lien is created on property of an estate, the court
may require that the representative's general bond be
increased, or an additional bond given, for the
protection of the estate and the creditors, as for the
sale of real property belonging to the estate.

Revisor's Note

Section 329(c), Texas Probate Code, refers to the
"terms and conditions" under which certain authority
is granted. The revised law omits the reference to
"conditions" because, in context, "conditions" is
included within the meaning of "terms."

Revised Law

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. (Tex. Prob. Code, Sec. 329(c)
(part).)

Source Law

(c) . . . provided, however, the loan or renewal
shall not be for a term longer than three years from
the granting of original letters to the representative
of such estate, but the court may authorize an
extension of such lien for not more than one additional
year without further citation or notice. . . .

Revisor's Note

Section 329(c), Texas Probate Code, refers to the
granting of "original letters." For clarity and the
convenience of the reader, the revised law specifies that this section concerns "letters testamentary or of administration" for the reason stated in the revisor's note to Section 351.102.

[Sections 351.254-351.300 reserved for expansion]

SUBCHAPTER G. PAYMENT OF INCOME OF CERTAIN ESTATES DURING ADMINISTRATION

Revised Law
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. (Tex. Prob. Code, Sec. 239 (part).)

Source Law
Sec. 239. In all cases where the estate of a deceased person is being administered under the direction, control, and orders of a court in the exercise of its probate jurisdiction, . . . .

Revisor's Note
Section 239, Texas Probate Code, refers to a "deceased person." Throughout the Texas Probate Code, a deceased person is more commonly referred to as a "decedent." The revised law substitutes a reference to a "decedent" for the reference to a "deceased person" for consistency of terminology throughout this code.

Revised Law
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. (Tex. Prob. Code, Sec. 239 (part).)

Source Law

Sec. 239. . . . upon the application of the executor or administrator of said estate, or of any interested party, after notice thereof has been given by posting, if it appears from evidence introduced at the hearing upon said application, and the court finds, that the reasonable market value of the assets of the estate then on hand, exclusive of the annual income therefrom, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies, and that no creditor or legatee of the estate has then appeared and objected, the court may order and direct the executor or administrator to pay to, or credit to the account of, those persons who the court finds will own the assets of the estate when the administration thereon is completed, and in the same proportions, such part of the annual net income received by or accruing to said estate, as the court believes and finds can conveniently be paid to such owners without prejudice to the rights of creditors, legatees, or other interested parties. Nothing herein contained shall authorize the court to order paid over to such owners of the estate any part of the corpus or principal of the estate, except as otherwise provided by sections of this Code; . . . .

Revisor’s Note

(1) Section 239, Texas Probate Code, states that the court may order payment of certain income that the court "believes and finds" can conveniently be paid in accordance with the section. The revised law omits the reference to "believes" because the meaning of that term is included in the meaning of "finds."

(2) Section 239, Texas Probate Code, provides
that nothing "herein," meaning in Section 239, authorizes the court to order paid over to the estate owners any part of the "corpus or principal" of the estate. Section 239 is revised as this subchapter. The revised law is drafted accordingly. In addition, throughout this chapter, the revised law omits the reference to "corpus" because, in context, the meaning of that term is included within the meaning of "principal."

Revised Law

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.

Source Law

Sec. 239. ... provided, however, in this connection, bonuses, rentals, and royalties received for, or from, an oil, gas, or other mineral lease shall be treated and regarded as income, and not as corpus or principal.

Revisor's Note

Section 239, Texas Probate Code, refers to a mineral lease being "treated and regarded" as income. The revised law omits the reference to "regarded" because the meaning of that term is included in the meaning of "treated."

[Sections 351.304-351.350 reserved for expansion]

SUBCHAPTER H. CERTAIN ADMINISTERED ESTATES

Revised Law

Sec. 351.351. APPLICABILITY. This subchapter does not apply to:

(1) the appointment of an independent executor or administrator under Section 145(c), (d), or (e); or

(2) the appointment of a successor independent executor under Section 154A. (Tex. Prob. Code, Secs. 145(q)

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Source Law

[Sec. 145]
(q)... Section 36 of this code does not apply to the appointment of an independent executor or administrator under Subsection (c), (d), or (e) of this section.

[Sec. 154A]
(i)... Section 36 of this code does not apply to an appointment of a successor independent executor under this section.

Revised Law

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. (Tex. Prob. Code, Sec. 36(a) (part).)

Source Law

Sec. 36. (a) It shall be the duty of each county and probate court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court and other officers of the court perform the duty enjoined upon them by law pertaining to such estates....

Revised Law

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.

(Tex. Prob. Code, Sec. 36(a) (part).)

Source Law

(a)... each county and probate court... of estates being administered under orders of the court... . . . . The judge shall annually, if in his opinion the same be necessary, examine the condition of each of said estates and the solvency of the bonds of personal representatives of estates. He shall, at any time he
finds that the personal representative's bond is not sufficient to protect such estate, require such personal representatives to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; . . . .

Revised Law

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. (Tex. Prob. Code, Sec. 36(a) (part).)

Source Law

(a) . . . and should damage or loss result to estates through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect.

Revised Law

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. (Tex. Prob. Code, Sec. 36(b).)

Source Law

(b) The court may request an applicant or court-appointed fiduciary to produce other information identifying an applicant, decedent, or personal representative, including social security numbers, in addition to identifying information the applicant or fiduciary is required to produce under this code. The court shall maintain the information required under this subsection, and the information may not be filed with the clerk.

CHAPTER 352. COMPENSATION AND EXPENSES OF PERSONAL REPRESENTATIVES AND OTHERS

SUBCHAPTER A. COMPENSATION OF PERSONAL REPRESENTATIVES

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[Sections 352.005-352.050 reserved for expansion]

SUBCHAPTER B. EXPENSES OF PERSONAL REPRESENTATIVES AND OTHERS

Sec. 352.051. EXPENSES; ATTORNEY’S FEES

Sec. 352.052. ALLOWANCE FOR DEFENSE OF WILL

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CHAPTER 352. COMPENSATION AND EXPENSES OF PERSONAL REPRESENTATIVES AND OTHERS

SUBCHAPTER A. COMPENSATION OF PERSONAL REPRESENTATIVES

Revised Law

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. (Tex. Prob. Code, Sec. 241(b).)

Source Law

(b) Definition. In this section, "financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, including banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

Revised Law

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.
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. (Tex. Prob. Code, Sec. 241(a) (part).)

Source Law

Sec. 241. (a) Executors, administrators, and temporary administrators shall be entitled to receive a commission of five per cent (5%) on all sums they may actually receive in cash, and the same per cent on all sums they may actually pay out in cash, in the administration of the estate on a finding by the court that the executor or administrator has taken care of and managed the estate in compliance with the standards of this code; provided, no commission shall be allowed for receiving funds belonging to the testator or intestate which were on hand or were held for the testator or intestate at the time of his death in a financial institution or a brokerage firm, including cash or a cash equivalent held in a checking account, savings account, certificate of deposit, or money market account; nor for collecting the proceeds of any life insurance policy; nor for paying out cash to the heirs or legatees as such; provided, further, however, that in no event shall the executor or administrator be entitled in the aggregate to more than five per cent (5%) of the gross fair market value of the estate subject to administration. . .

Revisor's Note

Section 241(a), Texas Probate Code, refers to executors and administrators taking care of and managing decedents' estates in compliance with the standards of "this code," meaning the Texas Probate Code. The revised law substitutes a reference to "this
Revised Law
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. (Tex. Prob. Code, Sec. 241(a) (part).)

Source Law
(a) ... If the executor or administrator manages a farm, ranch, factory, or other business of the estate, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services, including unusual effort to collect funds or life insurance. For this purpose, the county court shall have jurisdiction to receive, consider, and act on applications from independent executors. . . .

Revised Law
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 149C or Subchapter B, Chapter 361. (Tex. Prob. Code, Sec. 241(a) (part).)
The court may, on application of an interested person or on its own motion, deny a commission allowed by this subsection in whole or in part if:

1. The court finds that the executor or administrator has not taken care of and managed estate property prudently; or
2. The executor or administrator has been removed under Section 149C or 222 of this code.

Sections 352.005-352.050 reserved for expansion

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. (Tex. Prob. Code, Sec. 242.)

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. (Tex. Prob.
Code, Sec. 243.)

Source Law

Sec. 243. When any person designated as
executor in a will or an alleged will, or as
administrator with the will or alleged will annexed,
defends it or prosecutes any proceeding in good faith,
and with just cause, for the purpose of having the will
or alleged will admitted to probate, whether
successful or not, he shall be allowed out of the
estate his necessary expenses and disbursements,
including reasonable attorney's fees, in such
proceedings. When any person designated as a devisee,
legatee, or beneficiary in a will or an alleged will,
or as administrator with the will or alleged will
annexed, defends it or prosecutes any proceeding in
good faith, and with just cause, for the purpose of
having the will or alleged will admitted to probate,
whether successful or not, he may be allowed out of the
estate his necessary expenses and disbursements,
including reasonable attorney's fees, in such
proceedings.

Revisor's Note

(1) Section 243, Texas Probate Code, states in
the first sentence that an administrator with the will
or alleged will annexed "shall be allowed" out of the
estate the administrator's necessary expenses and
disbursements in certain proceedings relating to
admitting a will or alleged will to probate. That
provision conflicts with the second sentence of
Section 243, which states that an administrator with
the will or alleged will annexed "may be allowed" out
of the estate the administrator's necessary expenses
and disbursements in those same proceedings. The
legislative intent is ambiguous, and the revised law
preserves the ambiguity by revising both provisions.

(2) Section 243, Texas Probate Code, refers to a
"devisee, legatee, or beneficiary" in a will or
alleged will. The revised law omits the reference to
"legatee" because Section 3(i), Texas Probate Code,
revised in this code as Section 22.009, defines
"devisee" to include a "legatee."

Revised Law

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. (Tex. Prob. Code,
Sec. 244.)

Source Law

Sec. 244. All expense charges shall be made in
writing, showing specifically each item of expense and
the date thereof, and shall be verified by affidavit of
the representative, filed with the clerk and entered
on the claim docket, and shall be acted on by the court
in like manner as other claims against the estate.

Revisor's Note

Section 244, Texas Probate Code, refers to a
"representative" of an estate. Section 3(aa), Texas
Probate Code, revised as Section 22.031 of this code,
defines "personal representative" and
"representative" to be synonyms. For consistency of
terminology throughout this chapter, the revised law
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Source Law

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

[Sections 353.002-353.050 reserved for expansion]
decedent's family.

(b) Before the inventory, appraisement, and list of claims of an estate are approved:

1. The decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all property that the applicant claims is exempt; and

2. Any of the decedent's unmarried children remaining with the decedent's family 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. (Tex. Prob. Code, Sec. 271.)

Source Law

Sec. 271. (a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisement, and list of claims have been approved, the court shall, by order, set apart:

1. The homestead for the use and benefit of the surviving spouse and minor children; and

2. All other property of the estate that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased.

(b) Before the approval of the inventory, appraisement, and list of claims:

1. A surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all of the property that the applicant claims is exempt; and

2. Any unmarried children remaining with the family of the deceased may apply to the court to have all exempt property other than the homestead set aside by filing an application and a verified affidavit listing all of the other property that the applicant claims is exempt.

(c) An applicant under Subsection (b) of this section bears the burden of proof by a preponderance of the evidence at any hearing on the application. The
court shall set aside property of the decedent's estate
that the court finds is exempt.

Revisor's Note

1. Section 271(a), Texas Probate Code, refers
to exempt property "set apart" by the court, and
Section 271(b), Texas Probate Code, refers to exempt
property "set aside" by the court. In context, the
quoted phrases are synonymous. For consistency of
terminology throughout this chapter, the revised law
refers only to exempt property that is "set aside."

2. Sections 271(a) and (b), Texas Probate Code,
refer to "the deceased." Throughout the Texas Probate
Code, a deceased person is more commonly referred to as
a "decedent." The revised law throughout this chapter
substitutes references to a "decedent" for references
to the "deceased" for consistency of terminology
throughout this code.

Revised Law

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 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; or

(2) the children's guardian, if the children are
minors.

(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; or
(2) the children's guardian, if the children are minors.

(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. (Tex. Prob. Code, Sec. 272.)

Source Law

Sec. 272. The exempt property set apart to the surviving spouse and children shall be delivered by the executor or administrator without delay as follows: (a) If there be a surviving spouse and no children, or if the children be the children of the surviving spouse, the whole of such property shall be delivered to the surviving spouse. (b) If there be children and no surviving spouse, such property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors. (c) If there be children of the deceased of whom the surviving spouse is not the parent, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors. (d) In all cases, the homestead shall be delivered to the surviving spouse, if there be one, and if there be no surviving spouse, to the guardian of the minor children.

Revisor's Note

Section 272, Texas Probate Code, refers to a decedent's children being of "lawful age." Throughout this chapter, the revised law substitutes "legal" for "lawful" in this context because the terms are synonymous and "legal" is more consistent with modern usage.

Revised Law

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 $15,000, and the allowance in lieu of other exempt property may not exceed $5,000, excluding the family allowance for the support of the surviving spouse and minor children provided by Subchapter C. (Tex. Prob. Code, Sec. 273.)

Source Law

Sec. 273. In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such surviving spouse and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed $15,000 and the allowance for other exempted property shall in no case exceed $5,000, exclusive of the allowance for the support of the surviving spouse and minor children which is hereinafter provided for.

Revisor's Note

(1) Section 273, Texas Probate Code, refers to the allowance in lieu of exempt property to be paid to the surviving spouse and children "as hereinafter provided." It is clear from the context that the quoted language refers to Section 275, Texas Probate Code, which is revised as Section 353.054 of this chapter. The revised law is drafted accordingly.

(2) Section 273, Texas Probate Code, refers to the allowance for the support of the surviving spouse and minor children "which is hereinafter provided for." The revised law substitutes a reference to Subchapter C for the quoted language because the provisions of the Texas Probate Code applicable to the family allowance for the support of the surviving spouse and minor children are revised as that subchapter.

Revised Law

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 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 children of whom the surviving spouse is not a parent; or

(2) the guardian of the children described by Subdivision (1), if those children are minors.

(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 the children, if the children are of lawful age, or, if any of the children are minors, pay the minor children's shares to the guardian of the minor children. (Tex. Prob. Code, Sec. 275.)

Source Law

Sec. 275. The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows: (a) If there be a surviving spouse and no children, or if all the children be the children of the surviving spouse, the whole shall be paid to such surviving spouse.

(b) If there be children and no surviving spouse, the whole shall be paid to and equally divided among them if they be of lawful age, but if any of such children are minors, their shares shall be paid to their guardian or guardians.

(c) If there be a surviving spouse, and children of the deceased, some of whom are not children of the surviving spouse, the surviving spouse shall receive one-half of the whole, plus the shares of the children of whom the survivor is the parent, and the remaining shares shall be paid to the children of whom the survivor is not the parent, or, if they are minors, to their guardian.
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, 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. (Tex. Prob. Code, Sec. 274(part).)

Source Law

Sec. 274. The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such surviving spouse or children, if they be of lawful age, or their guardian if they be minors, shall choose to take at the appraisement, or a part thereof, or both, as they shall select; provided, however, that property specifically bequeathed or devised to another may be so taken, or . . . only if the other available property shall be insufficient to provide the allowance.

Revisor's Note

(1) Section 274, Texas Probate Code, refers to estate funds that come into the "hands" of the executor or administrator. Throughout this chapter, the revised law substitutes "possession" for "hands" because the terms are synonymous in context and "possession" is more consistent with modern usage.

(2) Section 274, Texas Probate Code, refers to property specifically "bequeathed or devised" to another. Throughout this chapter, the revised law omits the reference to "bequeathed" as unnecessary.
Traditionally, "devise" referred to the disposition of real property by a will; "bequeath" usually refers to the disposition of personal property by a will. Black's Law Dictionary (revised eighth edition, 2004).

Section 3(h), Texas Probate Code, revised as Section 22.008 of this code, provides that "devise" means "to dispose of real or personal property, or of both, by will." The revised law therefore omits "bequeathed" because the meaning of that term is included within the meaning of "devised."

Revised Law
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, 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. (Tex. Prob. Code, Secs. 274 (part), 276.)

Source Law
Sec. 274. . . . property specifically bequeathed or devised to another . . . may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Sec. 276. If there be no property of the deceased that such surviving spouse or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part
thereof, the court, on the application in writing of such surviving spouse and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Revisor's Note

Section 274, Texas Probate Code, provides that property may be sold to raise funds for the allowance "as hereinafter provided" only under certain circumstances. It is clear from the context that the quoted language refers to Section 276, Texas Probate Code, which is revised in this section. The revised law is drafted accordingly.

Sections 353.057-353.100 reserved for expansion

SUBCHAPTER C. FAMILY ALLOWANCE

Revised Law

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, the court shall fix a family allowance for the support of the decedent's surviving spouse and minor children.

(b) Before the inventory, appraisement, and list of claims of an estate are approved, 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 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 and the decedent's minor 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 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 and minor 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; or

2. the decedent's minor children, if the minor children have property in their own right adequate for the children's maintenance. (Tex. Prob. Code, Secs. 286, 288.)

Source Law

Sec. 286. (a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisement, and list of claims have been approved, the court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.

(b) Before the approval of the inventory, appraisement, and list of claims, a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing the amount necessary for the maintenance of the surviving spouse and minor children for one year after the date of the death of the decedent and describing the spouse's separate property and any property that minor children have in their own right. The applicant bears the burden of proof by a preponderance of the evidence at any hearing on the application. The court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.

Sec. 288. No such allowance shall be made for the surviving spouse when the survivor has separate property adequate to the survivor's maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance.

Revised Law

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 and minor 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. (Tex. Prob. Code, Sec. 287.)

Source Law

Sec. 287. Such allowance shall be of an amount sufficient for the maintenance of such surviving spouse and minor children for one year from the time of the death of the testator or intestate. The allowance shall be fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. The allowance may be paid either in a lump sum or in installments, as the court shall order.

Revisor's Note

Section 287, Texas Probate Code, refers to the death of the "testator or intestate." The revised law substitutes "decedent" for the reference to "testator or intestate" because, in context, those terms are included in the meaning of "decedent" and "decedent" is more consistent with the terminology used throughout this chapter.

Revised Law

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. (Tex. Prob. Code, Sec. 289.)

Source Law

Sec. 289. When an allowance has been fixed, an order shall be entered stating the amount thereof, providing how the same shall be payable, and directing the executor or administrator to pay the same in accordance with law.

Revised Law

Sec. 353.104. PREFERENCE OF FAMILY ALLOWANCE. The family allowance made for the support of the decedent's surviving spouse and minor children shall be paid in preference to all other debts of or charges against the estate, other than Class 1 claims. (Tex. Prob. Code, Sec. 290.)

Source Law

Sec. 290. The family allowance made for the support of the surviving spouse and minor children of
the deceased shall be paid in preference to all other
debs or charges against the estate, except Class 1
claims.

Revised Law

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 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 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
and the decedent's minor children.
(d) If there is a surviving spouse and some or all of the
minor children of the decedent are not also children of the
surviving spouse, the executor or administrator shall pay the
portion of the entire family allowance necessary for the support of
those minor children to the guardian of those children.
(e) If there is no surviving spouse and there are minor
children of the decedent, the executor or administrator shall pay
the family allowance for the minor children to the guardian of those
children. (Tex. Prob. Code, Sec. 291.)

Source Law

Sec. 291. The executor or administrator shall
apportion and pay the family allowance:
(a) To the surviving spouse, if there be
one, for the use of the survivor and the minor
children, if such children be the survivor's.
(b) If the surviving spouse is not the
parent of such minor children, or of some of them, the
portion of such allowance necessary for the support of
such minor child or children of which the survivor is
not the parent shall be paid to the guardian or
 guardians of such child or children.
(c) If there be no surviving spouse, the
allowance to the minor child or children shall be paid
to the guardian or guardians of such minor child or
children.
(d) If there be a surviving spouse and no
minor child or children, the entire allowance shall be
paid to the surviving spouse.
Revised Law

Sec. 353.106. SURVIVING SPOUSE OR MINOR CHILDREN MAY TAKE PERSONAL PROPERTY FOR FAMILY ALLOWANCE. (a) A decedent's surviving spouse or the guardian of the decedent's minor children, 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. (Tex. Prob. Code, Sec. 292(part).)

Source Law

Sec. 292. The surviving spouse, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement; provided, however, that property specifically devised or bequeathed to another may be so taken, or . . . only if the other available property shall be insufficient to provide the allowance.

Revised Law

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, 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 or the guardian of the decedent's minor children 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. (Tex. Prob.
Sec. 292. ... property specifically devised or bequeathed to another ... may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Sec. 293. If there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisement, and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Revisor’s Note
Section 292, Texas Probate Code, provides that property may be sold to raise funds for the family allowance "as hereinafter provided" only under certain circumstances. It is clear from the context that the quoted language refers to Section 293, Texas Probate Code, which is revised in this section. The revised law is drafted accordingly.

[Sections 353.108-353.150 reserved for expansion]

SUBCHAPTER D. LIENS ON AND DISPOSITION OF EXEMPT PROPERTY AND PROPERTY TAKEN AS ALLOWANCE

Revised Law
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. (Tex. Prob. Code, Sec. 277.)

Source Law
Sec. 277. If property upon which there is a valid subsisting lien or encumbrance shall be set apart to the surviving spouse or children as exempt property, or appropriated to make up allowances made
in lieu of exempt property or for the support of the surviving spouse or children, the debts secured by such lien shall, if necessity requires, be either paid or continued as against such property. This provision applies to all estates, whether solvent or insolvent.

Revised Law

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. (Tex. Prob. Code, Sec. 278.)

Source Law

Sec. 278. If, upon a final settlement of the estate, it shall appear that the same is solvent, the exempted property, except the homestead or any allowance in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate.

Revised Law

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. (Tex. Prob. Code, Sec. 279.)

Source Law

Sec. 279. Should the estate, upon final settlement, prove to be insolvent, the title of the surviving spouse and children to all the property and allowances set apart or paid to them under the provisions of this Code shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.

Revisor's Note

(1) Section 279, Texas Probate Code, refers to certain property and allowances set aside or paid "under the provisions of this Code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this Code" because the provisions of the Texas Probate Code that
relate to the setting aside of property and paying of
allowances are revised in Title 2 of this code, and
this chapter is included in that title.

(2) Section 279, Texas Probate Code, provides
that the property and allowances set aside or paid to
the surviving spouse and children may not be taken for
any estate debts "except as hereinafter provided." It
is clear from the context that the quoted language
refers to Section 281, Texas Probate Code, which is
revised as Section 353.155 of this chapter. The
revised law is drafted accordingly.

Revised Law
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. (Tex. Prob. Code,
Sec. 280.)

Source Law
Sec. 280. In ascertaining whether an estate is
solvent or insolvent, the exempt property set apart to
the surviving spouse or children, or the allowance in
lieu thereof, and the family allowance hereinafter
provided for, shall not be estimated or considered as
assets of the estate.

Revisor's Note
Section 280, Texas Probate Code, refers to the
family allowance "hereinafter provided for." For the
convenience of the reader, the revised law substitutes
a reference to Subchapter C of this chapter for the
quoted language because Sections 286-293, Texas
Probate Code, which are the provisions of that code
applicable to the family allowance, are revised as
Subchapter C.

Revised Law
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). (Tex. Prob. Code, Sec. 281.)

Source Law

Sec. 281. The exempt property, other than the homestead or any allowance made in lieu thereof, shall be liable for the payment of Class 1 claims, but such property shall not be liable for any other debts of the estate.

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

[Sections 354.002-354.050 reserved for expansion]

SUBCHAPTER B. WITHDRAWAL FROM ADMINISTRATION OF CERTAIN ESTATES

Sec. 354.051. REQUIRED REPORT ON CONDITION OF ESTATE
Sec. 354.052. BOND REQUIRED TO WITHDRAW ESTATE FROM ADMINISTRATION
Sec. 354.053. ORDER FOR DELIVERY OF ESTATE
Sec. 354.054. ORDER OF DISCHARGE
Sec. 354.055. LIEN ON PROPERTY OF ESTATE WITHDRAWN FROM ADMINISTRATION
Sec. 354.056. PARTITION OF ESTATE WITHDRAWN FROM ADMINISTRATION
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CHAPTER 354. SUMMARY PROCEEDINGS FOR, OR WITHDRAWAL FROM ADMINISTRATION OF, CERTAIN ESTATES

SUBCHAPTER A. SUMMARY PROCEEDINGS FOR CERTAIN SMALL ESTATES

Revised Law

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 as required
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 and minor 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. (Tex. Prob. Code, Sec. 143.)

Source Law

Sec. 143. Whenever, after the inventory, appraisement, and list of claims has been filed by a personal representative, it is established that the estate of a decedent, exclusive of the homestead and exempt property and family allowance to the surviving spouse and minor children, does not exceed the amount sufficient to pay the claims of Classes One to Four, inclusive, as claims are hereinafter classified, the personal representative shall, upon order of the court, pay the claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of such claims, and thereafter present his account with an application for the settlement and allowance thereof. Thereupon the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, may decree final distribution, discharge the personal representative, and close the administration.
Revisor's Note

(1) Section 143, Texas Probate Code, refers to the filing of the "inventory, appraisement, and list of claims" by a personal representative. Part 1, Chapter VIII, Texas Probate Code, which consists of Sections 248-261 and is revised in this code as Chapter 309, governs the filing of the inventory, appraisement, and list of claims during the administration of an estate. Throughout this chapter, the revised law adds a cross-reference to Chapter 309 to the quoted language for the convenience of the reader.

(2) Section 143, Texas Probate Code, refers to claims of Classes One to Four "as claims are hereinafter classified." For the convenience of the reader, the revised law substitutes for the quoted language a cross-reference to Section 355.102, which is the revision of Section 322, Texas Probate Code, that provides for the classification of claims against decedents' estates.

[Sections 354.002-354.050 reserved for expansion]

SUBCHAPTER B. WITHDRAWAL FROM ADMINISTRATION OF CERTAIN ESTATES

Revised Law

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. (Tex. Prob. Code, Sec. 262.)

Source Law

Sec. 262. At any time after the return of inventory, appraisement, and list of claims of a deceased person, any one entitled to a portion of the estate may, by a written complaint filed in the court in which such case is pending, cause the executor or administrator of the estate to be cited to appear and
render under oath an exhibit of the condition of the estate.

Revisor's Note
Section 262, Texas Probate Code, refers to the "inventory, appraisement, and list of claims of a deceased person." The revised law substitutes for the quoted language a reference to the "inventory, appraisement, and list of claims of an estate" to conform to the terminology of Sections 250 and 251, Texas Probate Code, which are revised as Sections 309.051 and 309.052 of this code.

Revised Law
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. (Tex. Prob. Code, Sec. 263.)
Sec. 263. When the executor or administrator has rendered the required exhibit, the persons entitled to such estate, or any of them, or any persons for them, may execute and deliver to the court a bond payable to the judge, and his successors in office, to be approved by the court, for an amount equal to at least double the gross appraised value of the estate as shown by the appraisement and list of claims returned, conditioned that the persons who execute such bond shall pay all the debts against the estate not paid that have been or shall be allowed by the executor or administrator and approved by the court, or that have been or shall be established by suit against said estate, and will pay to the executor or administrator any balance that shall be found to be due him by the judgment of the court on his exhibit.

Revisor's Note

Section 263, Texas Probate Code, refers to the "appraisement and list of claims." Throughout the Texas Probate Code, the appraisement and list of claims of an estate is more commonly referred to as the "inventory, appraisement, and list of claims." Therefore, the revised law substitutes a reference to the "inventory, appraisement, and list of claims" for the reference to the "appraisement and list of claims" for consistency of terminology throughout this code.

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. (Tex. Prob. Code, Sec. 264.)

Sec. 264. When such bond has been given and approved, the court shall thereupon enter an order directing and requiring the executor or administrator to deliver forthwith to all persons entitled to any portion of the estate the portion or portions of such estate to which they are entitled.

Revisor's Note

(1) Section 264, Texas Probate Code, requires the court in certain circumstances to enter an order
"directing and requiring" the delivery of the estate to the persons entitled to the estate. The revised law omits "directing" because, in context, "directing" is included in the meaning of "requiring."

(2) Section 264, Texas Probate Code, imposes on an executor or administrator the duty to deliver the estate "forthwith" to the persons entitled to the estate. The revised law substitutes "promptly" for "forthwith" because the terms have the same meaning in this context and "promptly" is more consistent with modern usage.

**Revised Law**

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. (Tex. Prob. Code, Sec. 265.)

**Source Law**

Sec. 265. When an estate has been so withdrawn from further administration, an order shall be entered discharging the executor or administrator and declaring the administration closed.

**Revisor's Note**

Section 265, Texas Probate Code, refers to an estate withdrawn from "further administration." Part 2, Chapter VIII, Texas Probate Code, consisting of Sections 262-269 and revised as this subchapter, provides procedures for the withdrawal of a decedent's estate from administration. Therefore, throughout this subchapter the revised law omits "further" in this context as unnecessary.

**Revised Law**

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. (Tex. Prob. Code, Sec. 266.)

Source Law

Sec. 266. A lien shall exist on all of the estate withdrawn from administration in the hands of the distributees, and those claiming under them with notice of such lien, to secure the ultimate payment of the aforesaid bond and of the debts and claims secured thereby.

Revisor's Note

Section 266, Texas Probate Code, refers to the estate in the "hands" of the distributees. The revised law substitutes "possession" for "hands" because the terms are synonymous in context and "possession" is more consistent with modern usage.

Revised Law

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. (Tex. Prob. Code, Sec. 267.)

Source Law

Sec. 267. Any person entitled to any portion of the estate withdrawn from further administration may, on written application to the court, cause a partition and distribution to be made among the persons entitled thereto, in accordance with the provisions of this Code pertaining to the partition and distribution of estates.

Revisor's Note

Section 267, Texas Probate Code, refers to provisions of "this Code," meaning the Texas Probate Code, that relate to the partition and distribution of an estate. The revised law substitutes a reference to
"this title" because the provisions of the Texas Probate Code applicable to decedents' estates are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

Revised Law
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. (Tex. Prob. Code, Sec. 268.)

Source Law
Sec. 268. Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation shall have the right to sue on the bond in his own name, and shall be entitled to judgment thereon for such debt or claim as he shall establish against the estate.

Revised Law
Sec. 354.058. CREDITORS MAY SUE DISTRIBUTEEES. (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. (Tex. Prob. Code, Sec. 269.)

Source Law
Sec. 269. Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation may sue any distributee who has received any of the estate, or he may sue all the distributees together, but no one of such distributees
shall be liable beyond his just proportion according
to the amount of the estate he shall have received in
the distribution.

CHAPTER 355. PRESENTMENT AND PAYMENT OF CLAIMS

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[Sections 355.009-355.050 reserved for expansion]

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CHAPTER 355. PRESENTMENT AND PAYMENT OF CLAIMS

SUBCHAPTER A. PRESENTMENT OF CLAIMS AGAINST ESTATES IN GENERAL

Revised Law

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. (Tex. Prob. Code, Sec. 298(a) (part).)

Source Law

Sec. 298. (a) Time for Presentation of Claims. A claim may be presented to the personal representative at any time before the estate is closed if suit on the claim has not been barred by the general statutes of limitation. . . .
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. (Tex. Prob. Code, Sec. 308.)

Sec. 308. Claims may also be presented by depositing same, with vouchers and necessary exhibits and affidavit attached, with the clerk, who, upon receiving same, shall advise the representative of the estate, or the representative's attorney, by letter mailed to the representative's last known address, of the deposit of same. Should the representative fail to act on said claim within thirty days after it is deposited, then it shall be presumed to be rejected. Failure of the clerk to give notice as required herein shall not affect the validity of the presentment or the presumption of rejection because not acted upon within said thirty day period. The clerk shall enter a deposited claim on the claim docket.

Section 308, Texas Probate Code, refers to the duty of the clerk to advise the "representative" of a claim filed with the clerk. Section 3(aa), Texas Probate Code, revised in this code as Section 22.031, defines "personal representative" and "representative" to be synonymous. For consistency of terminology throughout this chapter, the revised law
substitutes "personal representative" for "representative."

Revised Law
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. (Tex. Prob. Code, Sec. 307.)

Source Law
Sec. 307. If the instrument evidencing or supporting a claim provides for attorney's fees, then the claimant may include as a part of the claim the portion of such fee that he has paid or contracted to pay to an attorney to prepare, present, and collect such claim.

Revised Law
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. (Tex. Prob. Code, Sec. 301 (part).)

Source Law
Sec. 301. . . . a claim for money against such estate, unless such claim be supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is not founded on a written instrument or account, the affidavit shall also state the facts upon which the claim is founded. A photostatic copy of any exhibit or voucher necessary to prove a claim may be offered with and attached to the claim in lieu of the original.
Revisor's Note

Section 301, Texas Probate Code, requires that a claim for money against an estate be supported by an affidavit, and prescribes the requirements for the affidavit. Section 304, Texas Probate Code, revised in this chapter as Section 355.005, prescribes different requirements for an affidavit supporting a claim of a corporation or other entity. For the convenience of the reader, the revised law adds a cross-reference to the exception provided by Section 355.005.

Revised Law

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. (Tex. Prob. Code, Sec. 304.)

Source Law

Sec. 304. An authorized officer or representative of a corporation or other entity shall make the affidavit required to authenticate a claim of such corporation or entity. When an affidavit is made by an officer of a corporation, or by an executor, administrator, trustee, assignee, agent, representative, or attorney, it shall be sufficient to state in such affidavit that the person making it has made diligent inquiry and examination, and that he believes that the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

Revised Law

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

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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.

(Tex. Prob. Code, Sec. 303 (part).)

Sec. 303. If evidence of a claim is lost or destroyed, the claimant or an authorized representative or agent of the claimant, may make affidavit to the fact of such loss or destruction, stating the amount, date, and nature of the claim and when due, and that the same is just, and that all legal offsets, payments and credits known to the affiant have been allowed, and that the claimant is still the owner of the claim; and . . . .

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. (Tex. Prob. Code, Sec. 302.)

Sec. 302. Any defect of form, or claim of insufficiency of exhibits or vouchers presented, shall be deemed waived by the personal representative unless written objection thereto has been made within thirty days after presentment of the claim, and filed with the county clerk.

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. (Tex. Prob. Code, Sec. 299.)

Source Law

Sec. 299. The general statutes of limitation are tolled on the date:
(1) a claim for money is filed or deposited with the clerk; or
(2) suit is brought against the personal representative of an estate with respect to a claim of the estate that is not required to be presented to the personal representative.

[Sections 355.009-355.050 reserved for expansion]

SUBCHAPTER B. ACTION ON CLAIMS

Revised Law

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. (Tex. Prob. Code, Sec. 309.)

Source Law

Sec. 309. When a duly authenticated claim against an estate is presented to the representative, or deposited with the clerk as herefore provided, the representative shall, within thirty days after the claim is presented or deposited, endorse thereon, annex thereto, or file with the clerk a memorandum signed by the representative, stating the date of presentation or depositing of the claim, and that the representative allows or rejects it, or what portion thereof the representative allows or rejects.

Revisor's Note

Section 309, Texas Probate Code, refers to a "duly authenticated" claim against an estate. The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The
requirement that the claim be authenticated is
sufficient to convey that the claim must have met the
requirements for authentication.

Revised Law
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. (Tex. Prob. Code, Sec. 310.)

Source Law
Sec. 310. The failure of a representative of an
estate to timely allow or reject a claim under Section
309 of this code shall constitute a rejection of the
claim. If the claim is thereafter established by suit, the
costs shall be taxed against the representative,
individually, or the representative may be removed on
the written complaint of any person interested in the
claim, after personal service of citation, hearing,
and proof, as in other cases of removal.

Revised Law
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. (Tex. Prob.
Code, Sec. 311.)

Source Law
Sec. 311. After a claim against an estate has
been presented to and allowed or rejected by the
personal representative, in whole or in part, the
claim must be filed with the county clerk of the proper
county. The clerk shall enter the claim on the claim
docket.

Revised Law
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. (Tex. Prob. Code, Sec. 312(a).)

Source Law

Sec. 312. (a) Contest of Claims. Any person interested in an estate may, at any time before the court has acted upon a claim, appear and object in writing to the approval of the same, or any part thereof, and in such case the parties shall be entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

Revised Law

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. (Tex. Prob. Code, Sec. 312(b).)

Source Law

(b) Court's Action Upon Claims. All claims which have been allowed and entered upon the claim docket for a period of ten days shall be acted upon by the court and be either approved in whole or in part or rejected, and they shall also at the same time be classified by the court.

Revised Law

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. (Tex. Prob.
Source Law

(c) Hearing on Claims. Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, the court shall examine the claimant and the personal representative under oath, and hear other evidence necessary to determine the issue. If not then convinced that the claim is just, the court shall disapprove it.

Revised Law

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. (Tex. Prob. Code, Sec. 312(d).)

Source Law

(d) Order of the Court. When the court has acted upon a claim, the court shall also endorse thereon, or annex thereto, a written memorandum dated and signed officially, stating the exact action taken upon such claim, whether approved or disapproved, or approved in part or rejected in part, and stating the classification of the claim. Such orders shall have the force and effect of final judgments.

Revisor's Note

Section 312(d), Texas Probate Code, states that a court's order on a claim has the "force and effect" of a final judgment. The revised law omits the reference to "force" as unnecessary because the meaning of the term is included within the meaning of "effect."

Revised Law

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. (Tex. Prob. Code, Sec. 312(e).)

Source Law

(e) Appeal. When a claimant or any person
interested in an estate shall be dissatisfied with the
action of the court upon a claim, the claimant or
person may appeal therefrom to the courts of appeals,
as from other judgments of the county court in probate
matters.

**Revised Law**

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. (Tex.
Prob. Code, Sec. 301 (part).)

**Source Law**

Sec. 301. No personal representative of a
decedent's estate shall allow, and the court shall not
approve, a claim for money against such estate, unless
such claim be supported by an affidavit [that the claim
is just and that all legal offsets, payments, and
credits known to the affiant have been allowed. If the
claim is not founded on a written instrument or
account, the affidavit shall also state the facts upon
which the claim is founded. A photostatic copy of any
exhibit or voucher necessary to prove a claim may be
offered with and attached to the claim in lieu of the
original.]

**Revisor's Note**

Section 301, Texas Probate Code, prohibits a
personal representative from allowing, and a court
from approving, a claim for money unless the claim is
supported by an affidavit that meets certain
requirements. Those requirements are specified in the
portion of Section 301 that is revised in this chapter
as Section 355.004(a), and this section of the revised
law refers to the requirements of that section for an
affidavit. As explained in the revisor's note to
Section 355.004 of this chapter, Section 304, Texas
Probate Code, revised in this chapter as Section
355.005, prescribes requirements for affidavits
supporting certain types of claims that differ from
the requirements specified in Section 355.004(a). For
accuracy and the convenience of the reader, the
revised law adds a reference to the requirements under
Section 355.005 for an affidavit because it is clear that the type of claim to which Section 355.005 applies may not be allowed or approved without an affidavit that meets the requirements of that section.

Revised Law

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 within four months after the date of receipt of the notice, the claim is barred. (Tex. Prob. Code, Sec. 298(a) (part).)

Source Law

(a) . . . If a claim of an unsecured creditor for money is not presented within four months after the date of receipt of the notice permitted by Section 294(d), the claim is barred.

Revised Law

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. (Tex. Prob. Code, Sec. 298(b).)

Source Law

(b) Claims Barred by Limitation Not to Be Allowed or Approved. No claims for money against a decedent, or against the estate of the decedent, on which a suit is barred under Subsection (a) of this section, Section 313, or Section 317(a) or by a general statute of limitation applicable thereto shall be allowed by a personal representative. If allowed by the representative and the court is satisfied that the claim is barred or that limitation has run, the claim shall be disapproved.

Revisor's Note

Section 298(b), Texas Probate Code, refers to
Sections 298(a), 313, and 317(a), Texas Probate Code, under which claims for money against a decedent or the decedent's estate are barred. The relevant portions of those sections are revised in this chapter as Sections 355.060, 355.064, and 355.201(b), respectively. The revised law is drafted accordingly.

Revised Law

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. (Tex. Prob. Code, Sec. 303 (part).)

Source Law

Sec. 303. [If evidence of a claim is lost or destroyed,] . . . . the claim must be proved by disinterested testimony taken in open court, or by oral or written deposition, before the claim is approved. If such claim is allowed or approved without such affidavit, or if it is approved without satisfactory proof, such allowance or approval shall be void.

Revised Law

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. (Tex. Prob. Code, Sec. 318.)

Source Law

Sec. 318. No claim for money against the estate
of a decedent shall be allowed by a personal
representative and no suit shall be instituted against
the representative on any such claim, after an order
for final partition and distribution has been made;
but, after such an order has been made, the owner of
any claim not barred by the laws of limitation shall
have an action thereon against the heirs, devisees,
legatees, or creditors of the estate, limited to the
value of the property received by them in
distributions from the estate.

Revisor's Note

Section 318, Texas Probate Code, refers to a
right of action on a claim against the "heirs,
devisees, legatees, or creditors" of an estate. The
revised law omits the reference to "legatees" because
Section 3(i), Texas Probate Code, revised as Section
22.009 of this code, provides that "devisee" includes
"legatee."

Revised Law

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. (Tex. Prob.
Code, Sec. 313 (part).)

Source Law

Sec. 313. When a claim or a part thereof has
been rejected by the representative, the claimant
shall institute suit thereon in the court of original
probate jurisdiction in which the estate is pending
within ninety days after such rejection, or the claim
shall be barred. When a rejected claim is sued on, the
endorsement made on or annexed thereto, or any
memorandum of rejection filed with respect to the
claim, shall be taken to be true without further proof,
unless denied under oath. . . .
Revisor's Note

Section 313, Texas Probate Code, refers to an "endorsement made on or annexed" to a claim. The revised law substitutes "memorandum endorsed on or attached" for the quoted phrase for clarity and consistency of terminology because Section 309, Texas Probate Code, revised in this chapter as Section 355.051, provides that the referenced endorsement is made in the form of a memorandum endorsed on or attached to the claim.

Revised Law

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. (Tex. Prob. Code, Sec. 314.)

Source Law

Sec. 314. No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the representative of an estate, and rejected by the representative or by the court, in whole or in part.

Revised Law

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. (Tex. Prob. Code, Sec. 313 (part).)

Source Law

Sec. 313. . . . When a rejected claim or part thereof has been established by suit, no execution shall issue, but the judgment shall be filed in the court in which the cause is pending, entered upon the
claim docket, classified by the court, and handled as
if originally allowed and approved in due course of
administration.

[Sections 355.067-355.100 reserved for expansion]

SUBCHAPTER C. PAYMENT OF CLAIMS, ALLOWANCES, AND EXPENSES

Revised Law

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. (Tex. Prob. Code, Sec. 319.)

Source Law

Sec. 319. No claim for money against the estate
of a decedent, or any part thereof, shall be paid until
it has been approved by the court or established by the
judgment of a court of competent jurisdiction.

Revised Law

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 institutional division of 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). (Tex. Prob. Code, Sec. 322.)

Source Law

Sec. 322. Claims against an estate of a decedent shall be classified and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed a total of Fifteen Thousand Dollars, with any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safekeeping, and management of the estate, including fees and expenses awarded under Section 243 of this code, and unpaid expenses of administration awarded in a guardianship of the decedent.

Class 3. Secured claims for money under Section 306(a)(1), including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage, lien, or security interest shall exist upon the same property, they shall be paid in order of their priority.

Class 4. Claims for the principal amount of and accrued interest on delinquent child support and child support arrearages that have been confirmed and reduced to money judgment, as determined under Subchapter F, Chapter 157, Family Code, and claims for

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unpaid child support obligations under Section 154.015, Family Code.

Class 5. Claims for taxes, penalties, and interest due under Title 2, Tax Code; Chapter 8, Title 132, Revised Statutes; Section 81.111, Natural Resources Code; the Municipal Sales and Use Tax Act (Chapter 321, Tax Code); Section 451.404, Transportation Code; or Subchapter I, Chapter 452, Transportation Code.

Class 6. Claims for the cost of confinement established by the institutional division of the Texas Department of Criminal Justice under Section 501.017, Government Code.

Class 7. Claims for repayment of medical assistance payments made by the state under Chapter 32, Human Resources Code, to or for the benefit of the decedent.

Class 8. All other claims.

Revisor's Note
(1) Section 322, Texas Probate Code, refers to the expenses of last "sickness" of a decedent. Throughout this chapter, the revised law substitutes "illness" for "sickness" in this context because the terms are synonymous and "illness" is the more modern term.

(2) Section 322, Texas Probate Code, refers to Chapter 8, Title 132, Revised Statutes, which provided for regulation of and taxation on coin-operated machines. That chapter was codified in 1999 as Chapter 2153, Occupations Code, by Chapter 388, Acts of the 76th Legislature, Regular Session. The revised law is drafted accordingly.

Revised Law
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. (Tex. Prob. Code, Sec. 320(a).)

Source Law

Sec. 320. (a) Priority of Payments. Personal representatives, when they have funds in their hands belonging to the estate, shall pay in the following order:

1. Funeral expenses and expenses of last sickness, in an amount not to exceed Fifteen Thousand Dollars.
2. Allowances made to the surviving spouse and children, or to either.
3. Expenses of administration and the expenses incurred in the preservation, safekeeping, and management of the estate.
4. Other claims against the estate in the order of their classification.

Revisor's Note

Section 320(a), Texas Probate Code, refers to estate funds in the "hands" of a personal representative. The revised law substitutes "possession" for "hands" because the terms are synonymous in context and "possession" is more consistent with modern usage.

Revised Law

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. (Tex. Prob. Code, Sec. 320(b).)
(b) Sale of Mortgaged Property. If a personal representative has the proceeds of a sale that has been made for the satisfaction of a mortgage, lien, or security interest, and the proceeds, or any part of the proceeds, are not required for the payment of any debts against the estate that have a preference over the mortgage, lien, or security interest, the personal representative shall pay the proceeds to any holder of a mortgage, lien, or security interest. If there is more than one mortgage, lien, or security interest against the property, the personal representative shall pay the holders in the order of the holders' priority. If the personal representative fails to pay the proceeds under this subsection, a holder, on proof of the failure to pay, may obtain an order from the court directing the payment to be made.

Revised Law
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. (Tex. Prob. Code, Sec. 320(c).)

Source Law
(c) Claimant's Petition. A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.

Revised Law
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. (Tex. Prob. Code, Sec. 320(d).)
(d) Permissive Order of Payment. After the sixth month after the date letters are granted and on application by the personal representative stating that the personal representative has no actual knowledge of any outstanding enforceable claims against the estate other than the claims already approved and classified by the court, the court may order the personal representative to pay any claim that is allowed and approved.

Revisor's Note

Section 320(d), Texas Probate Code, refers to the date "letters" are granted. For clarity and the convenience of the reader, throughout this chapter in instances in which the law from which the revised law is derived refers simply to "letters," the revised law specifies that the revised law concerns "letters testamentary or of administration" to distinguish those letters from letters of guardianship.

Revised Law

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. (Tex. Prob. Code, Sec. 326.)
Sec. 326. Any creditor of an estate of a decedent whose claim, or part thereof, has been approved by the court or established by suit, may, at any time after twelve months from the granting of letters testamentary, upon written application and proof showing that the estate has on hand sufficient available funds, obtain an order directing that payment be made; or, if there are no available funds, and if to await the receipt of funds from other sources would unreasonably delay payment, the court shall then order sale of property of the estate sufficient to pay the claim; provided, the representative of the estate shall have first been cited on such written complaint to appear and show cause why such order should not be made.

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. (Tex. Prob. Code, Sec. 321.)

Sec. 321. When there is a deficiency of assets to pay all claims of the same class, other than secured claims for money, the claims in such class shall be paid pro rata, as directed by the court, and in the order directed. No personal representative shall be allowed to pay the claims, whether the estate is solvent or insolvent, except with the pro rata amount of the funds of the estate that have come to hand.

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. (Tex. Prob. Code, Sec. 322B.)

Source Law

Sec. 322B. (a) Except as provided by Subsections (b)-(d) of this section, a decedent's property is liable for debts and expenses of administration other than estate taxes, and bequests abate in the following order:

1. property not disposed of by will, but passing by intestacy;
2. personal property of the residuary estate;
3. real property of the residuary estate;
4. general bequests of personal property;
5. general devises of real property;
6. specific bequests of personal property; and
7. specific devises of real property.

(b) This section does not affect the requirements for payment of a claim of a secured creditor who elects to have the claim continued as a preferred debt and lien against specific property under Section 306 of this code.

(c) This section does not apply to the payment of estate taxes under Section 322A of this code.

(d) A decedent's intent, as expressed in a will, controls over the abatement of bequests provided by this section.

Revised Law

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. (Tex. Prob. Code, Sec. 320A.)

Source Law

Sec. 320A. When personal representatives pay claims for funeral expenses and for items incident thereto, such as tombstones, grave markers, crypts or burial plots, they shall charge the whole of such claims to the decedent's estate and shall charge no part thereof to the community share of a surviving spouse.

Revised Law

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. (Tex. Prob. Code, Sec. 315.)

Source Law

Sec. 315. All costs incurred in the probate court with respect to claims shall be taxed as follows:
(a) If allowed and approved, the estate shall pay the costs.
(b) If allowed, but disapproved, the claimant shall pay the costs.
(c) If rejected, but established by suit, the estate shall pay the costs.
(d) If rejected, but not established by suit, the claimant shall pay the costs, except as provided by Section 310 of this code.
(e) In suits to establish a claim after rejection in part, if the claimant fails to recover judgment for a greater amount than was allowed or...
approved, the claimant shall pay all costs.

Revised Law
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. (Tex. Prob. Code, Sec. 323.)

Source Law
Sec. 323. When two or more persons are jointly bound for the payment of a debt, or for any other purpose, upon the death of any of the persons so bound, the decedent's estate shall be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly.

Revised Law
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. (Tex. Prob. Code, Sec. 328.)

Source Law

Sec. 328. (a) Procedure to Force Payment. If any representative of an estate shall fail to pay on demand any money ordered by the court to be paid to any person, except to the State Treasury, when there are funds of the estate available, the person or claimant entitled to such payment, upon affidavit of the demand and failure to pay, shall be authorized to have execution issued against the property of the estate for the amount due, with interest and costs; or

(b) Penalty Against Representative. Upon return of the execution not satisfied, or merely upon the affidavit of demand and failure to pay, the court may cite the representative and the sureties on the representative's bond to show cause why they should not be held liable for such debt, interest, costs, and damages. Upon return of citation duly served, if good cause to the contrary be not shown, the court shall render judgment against the representative and sureties so cited, in favor of the holder of such claim, for the amount theretofore ordered to be paid or established by suit, and remaining unpaid, together with interest and costs, and also for damages upon the amount neglected to be paid, at the rate of five percent per month for each month, or fraction thereof, that the payment was neglected to be paid after demand made therefor, which damages may be collected in any court of competent jurisdiction.

Revisor's Note

Section 328(b), Texas Probate Code, refers to a "citation duly served." The revised law omits the reference to "duly" in this context because the word does not add to the clear meaning of the law. The requirement that the citation be served is sufficient to convey that the requirements for service must be
[Sections 355.114-355.150 reserved for expansion]

SUBCHAPTER D. PRESENTMENT AND PAYMENT OF SECURED CLAIMS FOR MONEY

Revised Law

Sec. 355.151. OPTION TO TREAT CLAIM AS MATURER 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. (Tex. Prob. Code, Sec. 306(a).)

Source Law

Sec. 306. (a) Specifications of Claim. When a secured claim for money against an estate is presented, the claimant shall specify therein, in addition to all other matters required to be specified in claims:

(1) Whether it is desired to have the claim allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved; or

(2) Whether it is desired to have the claim allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract which secured the lien, in which event it shall be so allowed and approved if it is a valid lien; provided, however, that the personal representative may pay said claim prior to maturity if it is for the best interest of the estate to do so.

Revised Law

Sec. 355.152. PERIOD FOR SPECIFYING TREATMENT OF SECURED

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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). (Tex. Prob. Code, Sec. 306(b).)

Source Law

(b) Time for Specification of Secured Claim. Within six months after the date letters are granted, or within four months after the date notice is received under Section 295 of this code, whichever is later, the secured creditor may present the creditor's claim and shall specify whether the claim is to be allowed and approved under Paragraph (1) or (2) of Subsection (a) of this section. If a secured claim is not presented within the time prescribed by this subsection or if the claim is presented without specifying how the claim is to be paid, it shall be treated as a claim to be paid in accordance with Paragraph (2) of Subsection (a) hereof.

Revised Law

Sec. 355.153. PAYMENT OF MATUR ED 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). (Tex. Prob. Code, Secs. 306(c), (c-1).)

Source Law

(c) Matured Secured Claims. If a claim has been allowed and approved as a matured secured claim under Paragraph (1) of Subsection (a) of this section, the claim shall be paid in due course of administration and the secured creditor is not entitled to exercise any other remedies in a manner that prevents the preferential payment of claims and allowances described by Paragraphs (1) through (3) of Section 320(a) of this code.

(c-1) If a claimant presents a secured claim against an estate for a debt that would otherwise pass with the property securing the debt to one or more devisees in accordance with Section 71A(a) of this code and the claim is allowed and approved as a matured secured claim under Subsection (a)(1) of this section, the personal representative shall collect from the devisees the amount of the debt and pay that amount to the claimant in satisfaction of the claim. Each devisee's share of the debt is an amount equal to a fraction representing the devisee's ownership interest in the property, multiplied by the amount of the debt. If the personal representative is unable to collect from the devisees an amount sufficient to pay the debt, the personal representative shall sell the
property securing the debt, subject to Part 5 of this chapter. The personal representative shall use the sale proceeds to pay the debt and any expenses associated with the sale and shall distribute the remaining sale proceeds to each devisee in an amount equal to a fraction representing the devisee's ownership interest in the property, multiplied by the amount of the remaining sale proceeds. If the sale proceeds are insufficient to pay the debt and any expenses associated with the sale, the difference between the sum of the amount of the debt and the expenses associated with the sale and the sale proceeds shall be paid under Subsection (c) of this section.

Revisor's Note

Section 306(c-1), Texas Probate Code, refers to "Part 5 of this chapter," meaning Part 5, Chapter VIII, Texas Probate Code, which includes Sections 331 through 358. Sections 331 through 358 are revised as Chapter 356 of this code. The revised law is drafted accordingly.

Revised Law

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. (Tex. Prob. Code, Sec. 306(d).)

Source Law

(d) Approved Claim as Preferred Lien Against Property. When an indebtedness has been allowed and approved under Paragraph (2) of Subsection (a) hereof, no further claim shall be made against other assets of the estate by reason thereof, but the same thereafter shall remain a preferred lien against the property securing same, and the property shall remain security for the debt in any distribution or sale thereof prior to final maturity and payment of the debt.

Revised Law

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. (Tex. Prob. Code, Sec. 306(e).)

(e) Payment of Maturities on Preferred Debt and
Lien Claims. If property securing a claim allowed,
approved, and fixed under Paragraph (2) of Subsection
(a) hereof is not sold or distributed within six months
from the date letters are granted, the representative
of the estate shall promptly pay all maturities which
have accrued on the debt according to the terms
thereof, and shall perform all the terms of any
contract securing same. If the representative
defaults in such payment or performance, on
application of the claimholder, the court shall:

1. require the sale of said property
subject to the unmatured part of such debt and apply
the proceeds of the sale to the liquidation of the
maturities;
2. require the sale of the property free
of the lien and apply the proceeds to the payment of
the whole debt; or
3. authorize foreclosure by the
claimholder as provided by Subsections (f) through (k)
of this section.

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.

(Tex. Prob. Code, Sec. 306(f).)

Source Law

(f) Foreclosure of Preferred Liens. An application by a claimholder under Subsection (e) of this section to foreclose the claimholder's lien or security interest on property securing a claim that has been allowed, approved, and fixed under Paragraph (2) of Subsection (a) of this section shall be supported by affidavit of the claimholder that:

1. describes the property or part of the property to be sold by foreclosure;
2. describes the amounts of the 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.

Revised Law

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. (Tex. Prob. Code, Sec. 306(g).)

Source Law

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). (Tex. Prob. Code, Secs. 306(h),
(i)(1), (j).)

Source Law
(h) Setting of Hearing on Application. When an
application is filed, the clerk shall immediately
notify the judge. The judge shall schedule in writing
a date for a hearing on the application. The judge
may, by entry on the docket or otherwise, continue the
hearing for a reasonable time to allow an interested
person to obtain an appraisal or other evidence
concerning the fair market value of the property that
is the subject of the application. If the interested
person requests an unreasonable time for a
continuance, the person must show good cause for the
continuance.
(i) Hearing. (1) At the hearing, if the court
finds that there is a default in payment or performance
under the contract that secures the payment of the
claim, the court shall:
(A) require the sale of the property
subject to the unmatured part of the debt and apply the
proceeds of the sale to the liquidation of the
maturities;
(B) require the sale of the property
free of the lien and apply the proceeds to the payment
of the whole debt; or
(C) authorize foreclosure by the
claimholder as provided by Subsection (f) of this
section.
(j) Appeal. Any person interested in the estate
may appeal an order issued under Subsection (i)(1)(C)
of this section.

Revised Law
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. (Tex. Prob.
Code, Sec. 306(i)(2).)

Source Law

(2) When the court grants a claimholder
the right of foreclosure, the court shall authorize
the claimholder to foreclose the claimholder's
mortgage, lien, or security interest in accordance
with the provisions of the document creating the
mortgage, lien, or security interest or in any other
manner allowed by law. In the discretion of the court
and based on the evidence presented at the hearing, the
court may fix a minimum price for the property to be
sold by foreclosure that does not exceed the fair
market value of the property. If the court fixes a
minimum price, the property may not be sold at the
foreclosure sale for a lower price.

Revised Law

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. (Tex. Prob. Code, Sec. 306(k).)

Source Law

(k) Unsuccessful Foreclosure. If a foreclosure
sale authorized under this section is conducted and
the property is not sold because no bid at the sale met
the minimum price set by the court, the claimholder may
file another application under Subsection (f) of this
section. The court may, in the court's discretion,
eliminate or modify the minimum price requirement and
grant permission for another foreclosure sale.

Revisor's Note

Section 306(k), Texas Probate Code, provides that
a claim holder may file a subsequent application for
foreclosure under Section 306(f), Texas Probate Code.
Subsections (f) through (k) were added to Section 306,
Texas Probate Code, by Chapter 1054, Acts of the 74th
Legislature, Regular Session, 1995. Subsection (f) in
part provided for the filing of an application
supported by an affidavit for foreclosure by a claim holder. Subsection (k) referred to an application under Subsection (f). Chapter 1054 also amended Subsection (e) of Section 306 to require the court, under certain circumstances, to authorize foreclosure under Subsection (f) on application of the claim holder.

In 1997, the legislature amended Subsections (e) and (f) in Chapter 1302, Acts of the 75th Legislature, Regular Session. Chapter 1302 retained the reference in Subsection (e) to a claim holder's application to foreclose, but amended Subsection (f) to refer to 
"[a]n application by a claimholder under Subsection (e)" to foreclose, clarifying that the authority to file the application is derived from Subsection (e), rather than Subsection (f). However, the reference in Subsection (k) to an "application under Subsection (f)" was not amended. Because the authority for the application is derived from Subsection (e), it is clear that the legislature's failure to change the reference in Subsection (k) was an oversight. For that reason, the revised law substitutes a reference to an application for foreclosure under Section 355.155(b)(3) of this chapter, which is the revision of Section 306(e)(3), Texas Probate Code.

[Sections 355.161-355.200 reserved for expansion]

SUBCHAPTER E. CLAIMS INVOLVING PERSONAL REPRESENTATIVES

Revised Law

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 presentation 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. (Tex. Prob. Code, Sec. 317.)

Source Law

Sec. 317. (a) By Executors or Administrators. The foregoing provisions of this Code relative to the presentation of claims against an estate shall not be construed to apply to any claim of a personal representative against the testator or intestate; but a personal representative holding such claim shall file the same in the court granting the letters, verified by affidavit as required in other cases, within six months after the representative has qualified, or such claim shall be barred.

(b) Action on Such Claims. When a claim by a personal representative has been filed with the court within the required time, such claim shall be entered upon the claim docket and acted upon by the court in the same manner as in other cases, and, when the claim has been acted upon by the court, an appeal from the judgment of the court may be taken as in other cases.

(c) Provisions Not Applicable to Certain Claims. The foregoing provisions relative to the presentation of claims shall not be so construed as to apply to a claim:

(1) of any heir, devisee, or legatee who
claims in such capacity;
(2) that accrues against the estate after
the granting of letters for which the representative
of the estate has contracted; or
(3) for delinquent ad valorem taxes
against a decedent's estate that is being administered
in probate in:
(A) a county other than the county in
which the taxes were imposed; or
(B) the same county in which the
taxes were imposed, if the probate proceedings have
been pending for more than four years.

Revisor's Note
(1) Section 317(a), Texas Probate Code, refers
to "[t]he foregoing provisions of this Code relative
to" the presentment of claims against an estate.
Because all of the applicable provisions of the Texas
Probate Code related to the presentment of claims are
revised in this chapter, the revised law substitutes a
reference to "this chapter" for the quoted language.
(2) Section 317(a), Texas Probate Code, refers
to a "testator or intestate." Throughout this
chapter, the revised law substitutes "decedent" for
the quoted terms for consistency of terminology and
because a "decedent" includes a person who dies
without a will, referred to as an "intestate," and a
person who dies leaving a will, referred to as a
"testator."

Revised Law
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.
(Tex. Prob. Code, Sec. 316.)
Source Law

Sec. 316. The naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against the person named as executor; and, in all cases where a personal representative is indebted to the testator or intestate, the representative shall account for the debt in the same manner as if it were cash in the representative's hands; provided, however, that if said debt was not due at the time of receiving letters, the representative shall be required to account for it only from the date when it becomes due.

Revised Law

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. (Tex. Prob. Code, Sec. 324.)

Source Law

Sec. 324. It shall be unlawful, and cause for removal, for a personal representative whether acting under appointment by will or under orders of the court, to purchase for the personal representative's own use or for any purposes whatsoever, any claim against the estate the personal representative represents. Upon written complaint by any person interested in the estate, and satisfactory proof of violation of this provision, after citation and hearing, the court shall enter its order cancelling the claim, and no part thereof shall be paid out of the estate; and the court may, in the court's discretion, remove such representative.

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CHAPTER 356. SALE OF ESTATE PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

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. (Tex. Prob. Code, Sec. 331.)

Source Law

Sec. 331. Except as hereinafter provided, no sale of any property of an estate shall be made without an order of court authorizing the same. The court may order property sold for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when otherwise specially provided herein.

Revisor's Note

Section 331, Texas Probate Code, provides that
estate property may not be sold without a court order "[e]xcept as hereinafter provided," meaning as provided by Part 5, Chapter VIII, Texas Probate Code, consisting of Sections 331-358, and states that the court may order the sale of estate property by certain methods of payment and in certain manners "except when otherwise specially provided herein," meaning in Part 5, Chapter VIII, Texas Probate Code, consisting of Sections 331-358. The revised law substitutes "by this chapter" for "hereinafter" and "herein" because this chapter contains the revision of Sections 331-358, Texas Probate Code, which are the provisions relating to the sale of estate property.

Revised Law
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. (Tex. Prob. Code, Sec. 332.)

Source Law
Sec. 332. Whenever by the terms of a will an executor is authorized to sell any property of the testator, no order of court shall be necessary to authorize the executor to make such sale, and the sale may be made at public auction or privately as the executor deems to be in the best interest of the estate and may be made for cash or upon such credit terms as the executor shall determine; provided, that when particular directions are given by a testator in his will respecting the sale of any property belonging to
his estate, the same shall be followed, unless such
directions have been annulled or suspended by order of
the court.

[Sections 356.003-356.050 reserved for expansion]

SUBCHAPTER B. CERTAIN ESTATE PROPERTY REQUIRED TO BE SOLD

Revised Law

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. (Tex. Prob. Code,
Sec. 333.)

Source Law

Sec. 333. (a) The representative of an estate,
after approval of inventory and appraisement, shall
promptly apply for an order of the court to sell at
public auction or privately, for cash or on credit not
exceeding six months, all of the estate that is liable
to perish, waste, or deteriorate in value, or that will
be an expense or disadvantage to the estate if kept.
Property exempt from forced sale, specific legacies,
and personal property necessary to carry on a farm,
ranch, factory, or any other business which it is thought best to operate, shall not be included in such sales.

(b) In determining whether to order the sale of an asset under Subsection (a) of this section, the court shall consider:

(1) the representative's duty to take care of and manage the estate as a person of ordinary prudence, discretion, and intelligence would exercise in the management of the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Chapter 117 or Subchapter F, Chapter 113, Property Code.

Revisor's Note

(1) Section 333(a), Texas Probate Code, refers to "[t]he representative of an estate." For consistency of terminology throughout this chapter, the revised law substitutes references to "personal representative" for initial references to "representative" in a provision for clarity and because, under Section 3(aa), Texas Probate Code, revised as Section 22.031 of this code, the terms are synonymous.

(2) Section 333(a), Texas Probate Code, refers to the approval of the "inventory and appraisement" of an estate. The inventory and appraisement is filed with a list of claims for the estate, as provided by Section 251, Texas Probate Code, revised as Section 309.052 of this code, and approved with that list, as provided by Section 255, Texas Probate Code, revised as Section 309.054 of this code. For accuracy, the revised law substitutes "inventory, appraisement, and list of claims" for "inventory and appraisement."

[Sections 356.052-356.100 reserved for expansion]

SUBCHAPTER C. SALE OF PERSONAL PROPERTY

Revised Law

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
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. (Tex. Prob. Code, Sec. 334 (part).)

Source Law

Sec. 334. Upon application by the personal
representative of the estate or by any interested
person, the court may order the sale of any personal
property of the estate not required to be sold by the
preceding Section, including growing or harvested
crops or livestock, but not including exempt property
or specific legacies, if the court finds that so to do
would be in the best interest of the estate in order to
pay expenses of administration, funeral expenses,
expenses of last illness, allowances, or claims
against the estate, from the proceeds of the sale of
such property.

Revised Law

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. (Tex. Prob. Code, Sec. 334 (part).)

Source Law

Sec. 334. In so far as possible, applications and orders for the sale of personal
property shall conform to the requirements hereinafter
set forth for applications and orders for the sale of
real estate.

Revisor's Note

Section 334, Texas Probate Code, provides that
applications and orders for the sale of personal
property must conform to the requirements "hereinafter
set forth" for applications and orders for the sale of
real estate. The revised law substitutes a reference
to Subchapter F of this chapter for "hereinafter set
forth" because the relevant requirements for the sale of real estate are revised as that subchapter.

Revised Law
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. (Tex. Prob. Code, Sec. 336.)

Source Law
Sec. 336. All sales of personal property at public auction shall be made after notice has been issued by the representative of the estate and posted as in case of posting for original proceedings in probate, unless the court shall otherwise direct.

Revised Law
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. (Tex. Prob. Code, Sec. 337.)

Source Law
Sec. 337. No more than six months credit may be allowed when personal property is sold at public auction, based upon the date of such sale. The purchaser shall be required to give his note for the amount due, with good and solvent personal security, before delivery of such property can be made to him, but security may be waived if delivery is not to be made until the note, with interest, has been paid.

Revised Law
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. (Tex. Prob. Code, Sec. 339.)

Source Law
Sec. 339. All sales of personal property shall be reported to the court, and the laws regulating sales of real estate as to confirmation or disapproval of sales shall apply, but no conveyance shall be necessary. The decree confirming the sale of personal property shall vest the right and title of the estate of the intestate in the purchaser who has complied with the terms of the sale, and shall be prima facie evidence that all requirements of the law in making the sale have been met. The representative of an estate may, upon request, issue a bill of sale without warranty to the purchaser as evidence of title, the expense thereof to be borne by the purchaser.

Revisor's Note
Section 339, Texas Probate Code, refers to a court "decree" confirming a sale of estate personal property. The revised law substitutes "order" for "decree" for consistency of terminology throughout this chapter and because, in context, the terms are synonymous.

[Sections 356.106-356.150 reserved for expansion]

SUBCHAPTER D. SALE OF LIVESTOCK

Revised Law
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. (Tex. Prob. Code, Sec. 335 (part).)

Source Law

Sec. 335. When the personal representative of
an estate has in his possession any livestock which he
deems necessary or to the advantage of the estate to
sell, he may, in addition to any other method provided
by law for the sale of personal property, obtain
authority from the court in which the estate is pending
to sell such livestock through a bonded livestock
commission merchant, or a bonded livestock auction
commission merchant. Such authority may be granted by
the court upon written and sworn application by the
personal representative, or by any person interested
in the estate, . . . .

Revised Law

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. (Tex. Prob. Code,
Sec. 335 (part).)

Source Law

Sec. 335. . . . [Such authority may be granted
by the court upon written and sworn application] . . .
describing the livestock sought to be sold, and
setting out the reasons why it is deemed necessary or
to the advantage of the estate that the application be
granted. The court shall forthwith consider any such
application, and may, in its discretion, hear evidence
for or against the same, with or without notice, as the
facts warrant. . . .

Revisor’s Note

Section 335, Texas Probate Code, provides that
the court shall consider an application to sell
livestock “forthwith.” Throughout this chapter, the
revised law substitutes "promptly" for "forthwith" because the terms are synonymous in context and "promptly" is more consistent with modern usage.

Revised Law
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. (Tex. Prob. Code, Sec. 335 (part).)

Source Law
Sec. 335. . . . If the application be granted, the court shall enter its order to that effect, and shall authorize delivery of the livestock to any bonded livestock commission merchant or bonded livestock auction commission merchant for sale in the regular course of business. . . .

Revised Law
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. (Tex. Prob. Code, Sec. 335 (part).)

Source Law
Sec. 335. . . . A report of such sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the personal representative to the court, but no order of confirmation by the court is required to pass title to the purchaser of such livestock.

Revised Law
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. (Tex. Prob. Code, Sec. 335 (part).)

Source Law
Sec. 335. . . . The commission merchant shall be paid his usual and customary charges, not to exceed 5 percent of the sale price, for the sale of livestock authorized under this subchapter.
funds per cent of the sale price, for the sale of such
livestock. . . .

[Sections 356.156-356.200 reserved for expansion]

SUBCHAPTER E. SALE OF MORTGAGED PROPERTY

Revised Law

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. (Tex. Prob. Code, Sec. 338 (part).)

Source Law

Sec. 338. Any creditor holding a claim secured
by a valid mortgage or other lien, which has been
allowed and approved or established by suit, may
obtain from the court in which the estate is pending an
order that said property, or so much thereof as
necessary to satisfy his claim, shall be sold, by
filing his written application therefor. . . .

Revised Law

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. (Tex. Prob. Code, Sec.
338 (part).)

Source Law

Sec. 338. . . . Upon the filing of such
application, the clerk shall issue citation requiring
the representative of the estate to appear and show
cause why such application should not be granted.

Revised Law

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

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estate. (Tex. Prob. Code, Sec. 338 (part).)

Source Law

Sec. 338. . . . If it appears to the court that it would be advisable to discharge the lien out of the general assets of the estate or that it be refinanced, he may so order; otherwise, he shall grant the application and order that the property be sold at public or private sale, as deemed best, as in ordinary cases of sales of real estate.

[Sections 356.204-356.250 reserved for expansion]

SUBCHAPTER F. SALE OF REAL PROPERTY: APPLICATION AND ORDER FOR SALE

Revised Law

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.

(Tex. Prob. Code, Sec. 341.)

Source Law

Sec. 341. Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents.

(2) Dispose of any interest in real property of the estate of a decedent, when it is deemed to the best interest of the estate to sell such interest.

Revisor's Note

Section 341(1), Texas Probate Code, refers to the expenses of last "sickness" of a decedent. The revised law substitutes "illness" for "sickness" for consistency of terminology throughout this chapter,
and because the terms are synonymous and "illness" is the more modern term.

Revised Law

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. (Tex. Prob. Code, Sec. 342.)

Source Law

Sec. 342. An application for the sale of real estate shall be in writing, shall describe the real estate or interest in or part thereof sought to be sold, and shall be accompanied by an exhibit, verified by affidavit, showing fully and in detail the condition of the estate, the charges and claims that have been approved or established by suit, or that have been rejected and may yet be established, the amount of each such claim, the property of the estate remaining on hand liable for the payment of such claims, and any other facts tending to show the necessity or advisability of such sale.

Revised Law

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. (Tex. Prob. Code, Sec. 344.)

Source Law

Sec. 344. Upon the filing of such application
and exhibit, the clerk shall issue a citation to all
persons interested in the estate, describing the land
or interest or part thereof sought to be sold, and
informing them of the right under Section 345 of this
code to file an opposition to the sale during the
period prescribed by the court as shown in the
citation, if they so elect. Service of such citation
shall be by posting.

Revisor's Note

Section 344, Texas Probate Code, requires the
clerk to issue a citation describing the "land or
interest or part thereof sought to be sold" on the
filing of "such application and exhibit." It is clear
from the context that the application and exhibit
referred to in Section 344 is the application and
exhibit described in Section 342, Texas Probate Code,
revised in this chapter as Section 356.252. That
section prescribes the requirements for an application
for the sale of "real estate." The revised law
therefore substitutes "real estate" for "land" in this
case for consistency of terminology.

Revised Law

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. (Tex. Prob. Code, Sec. 345.)

Source Law

Sec. 345. When an application for an order of
sale is made, any person interested in the estate may,
during the period provided in the citation issued under Section 344 of this code, file his opposition to the sale, in writing, or may make application for the sale of other property of the estate.

Revised Law

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. (Tex. Prob. Code, Sec. 345A.)

Source Law

Sec. 345A. (a) The clerk of a court in which an application for an order of sale is filed shall immediately call to the attention of the judge any opposition to the sale that is filed during the period provided in the citation issued under Section 344 of this code. The court shall hold a hearing on an application if an opposition to the sale is filed during the period provided in the citation. (b) A hearing on an application for an order of sale is not required under this section if no opposition to the application is filed during the period provided in the citation. The court, in its discretion, may determine that a hearing is necessary on the application even if no opposition was filed during that period.

(c) If the court orders a hearing under...
Subsection (a) or (b) of this section, the court shall designate in writing a date and time for hearing the application and any opposition, together with the evidence pertaining to the application and opposition. The clerk shall issue a notice to the applicant and to each person who files an opposition to the sale, if applicable, of the date and time of the hearing.

(d) The judge may, by entries on the docket, continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

Revised Law
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. (Tex. Prob. Code, Sec. 82C95 MTB-D 582)
Sec. 346. If satisfied that the sale of the property of the estate described in the application is necessary or advisable, the court shall order the sale to be made; otherwise, the court may deny the application and may, if it deems best, order the sale of other property the sale of which would be more advantageous to the estate. An order for the sale of real estate shall specify:

(a) The property to be sold, giving such description as will identify it; and
(b) Whether the property is to be sold at public auction or at private sale, and, if at public auction, the time and place of such sale; and
(c) The necessity or advisability of the sale and its purpose; and
(d) Except in cases in which no general bond is required, that, having examined the general bond of the representative of the estate, the court finds it to be sufficient as required by law, or finds the same to be insufficient and specifies the necessary or increased bond, as the case may be; and
(e) That the sale shall be made and the report returned in accordance with law; and
(f) The terms of the sale.

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. (Tex. Prob. Code, Sec. 340.)

Sec. 340. Real property of the estate which is selected to be sold for the payment of expenses or claims shall be that which the court deems most advantageous to the estate to be sold.

[Sections 356.258-356.300 reserved for expansion]

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. (Tex. Prob. Code, Sec. 348(a) (part).)
credit, or the equity in land securing an indebtedness may be sold subject to such indebtedness, or with an assumption of such indebtedness, at public or private sale, as appears to the court to be for the best interest of the estate.

Revised Law
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. (Tex. Prob. Code, Sec. 348(a) (part).)

Source Law
(a) When real estate is sold partly on credit, the cash payment shall not be less than one-fifth of the purchase price, and the purchaser shall execute a note for the deferred payments payable in monthly, quarterly, semi-annual or annual installments, of such amounts as appears to the court to be for the best interest of the estate, to bear interest from date at a rate of not less than four percent (4%) per annum, payable as provided in such note. Default in the payment of principal or interest, or any part thereof when due, shall, at the election of the holder of such note, mature the whole debt. Such note shall be secured by vendor's lien retained in the deed and in the note upon the property sold, and be further secured by deed of trust upon the property sold, with the usual provisions for foreclosure and sale upon failure to make the payments provided in the deed and notes.

[Sections 356.303-356.350 reserved for expansion]
SUBCHAPTER H. RECONVEYANCE OF REAL ESTATE FOLLOWING FORECLOSURE

Revised Law
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. (Tex. Prob. Code, Sec. 348(b) (part).)

Source Law
(b) Reconveyance Upon Redemption. When an estate owning real estate by virtue of foreclosure of vendor's lien or mortgage belonging to the estate, either by judicial sale or by a foreclosure suit or through sale under deed of trust or by acceptance of a deed in cancellation of a lien or mortgage owned by the estate, and...

Revised Law
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. (Tex. Prob. Code, Sec. 348(b) (part).)

Source Law
(b) ... it appears to the court that an application to redeem the property foreclosed upon has been made by the former owner of the real estate to any corporation or agency now created or hereafter to be created by any Act or Acts of the Congress of the United States or of the State of Texas in connection...
with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate, and it further appears to the court that it would be to the best interest of the estate to own bonds of one of the above named federal or state corporations or agencies instead of the real estate, then upon proper application and proof, the court may dispense with the provisions of credit sales as provided above, and may order reconveyance of the property to the former mortgage debtor, or former owner, . . . .

Revisor's Note

(1) Section 348(b), Texas Probate Code, in part refers to the "property" foreclosed upon and to the reconveyance of the "property." Another portion of Section 348(b) revised in this chapter as Section 356.351 refers to "real estate" owned by an estate as a result of a foreclosure. Because it is clear that the "property" referred to in this portion of Section 348(b) is the "real estate" referred to in the other portion of the section, the revised law substitutes "real estate" for "property" for consistency of terminology.

(2) Section 348(b), Texas Probate Code, refers to a corporation or agency "now created or hereafter to be created" by an Act of the United States Congress or of this state. The revised law omits the quoted language as unnecessary because under Section 311.022, Government Code (Code Construction Act), applicable to the revised law, a statute is presumed to operate prospectively. Therefore, the provision would include any corporation or agency in existence on the date Section 348(b) was enacted or created after that date.

(3) Section 348(b), Texas Probate Code, authorizes the court to dispense with the requirements for credit sales "as provided above." Because it is clear from the context that the quoted language refers to the requirements for credit sales of real estate in Section 348(a), Texas Probate Code, revised in this chapter as Section 356.302, the revised law
substitutes "prescribed by Section 356.302" for "as provided above."

Revised Law

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. (Tex. Prob. Code, Sec. 348(b) (part).)

Source Law

(b) ... reserving vendor's lien notes for the total amount of the indebtedness due or for the total amount of bonds which the corporation or agency above named is under its rules and regulations allowed to advance, and, upon obtaining such an order, it shall be proper for the representative to indorse and assign the notes so obtained over to any one of the corporations or agencies above named in exchange for bonds of that corporation or agency.

[Sections 356.354-356.400 reserved for expansion]

SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC SALE

Revised Law

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. (Tex. Prob. Code, Sec. 349(a).)

Source Law

Sec. 349. (a) Notice of Sale. Except as hereinafter provided, all public sales of real estate shall be advertised by the representative of the estate by a notice published in the county in which the estate is pending, as provided in this Code for publication of notices or citations. Reference shall be made to the order of sale, the time, place, and the required terms of sale, and a brief description of the property to be sold shall be given. It need not contain field notes, but if rural property, the name of the original survey, the number of acres, its locality in the county, and the name by which the land is generally known, if any, shall be given.

Revisor's Note

(1) Section 349(a), Texas Probate Code, provides that "[e]xcept as hereinafter provided," the personal representative shall provide notice of a public sale of real estate in a certain manner. Section 349(c), Texas Probate Code, revised in relevant part as Section 356.403(c) of this chapter, is the provision following Section 349(a) that contains the referenced exception. The revised law is drafted accordingly.

(2) Section 349(a), Texas Probate Code, requires certain notice to be published "as provided in this Code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this Code" because the provisions of the Texas Probate Code that relate to the
publication of notice with respect to a decedent's estate are revised in Title 2 of this code, and this chapter is included in that title.

(3) Section 349(a), Texas Probate Code, provides that a notice of the public sale of "real estate" must include a description of the "property" to be sold and, if the property is rural, any name by which the "land" is generally known. The revised law substitutes "real estate" for "property" and "land" in this context for consistency of terminology. Similar changes are made throughout this subchapter, the provisions of which are all derived from Section 349, Texas Probate Code.

Revised Law
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.
(Tex. Prob. Code, Sec. 349(b).)

Source Law
(b) Method of Sale. All public sales of real estate shall be made at public auction to the highest bidder.

Revised Law
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.

(Tex. Prob. Code, Sec. 349(c).)

(c) Time and Place of Sale. All such sales shall be made in the county in which the proceedings are pending, at the courthouse door of said county, or other place in such county where sales of real estate are specifically authorized to be made, on the first Tuesday of the month after publication of notice shall have been completed, between the hours of ten o'clock A.M. and four o'clock P.M., provided, that if deemed advisable by the court, he may order such sale to be made in the county in which the land is situated, in which event notice shall be published both in such county and in the county where the proceedings are pending.

Revised Law
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. (Tex. Prob. Code, Sec. 349(d).)

(d) Continuance of Sales. If sales are not completed on the day advertised, they may be continued from day to day by making public announcement verbally of such continuance at the conclusion of the sale each day, such continued sales to be within the same hours as hereinbefore prescribed. If sales are so continued, the fact shall be shown in the report of sale made to the court.

Revisor's Note
Section 349(d), Texas Probate Code, provides that if a public sale of real estate of an estate is not completed on the day advertised, the sale may be continued from day to day within the same hours "as hereinbefore prescribed." The revised law substitutes a reference to Section 356.403(b) for the quoted language because the relevant part of Section 349(c), Texas Probate Code, that prescribes the hours during
which a public sale of real estate of an estate must occur is revised as that section.

Revised Law

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. (Tex. Prob. Code, Sec. 349(e).)

Source Law

(e) Failure of Bidder to Comply. When any person shall bid off property of an estate offered for sale at public auction, and shall fail to comply with the terms of sale, such property shall be readvertised and sold without any further order; and the person so defaulting shall be liable to pay to the representative of the estate, for its benefit, ten percent of the amount of his bid, and also any deficiency in price on the second sale, such amounts to be recovered by such representative by suit in any court having jurisdiction of the amount claimed, in the county in which the sale was made.

[Sections 356.406-356.450 reserved for expansion]

SUBCHAPTER J. SALE OF REAL ESTATE: PRIVATE SALE

Revised Law

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. (Tex. Prob. Code, Sec. 350.)

Source Law

Sec. 350. All private sales of real estate shall
be made in such manner as the court directs in its
order of sale, and no further advertising, notice, or
citation concerning such sale shall be required,
unless the court shall direct otherwise.

[Sections 356.452-356.500 reserved for expansion]

SUBCHAPTER K. SALE OF EASEMENT OR RIGHT-OF-WAY

Revised Law
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. (Tex. Prob. Code, Sec. 351
(part).)

Source Law
Sec. 351. It shall be lawful to sell and convey
easements and rights of ways on, under, and over the
lands of an estate being administered under orders of a
court, regardless of whether the proceeds of such a
sale are required for payment of charges or claims
against the estate, or for other lawful
purposes. . . .

Revised Law
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. (Tex. Prob. Code, Sec. 351 (part).)

Source Law
Sec. 351. . . . The procedure for such sales
shall be the same as now or hereafter provided by law
for sales of real property of estates of decedents at
private sale.

Revisor's Note
Section 351, Texas Probate Code, provides that
the procedure for the sale of certain easements and
rights-of-way is the same as provided by the law "now,"
meaning on the date of enactment, or "hereafter,"
meaning after that date, for a sale of estate real
property at private sale. The revised law omits the
references to "now" and "hereafter" as unnecessary
because under Section 311.027, Government Code (Code
Construction Act), applicable to the revised law, a
reference to a statute applies to all reenactments, revisions, or amendments of that statute unless expressly provided otherwise.

[Sections 356.503-356.550 reserved for expansion]

SUBCHAPTER L. CONFIRMATION OF SALE OF REAL PROPERTY AND TRANSFER OF TITLE

Revised Law

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. (Tex. Prob. Code, Sec. 353.)

Source Law

Sec. 353. All sales of real property of an estate shall be reported to the court ordering the same within thirty days after the sales are made. Reports shall be in writing, sworn to, and filed with the clerk, and noted on the probate docket. They shall show:

(a) The date of the order of sale.

(b) The property sold, describing it.

(c) The time and place of sale.

(d) The name of the purchaser.

(e) The amount for which each parcel of property or interest therein was sold.

(f) The terms of the sale, and whether made at public auction or privately.

(g) Whether the purchaser is ready to comply with the order of sale.
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. (Tex. Prob. Code, Sec. 355 (part).)

Sec. 355. After the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against such report, and determine the sufficiency or insufficiency of the representative's general bond, if any has been required and given; and, . . . .

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. (Tex. Prob. Code, Sec. 354 (part).)

Sec. 354. If the personal representative of the estate is not required by this Code to furnish a general bond, the sale may be confirmed by the court if found to be satisfactory and in accordance with law. . . .

Revisor's Note

(1) Section 354, Texas Probate Code, refers to a personal representative of an estate who is not required by "this Code," meaning the Texas Probate Code, to give a general bond. The revised law substitutes a reference to "this title" for "this Code" because the provisions of the Texas Probate Code requiring an estate's personal representative to give
a bond are revised in Title 2 of this code, and this
chapter is included in that title.
(2) Section 354, Texas Probate Code, authorizes
the court to confirm "the sale" if the personal
representative of the estate is not required to give a
general bond and the court makes certain findings. The
revised law substitutes "the sale of estate real
property" for "the sale" because it is clear from the
context that the sale to which Section 354 is referring
is a sale of estate real property reported to the court
under Section 353, Texas Probate Code, revised in this
chapter as Section 356.551.

Revised Law
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. (Tex. Prob. Code, Sec. 354
(part).)

Source Law
Sec. 354. [If the personal representative of
the estate is not required by this Code to furnish a
general bond,] . . . . Otherwise, before any sale of
real estate is confirmed, the court shall determine
whether the general bond of said representative is sufficient to protect the estate after the proceeds of the sale are received. If the court so finds, the sale may be confirmed. If the general bond be found insufficient, the sale shall not be confirmed until and unless the general bond be increased to the amount required by the court, or an additional bond given, and approved by the court. The increase, or the additional bond, shall be equal to the amount for which such real estate is sold, plus, in either instance, such additional sum as the court shall find necessary and fix for the protection of the estate; . . . .

Revised Law
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. (Tex. Prob. Code, Sec. 354 (part).)

Source Law
Sec. 354. . . . provided, that where the real estate sold is encumbered by a lien to secure a claim against the estate and is sold to the owner or holder of such secured claim and is in full payment, liquidation, and satisfaction thereof, no increased general bond or additional bond shall be required except for the amount of cash, if any, actually paid to the representative of the estate in excess of the amount necessary to pay, liquidate, and satisfy such claim in full.

Revised Law
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
(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. (Tex. Prob. Code, Sec. 355 (part).)

Source Law
Sec. 355. . . . if he is satisfied that the sale was for a fair price, properly made and in conformity with law, and has approved any increased or additional bond which may have been found necessary to protect the estate, the court shall enter a decree confirming such sale, showing conformity with the foregoing provisions of the Code, and authorizing the conveyance of the property to be made by the representative of the estate upon compliance by the purchaser with the terms of the sale, detailing such terms. If the court is not satisfied that the sale was for a fair price, was properly made, and in conformity with law, an order shall be made setting the same aside and ordering a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale shall have the force and effect of a final judgment; and any person interested in the estate or in the sale shall have the right to have such decrees reviewed as in other final judgments in probate proceedings.

Revisor's Note
(1) Section 355, Texas Probate Code, requires the court in certain circumstances to enter a "decree" confirming a sale of estate real property. Throughout this subchapter, the revised law substitutes "order" for "decree" for the reason stated in the revisor's note to Section 356.105.

(2) Section 355, Texas Probate Code, requires the court, in its order confirming the sale of estate real property, to show that the sale conforms with "the foregoing provisions of the Code," meaning the Texas Probate Code. The revised law substitutes a reference to this chapter for the quoted language because Part 5,
Chapter VIII, Texas Probate Code, contains the requirements for the sale of estate property and those provisions are revised as this chapter.

(3) Section 355, Texas Probate Code, refers to the "force and effect" of the court's action in confirming or disapproving a sale of estate real property. The revised law omits the reference to "force" as unnecessary because, in context, the meaning of that term is included in the meaning of "effect."

Revised Law
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. (Tex. Prob. Code, Sec. 356.)

Source Law
Sec. 356. When real estate is sold, the conveyance shall be by proper deed which shall refer to and identify the decree of the court confirming the sale. Such deed shall vest in the purchaser all right, title, and interest of the estate to such property, and shall be prima facie evidence that said sale has met all applicable requirements of the law.

Revised Law
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. (Tex. Prob. Code, Sec. 357.)

Source Law

Sec. 357. After a sale is confirmed by the court and the terms of sale have been complied with by the purchaser, the representative of the estate shall forthwith execute and deliver to the purchaser a proper deed conveying the property. If the sale is made partly on credit, the vendor's lien securing the purchase money note or notes shall be expressly retained in said deed, and in no event waived, and before actual delivery of said deed to purchaser, he shall execute and deliver to the representative of the estate a vendor's lien note or notes, with or without personal sureties as the court shall have ordered, and also a deed of trust or mortgage on the property as further security for the payment of said note or notes. Upon completion of the transaction, the personal representative shall promptly file or cause to be filed and recorded in the appropriate records in the county where the land is situated said deed of trust or mortgage.

Revised Law

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. (Tex. Prob. Code, Sec. 358.)

Source Law

Sec. 358. Should the representative of an estate neglect to comply with the preceding Section,
or to file the deed of trust securing such lien in the proper county, he and the sureties on his bond shall,
after complaint and citation, be held liable for the use of the estate, for all damages resulting from such neglect, which damages may be recovered in any court of competent jurisdiction, and he may be removed by the court.

[Sections 356.560-356.600 reserved for expansion]

SUBCHAPTER M. PROCEDURE ON FAILURE TO APPLY FOR SALE

Revised Law

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. (Tex. Prob. Code, Sec. 347 (part).)

Source Law

Sec. 347. When the representative of an estate neglects to apply for an order to sell sufficient property to pay the charges and claims against the estate that have been allowed and approved, or established by suit, any interested person may, upon written application, cause such representative to be cited to appear and make a full exhibit of the condition of such estate, and show cause why a sale of the property should not be ordered. . . .

Revised Law

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. (Tex. Prob. Code, Sec. 347 (part).)

Source Law

Sec. 347. . . . Upon hearing such application, if the court is satisfied that a sale of the property is necessary or advisable in order to satisfy such claims, it shall enter an order of sale as provided in the preceding Section.

Revisor's Note

Section 347, Texas Probate Code, refers to a sale of estate property to satisfy "such claims" of the
estate. The revised law substitutes "charges and claims described by Section 356.601" for "such claims" for consistency with the terminology used in a preceding portion of Section 347, Texas Probate Code, which is revised in this chapter as Section 356.601, and because, in context, it is clear that the reference to "such claims" is a reference to the "charges and claims" described in the preceding portion of Section 347.

[Sections 356.603-356.650 reserved for expansion]

SUBCHAPTER N. PURCHASE OF PROPERTY BY PERSONAL REPRESENTATIVE

Revised Law
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. (Tex. Prob. Code, Sec. 352(a).)

Source Law
Sec. 352. (a) Except as provided by Subsection (b), (c), or (d) of this section, the personal representative of an estate shall not become the purchaser, directly or indirectly, of any property of the estate sold by him, or by any co-representative if one be acting.

Revised Law
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. (Tex. Prob. Code, Sec. 352(b).)

Source Law
(b) A personal representative of an estate may purchase property from the estate if the will, duly admitted to probate, appointing the personal representative expressly authorizes the sale.

Revisor's Note
Section 352(b), Texas Probate Code, refers to a
will "duly admitted to probate." The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The requirement that the will be admitted for probate is sufficient to convey that the will must have met the requirements to be admitted to probate.

Revised Law

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. (Tex. Prob. Code, Sec. 352(c).)

Source Law

(c) A personal representative of a decedent may purchase property from the estate of the decedent in compliance with the terms of a written executory contract signed by the decedent, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement.

Revised Law

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.

(Tex. Prob. Code, Sec. 352(d).)

Source Law

(d) After issuing the notice required by this subsection, a personal representative of an estate, including an independent administrator, may purchase property from the estate on the court's determination that the sale is in the best interest of the estate. The personal representative shall give notice by certified mail, return receipt requested, unless the court requires another form of notice, to each distributee of a deceased person's estate and to each creditor whose claim remains unsettled after presenting a claim within six months of the original grant of letters. The court may require additional notice or it may allow for the waiver of the notice required for a sale made under this subsection.

Revisor's Note

Section 352(d), Texas Probate Code, refers to the "original grant of letters" to a personal representative. For clarity and the convenience of the reader, the revised law specifies that the revised law concerns "letters testamentary or of administration" to distinguish those letters from original letters of guardianship, which are issued under Section 659, Texas Probate Code, redesignated as Section 659 of this code.

Revised Law

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. (Tex. Prob. Code, Sec. 352(e).)

Source Law

(e) If a purchase is made in violation of this section, any person interested in the estate may file a written complaint with the court in which the proceedings are pending, and upon service of citation upon the representative, after hearing and proof, such sale shall be by the court declared void, and shall be set aside by the court and the property ordered to be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the representative.

CHAPTER 357. RENTING ESTATE PROPERTY

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CHAPTER 357. RENTING ESTATE PROPERTY

SUBCHAPTER A. RENTAL AND RETURN OF ESTATE PROPERTY

Revised Law

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. (Tex. Prob. 82C95 MTB-D 604
Code, Secs. 359, 360.)

Source Law

Sec. 359. The personal representative of an estate may, without order of court, rent any of its real property or hire out any of its personal property, either at public auction or privately, as may be deemed in the best interest of the estate, for a period not to exceed one year.

Sec. 360. If property of the estate is hired or rented without an order of court, the personal representative shall be required to account to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court upon satisfactory evidence, upon sworn complaint of any person interested in the estate.

Revisor's Note

Section 359, Texas Probate Code, authorizes a personal representative to "rent . . . real property or hire out . . . personal property" of the estate. The revised law substitutes an authorization to "rent [estate] property" for the quoted language for the reasons that follow. First, the revised law omits the reference to "hiring out" property because "hiring out" property is synonymous with "renting" property, and "renting" property is more consistent with modern usage. Similar changes are made throughout this chapter with respect to references to the renting and hiring out of estate property. In addition, the revised law omits the specific references to "real property" and "personal property" in this context and refers only to "property" because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to include both real and personal property and, absent an express limitation, an authorization to rent property is an authorization to rent both real and personal property.

Revised Law

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

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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 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. (Tex. Prob. Code, Sec. 361.)

Source Law

Sec. 361. Representatives of estates, if they prefer, may, and, if the proposed rental period exceeds one year, shall, file a written application with the court setting forth the property sought to be hired or rented. If the court finds that it would be to the interest of the estate, he shall grant the application and issue an order which shall describe the property to be hired or rented, state whether such hiring or renting shall be at public auction or privately, whether for cash or on credit, and, if on credit, the extent of same and the period for which the property may be rented. If to be hired or rented at public auction, the court shall also prescribe whether notice thereof shall be published or posted.

Revised Law

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. (Tex. Prob. Code, Sec. 363.)
Sec. 363. When property is hired or rented on credit, possession thereof shall not be delivered until the hirer or renter has executed and delivered to the representative of the estate a note with good personal security for the amount of such hire or rent; and, if any such property so hired or rented is delivered without receiving such security, the representative and the sureties on his bond shall be liable for the full amount of such hire or rent; provided, that when the hire or rental is payable in installments, in advance of the period of time to which they relate, this Section shall not apply.

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. (Tex. Prob. Code, Sec. 364.)

Sec. 364. All property hired or rented, with or without an order of court, shall be returned to the possession of the estate in as good condition, reasonable wear and tear excepted, as when hired or rented, and it shall be the duty and responsibility of the representative of the estate to see that this is done, to report to the court any loss, damage or destruction of property hired or rented, and to ask for authority to take such action as is necessary; failing so to do, he and the sureties on his bond shall be liable to the estate for any loss or damage suffered through such fault.

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. (Tex. Prob. Code, Sec. 362.)

Source Law

Sec. 362. Any person interested in an estate may file his written and sworn complaint in a court where such estate is pending, and cause the personal representative of such estate to be cited to appear and show cause why he did not hire or rent any property of the estate, and the court, upon hearing such complaint, shall make such order as seems for the best interest of the estate.

[Sections 357.006-357.050 reserved for expansion]

SUBCHAPTER B. REPORT ON RENTED ESTATE PROPERTY

Revised Law

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. (Tex. Prob. Code, Sec. 365.)

Source Law

Sec. 365. (a) When any property of the estate with an appraised value of Three Thousand Dollars or more has been hired or rented, the representative shall, within thirty days thereafter, file with the court a sworn and written report, stating:

(1) The property involved and its appraised value.
(2) The date of hiring or renting, and whether at public auction or privately.
(3) The name of the person or persons hiring or renting such property.
(4) The amount of such hiring or rental.
(5) Whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken therefor.

(b) When the value of the property involved is less than Three Thousand Dollars, the hiring or renting thereof may be reported upon in the next annual or final account which shall be filed as required by law.

Revised Law

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. (Tex. Prob. Code, Sec. 366.)

Source Law

Sec. 366. At any time after five days from the time such report of hiring or renting is filed, it shall be examined by the court and approved and confirmed by order of the court if found just and reasonable; but, if disapproved, the estate shall not
be bound and the court may order another offering of
the property for hire or rent, in the same manner and
subject to the same rules heretofore provided. If the
report has been approved and it later appears that, by
reason of any fault of the representative of the
estate, the property has not been hired or rented for
its reasonable value, the court shall cause the
representative of the estate and his sureties to
appear and show cause why the reasonable value of hire
or rent of such property shall not be adjudged against
him.

Revisor's Note

(1) Section 366, Texas Probate Code, requires
the court to examine and approve a report of renting at
any time after five days from the "time" the report is
filed. The revised law substitutes "date" for "time"
because the specific time of day of the filing is
inconsequential. Under general rules of statutory
construction, for purposes of computing a period of
days, the first day is excluded. Therefore, the time of
day the report is filed is irrelevant in determining
whether the examination and approval occurred after
the period prescribed by Section 366, and the revised
law is drafted accordingly.

(2) Section 366, Texas Probate Code, refers to
the "rules heretofore provided" for the renting of
estate property. The revised law substitutes a
reference to the "provisions of this chapter" for the
quoted language because Sections 359 through 366,
Texas Probate Code, are the provisions that prescribe
the requirements for the renting of estate property,
and those sections are revised as this chapter.

CHAPTER 358. MATTERS RELATING TO MINERAL PROPERTIES

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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.

(Tex. Prob. Code, Sec. 367(a); New.)

Revisor's Note

(1) Section 367(a), Texas Probate Code, refers to "this Part of this Chapter," meaning Part 7, Chapter
VIII, Texas Probate Code. The provisions of Part 7, Chapter VIII, are revised in this code as this chapter. The revised law accordingly substitutes "this chapter" for "this Part of this Chapter."

(2) The definition of "gas" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

[Sections 358.002-358.050 reserved for expansion]

SUBCHAPTER B. MINERAL LEASES AFTER PUBLIC NOTICE

Revised Law

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. (Tex. Prob. Code, Secs. 367(b), (c) (part).)

Source Law

(b) Mineral Leases, With or Without Pooling or Unitization. Personal representatives of the estates of decedents, appointed and qualified under the laws of this State, and acting solely under orders of court, may be authorized by the court in which the probate proceedings on such estates are pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, providing for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), metals, and other solid minerals, and other minerals, or any of such minerals in place, belonging to such estates.

(c) Rules Concerning Applications, Orders, Notices, and Other Essential Matters. All such leases, with or without pooling provisions or unitization clauses, shall be made and entered into pursuant to and
in conformity with the following rules:

Revisor's Note

(1) Section 367(b), Texas Probate Code, refers to gas "(including all liquid hydrocarbons in the gaseous phase)." The revised law omits the quoted language because Section 358.001(1) defines "gas" to include "all liquid hydrocarbons in the gaseous phase in the reservoir." Although Section 358.001(1) refers to hydrocarbons "in the reservoir" and Section 367(b) does not include that reference, it is clear from the context that Section 367(b) is intended to apply to gas in the reservoir, and the revised law is drafted accordingly. Similar changes are made throughout this chapter.

(2) Section 367(c), Texas Probate Code, refers to "such leases, with or without pooling provisions or unitization clauses," meaning leases described by Section 367(b) of that code, which is revised as Subsection (a) of this section. Accordingly, the revised law substitutes a reference to "[a] lease described by Subsection (a)" for the reference to "such leases." The revised law omits the reference to "with or without pooling provisions or unitization clauses" because Subsection (a) of this section applies to a lease "with or without a unitization clause or pooling provision."

Revised Law

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. (Tex. Prob. Code, Sec. 367(c) (part).)

Source Law

1. Contents of Application. The representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application, addressed to the court or the judge of such court, asking for authority to lease property of the estate for mineral exploration and development, with or without pooling provisions or unitization clauses. The application shall (a) describe the property fully enough by reference to the amount of acreage, the survey name or number, or abstract number, or other description adequately identifying the property and its location in the county in which situated; (b) specify the interest thought to be owned by the estate, if less than the whole, but asking for authority to include all interest owned by the estate, if that be the intention; and (c) set out the reasons why such particular property of the estate should be leased. Neither the name of any proposed lessee, nor the terms, provisions, or form of any desired lease, need be set out or suggested in any such application for authority to lease for mineral development.

Revisor's Note

Section 367(c)1, Texas Probate Code, refers to the "representative of the estate." For consistency of terminology throughout this chapter, the revised
law substitutes "personal representative" for initial
references to "representative" in a provision for
clarity and because under Section 3(aa), Texas Probate
Code, revised as Section 22.031 of this code, the terms
are synonymous.

Revised Law
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. (Tex. Prob. Code, Sec. 367(c) (part).)

Source Law
2. Order Designating Time and Place for
Hearing Application.
   (a) Duties of Clerk and Judge. When
an application to lease, as above prescribed, is
filed, the county clerk shall immediately call the
filing of such application to the attention of the
court, and the judge shall promptly make and enter a
brief order designating the time and place for the
hearing of such application.
   (b) Continuance of Hearing. If the
hearing is not had at the time originally designated by
the court or by timely order or orders of continuance
duly entered, then, in such event, the hearing shall be
automatically continued, without further notice, to
the same hour or time the following day (except Sundays
and holidays on which the county courthouse is
officially closed to business) and from day to day
until the application is finally acted upon and
disposed of by order of the court. No notice of such
automatic continuance shall be required.

Revisor's Note
Section 367(c)2(b), Texas Probate Code, refers to
a continuance order "duly" entered. The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The requirement that the order be entered is sufficient to convey that the order must have been entered in the manner required by law.

Revised Law

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. (Tex. Prob. Code, Sec. 367(c) (part).)

Source Law

(c) . . .

3. Notice of Application to Lease, Service of Notice, and Proof of Service.

(a) Notice and Its Contents. The personal representative, and not the county clerk, shall give notice in writing of the time designated by
the judge for the hearing on the application to lease. The notice shall be directed to all persons interested in the estate. It shall state the date on which the application was filed, describe briefly the property sought to be leased, specifying the fractional interest sought to be leased if less than the entire interest in the tract or tracts identified, state the time and place designated by the judge for the hearing, and be dated.

(b) Service of Notice. The personal representative shall give at least ten days notice, exclusive of the date of notice and of the date set for hearing, by publication in one issue of a newspaper of general circulation in the county in which the proceeding is pending, or, if there be no such newspaper, then by posting by the personal representative or at his instance. The date of notice when published shall be the date the newspaper bears.

Revisor's Note

Section 367(c)3(a), Texas Probate Code, requires the personal representative and not the county clerk to give notice in writing of the time designated by the judge for the hearing on the application to lease. The revised law omits the reference to the county clerk as unnecessary because the provision requires the personal representative to give the notice and it is unnecessary to specify any entity who is not required to give the notice. The revised law omits the reference to the notice "in writing" because the notice is required to either be published in a newspaper or posted, both of which require a writing. Finally, the revised law omits the reference to the time designated by the judge for the hearing because that information is specified in the contents of the notice.

Revised Law

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. (Tex. Prob. Code, Sec. 367(c) (part).)

Source Law

(c) . . .

4. Preceding Requirements Mandatory. In the absence of: (a) a written order originally designating a time and place for hearing; (b) a notice issued by the personal representative of the estate in compliance with such order; and (c) proof of publication or posting of such notice as required, any order of the judge or court authorizing any acts to be performed pursuant to said application shall be null and void.

Revisor's Note

Section 367(c)4, Texas Probate Code, refers to an order that is "null and void." The revised law omits the reference to "null" because in context that term is included in the meaning of "void."

Revised Law

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;
notice has been given in the manner and for the
time required by law;
proof of necessity or advisability of leasing is
sufficient; and
the application should be granted.
(c) The order must contain:
the name of the lessee;
any actual cash consideration to be paid by the
lessee;
a finding that the requirements of Subsection (b)
have been satisfied; and
one of the following findings:
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:
the name of the lessee;
the date of the lease;
an adequate description of the property being
leased;
any delay rental to be paid to defer commencement
of operations; and
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. (Tex. Prob. Code, Sec.
367(c) (part).)
the depository bank, or either of them, for receiving rental is not shown in said exhibit copy, the same may be inserted or caused to be inserted in the lease by the estate's personal representative at the time of its execution, or at any other time agreeable to the lessee, his successors, or assigns.

Revisor's Note

(1) Section 367(c)5, Texas Probate Code, refers to a hearing on a lease application continued "as hereinabove provided." The revised law substitutes a reference to "as provided by Section 358.053(b)" for the quoted language because Section 367(c)2(b), Texas Probate Code, revised in this chapter as Section 358.053(b), is the section of the Texas Probate Code that precedes Section 367(c)5 and relates to the continuance of lease application hearings.

(2) Section 367(c)5, Texas Probate Code, refers to notice that has been "duly" given in the manner and for the time required by law. The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The requirement that notice be given in the manner and for the time required by law is sufficient to convey that the notice must have been given as required by law.

Revised Law

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. (Tex. Prob. Code, Sec. 367(c) (part).)
Conditional Validity of Lease; Bond; Time of Execution; Confirmation Not Needed. If, upon the hearing of an application for authority to lease, the court shall grant the same as above provided, the personal representative of the estate shall then be fully authorized to make, within thirty days after date of the judge's order, but not afterwards unless an extension be granted by the court upon sworn application showing good cause, the lease or leases as evidenced by the aforesaid true exhibit copies, in accordance with said order; but, . . . . It shall not be necessary for the judge to make any order confirming such leases.

Revisor's Note

(1) Section 367(c)6, Texas Probate Code, refers to the granting of a lease application by a court "as above provided," meaning as provided by Section 367(c). The revised law substitutes a reference to "as provided by Section 358.056" for the quoted language because the relevant portion of Section 367(c) is revised as that section.

(2) Section 367(c)6, Texas Probate Code, refers to "true exhibit copies" of a lease or leases. The revised law omits "true" because the word does not add to the clear meaning of the law. For example, a document purporting to be a copy is not a copy if it is different from the original document.

Revised Law

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. (Tex. Prob. Code, Sec.
367(c) (part).)

Source Law

(c) ... unless the personal
representative is not required to give a general bond,
no such lease, for which a cash consideration is
required, though ordered, executed, and delivered,
shall be valid unless the order authorizing same
actually makes findings with respect to the general
bond, and, in case such bond has been found
insufficient, then unless and until the bond has been
increased, or an additional bond given, as required by
the court's order, with the sureties required by law,
has been approved by the judge and filed with the clerk
of the court in which the proceedings are pending. In
the event two or more leases on different lands are
authorized by the same order, the general bond shall be
increased, or additional bonds given, to cover
all. . . .

Revised Law

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;
(3) a shut-in gas well. (Tex. Prob. Code, Sec. 367(c) (part).)

Source Law

(c) . . .
7. Term of Lease Binding. Every such lease, when executed and delivered in compliance with the rules hereinabove set out, shall be valid and binding upon the property or interest therein owned by the estate and covered by the lease for the full duration of the term as provided therein, subject only to its terms and conditions, even though the primary term shall extend beyond the date when the estate shall have been closed in accordance with law; provided the authorized primary term shall not exceed five (5) years, subject to terms and provisions of the lease extending it beyond the primary term by paying production, by bona fide drilling or reworking operations, whether in or on the same or additional well or wells, with no cessation of operations of more than sixty (60) consecutive days before production has been restored or obtained, or by the provisions of the lease relating to a shut-in gas well. . . .

Revisor's Note

Section 367(c)(7), Texas Probate Code, refers to a lease executed and delivered in compliance with "the rules hereinabove set out." The revised law substitutes a reference to "this subchapter" for the quoted language because the requirements of Section 367(c), Texas Probate Code, that relate to executing and delivering a mineral lease after public notice are revised in this subchapter.

Revised Law

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. (Tex. Prob. Code, Sec. 358.060, PAM 95 MTB-D 625)
Amendment of Leases. Any oil, gas, and mineral lease heretofore or hereafter executed by a personal representative pursuant to the Texas Probate Code may be amended by an instrument which provides that a shut-in gas well on the land covered by the lease or on land pooled with all or some part thereof shall continue such lease in force after its five (5) year primary term. Such instrument shall be executed by the personal representative, with the approval of the court, and on such terms and conditions as may be prescribed therein.

Revisor's Note

Section 367(c)7(a), Texas Probate Code, which took effect May 25, 1961, validates certain provisions of mineral leases that were previously executed and delivered in compliance with that code. The revised law omits that provision because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable in this context as a result of Section 311.002(3), Government Code (Code Construction Act), provides that the repeal of a statute does not affect any validation previously made under the statute. The omitted law reads:

7(a). Validation of Certain Provisions of Leases Heretofore Executed by Personal Representatives. As to any valid mineral lease heretofore executed and delivered in compliance with the provisions of the Texas Probate Code and which lease is still in force, any provisions of any such lease continuing such lease in force after its five (5) year primary term by a shut-in gas well are hereby validated; provided, however, that this provision shall not be applicable to any such provision of any such lease which is involved in any lawsuit pending in this state on the effective date of this Act wherein the validity of such provision is an issue.

[Sections 358.061-358.100 reserved for expansion]

SUBCHAPTER C. MINERAL LEASES AT PRIVATE SALE

Revised Law
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. (Tex. Prob.
Code, Sec. 368(a).)

Source Law

Sec. 368. (a) Authorization Allowed.
for setting a time and place for hearing of an
application to lease and the issuance, service, and
return of notice, the court may authorize the making of
oil, gas, and mineral leases at private sale (without
public notice or advertising) if, in the opinion of the
court, sufficient facts are set out in the application
required above to show that it would be more
advantageous to the estate that a lease be made
privately and without compliance with said mandatory
requirements mentioned above. Leases so authorized
may include pooling provisions or unitization clauses
as in other cases.

Revisor's Note

Section 368(a), Texas Probate Code, refers to the
"preceding" mandatory requirements for setting and
notice of a hearing on a lease application. The
revised law substitutes a reference to the mandatory
requirements of "Subchapter B" for the quoted term
because all of the requirements of Part 7, Chapter
VIII, Texas Probate Code, that precede Section 368(a)
of that code and relate to the setting and notice of a
lease application hearing are revised in that subchapter.

Revised Law

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. (Tex.
Prob. Code, Sec. 368(b).)

Source Law

(b) Action of the Court When Public Advertising
Not Required. At any time after the expiration of five
(5) days and prior to the expiration of ten (10) days
from the date of filing and without an order setting
time and place of hearing, the court shall hear the
application to lease at private sale and shall inquire
into the manner in which the proposed lease has been or
will be made, and shall hear evidence for or against
the same; and, if satisfied that the lease has been or
will be made for a fair and sufficient consideration
and on fair terms, and has been or will be properly
made in conformity with law, the court shall enter an
order authorizing the execution of such lease without
the necessity of advertising, notice, or citation,
said order complying in all other respects with the
requirements essential to the validity of mineral
leases as hereinabove set out, as if advertising or
notice were required. No order confirming a lease or
leases made at private sale need be issued, but no such
lease shall be valid until the increased or additional
bond required by the court, if any, has been approved
by the court and filed with the clerk of the court.
Section 368(b), Texas Probate Code, refers to the requirements essential to the validity of mineral leases "as hereinabove set out." The revised law substitutes a reference to the requirements essential to the validity of mineral leases "as set out in Subchapter B" for the quoted language because all of the relevant requirements that are set out in the provisions of Part 7, Chapter VIII, Texas Probate Code, that precede Section 368(b) are revised in that subchapter.

[Sections 358.103-358.150 reserved for expansion]

SUBCHAPTER D. POOLING OR UNITIZATION OF ROYALTIES OR MINERALS

Revised Law

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.
(Tex. Prob. Code, Secs. 369(a), (b) (part).)

Source Law

Sec. 369. (a) Authorization for Pooling or
Unitization. When an existing lease or leases on
property owned by the estate does not adequately
provide for pooling or unitization, the court may
authorize the commitment of royalty or mineral
interests in oil, liquid hydrocarbons, gas (including
all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals, or any one or more of them, owned by the estate being administered, to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all such minerals, where the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is to the best interest of the estate to execute the agreement. Any agreement so authorized to be executed may, among other things, provide:

1. That operations incident to the drilling of or production from a well upon any portion of a pool or unit shall be deemed for all purposes to be the conduct of operations upon or production from each separately owned tract in the pool or unit.

2. That any lease covering any part of the area committed to a pool or unit shall continue in force in its entirety as long as oil, gas, or other mineral subject to the agreement is produced in paying quantities from any part of the pooled or unitized area, or as long as operations are conducted as provided in the lease on any part of the pooled or unitized area, or as long as there is a shut-in gas well on any part of the pooled or unitized area, if the presence of such shut-in gas well is a ground for continuation of the lease by the terms of said lease.

3. That the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

4. That the royalties provided for on production from any tract or portion thereof within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement.

5. That the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so returned.

6. That gas obtained from other sources or other lands may be injected into a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so injected when same is produced from the unit.

(b) Procedure for Authorizing Pooling or Unitization. Pooling or unitization, when not adequately provided for by an existing lease or leases on property owned by the estate, may be authorized by the court in which the proceedings are pending pursuant to and in conformity with the following rules:

...  

Revised Law

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 minutes.

(e) Immediately after the pooling or unitization application is filed, the clerk shall call the application to the judge's attention. (Tex. Prob. Code, Sec. 369(b) (part).)

Source Law

(b) . . .

(1) Contents of Application. The personal representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application for authority (a) to enter into pooling or unitization agreements supplementing, amending, or otherwise relating to, any existing lease or leases covering property owned by the estate, or (b) to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application shall also (c) describe the property sufficiently, as required in original application to lease, (d) describe briefly the lease or leases, if any, to which the interest of the estate is subject, and (e) set out the reasons why the proposed agreement concerning such property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part thereof, but the agreement shall not be recorded in the minutes. The clerk shall immediately, after such application is filed, call it to the attention of the judge. . . .
Revisor's Note

Section 369(b)(1), Texas Probate Code, refers to a "true copy" of a proposed agreement. The revised law omits "true" for the reason stated in Revisor's Note (2) to Section 358.057.

Revised Law
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. (Tex. Prob. Code, Sec. 369(b) (part).)

Source Law
(b) . . .
(2) Notice Not Necessary. No notice of the filing of such application by advertising, citation, or otherwise, is required.
. . .

Revised Law
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. (Tex. Prob. Code, Sec. 369(b) (part).)

Source Law
(b) . . .
(3) Hearing of Application. A hearing on such application may be held by the judge at any time agreeable to the parties to the proposed agreement, and the judge shall hear proof and satisfy himself as to whether or not it is to the best interest of the estate that the proposed agreement be authorized. The hearing may be continued from day to day and from time to time as the court finds to be necessary.
. . .

Revised Law
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. (Tex. Prob. Code, Sec. 369(b) (part).)
of the agreement, if not stipulated in such agreement.

[Sections 358.156-358.200 reserved for expansion]

SUBCHAPTER E. SPECIAL ANCILLARY INSTRUMENTS THAT MAY BE EXECUTED
WITHOUT COURT ORDER

Revised Law

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. (Tex. Prob. Code, Sec. 370.)

Source Law

Sec. 370. As to any valid mineral lease or pooling or unitization agreement, executed on behalf of the estate prior to the effective date of this Code, or pursuant to its provisions, or by a former owner of land, minerals, or royalty affected thereby, the personal representative of the estate which is being administered may, without further order of the court, and without consideration, execute division orders, transfer orders, instruments of correction, instruments designating depository banks for the reception of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of any such lease or leases, and similar instruments pertaining to any such lease or agreement and the property covered thereby.

Revisor's Note

(1) Section 370, Texas Probate Code, refers to a "valid mineral lease or pooling or unitization agreement." The revised law omits "valid" as...
unnecessary because the word does not add to the clear
meaning of the law. For example, a document purporting
to be a mineral lease or pooling or unitization
agreement is no longer a mineral lease or pooling or
unitization agreement if it is expired and is not a
mineral lease or pooling or unitization agreement if
it is a forgery.

(2) Section 370, Texas Probate Code, refers to
"the effective date of this Code," meaning the Texas
Probate Code. The revised law substitutes "January 1,
1956," for the quoted language because that was the
effective date of the Texas Probate Code.

[Sections 358.202-358.250 reserved for expansion]

SUBCHAPTER F. PROCEDURE IF PERSONAL REPRESENTATIVE OF ESTATE
NEGLECTS TO APPLY FOR AUTHORITY

Revised Law

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. (Tex. Prob. Code, Sec. 371 (part).)

Source Law

Sec. 371. When the personal representative of
an estate shall neglect to apply for authority to
subject property of the estate to a lease for mineral
development, pooling or unitization, or to commit
royalty or other interest in minerals to pooling or
unitization, any person interested in the estate may,
upon written application filed with the county clerk,
cause such representative to be cited to show cause why
it is not for the best interest of the estate for such a
lease to be made, or such an agreement entered into.
...

Revised Law

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.

(Tex. Prob. Code, Sec. 371 (part).)

Source Law
Sec. 371. . . . The clerk shall immediately call the filing of such application to the attention of the judge of the court in which the probate proceedings are pending, and the judge shall set a time and place for a hearing on the application, and the representative of the estate shall be cited to appear and show cause why the execution of such lease or agreement should not be ordered. . . .

Revised Law
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. (Tex. Prob. Code, Sec. 371 (part).)

Source Law
Sec. 371. . . . Upon hearing, if satisfied from the proof that it would be in the best interest of the estate, the court shall enter an order requiring the personal representative forthwith to file his application to subject such property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. . . .

Revisor's Note
(1) Section 371, Texas Probate Code, imposes on the court under certain circumstances the duty to enter an order requiring the personal representative "forthwith" to file an application. The revised law substitutes "promptly" for "forthwith" because the...
terms have the same meaning in this context and "promptly" is more consistent with modern usage.

(2) Section 371, Texas Probate Code, refers to an application to commit royalty or other minerals to "unitization." The revised law substitutes a reference to an application to commit royalty or other minerals to "pooling or unitization" for the reference to "unitization" for consistency with the other provisions of Section 371, revised in relevant part in Sections 358.251 and 358.254 of this chapter, which refer to "pooling or unitization."

Revised Law
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. (Tex. Prob. Code, Sec. 371 (part).)

Source Law
Sec. 371. . . . The procedure prescribed with respect to original application to lease, or with respect to original application for authority to commit royalty or minerals to pooling or unitization, whichever is appropriate, shall then be followed.

Revisor's Note
(End of Chapter)

Section 372, Texas Probate Code, which took effect January 1, 1956, validates certain "presently existing" leases of oil, gas, or other minerals belonging to decedents' estates and agreements relating to pooling or unitization of oil, gas, or other minerals of those estates. The revised law omits that provision for the reason stated in the revisor's note to the end of Subchapter B. The omitted law reads:

Sec. 372. All presently existing leases on the oil, gas, or other minerals, or one or more of them, belonging to the
estates of decedents, and all agreements
with respect to pooling, or unitization
thereof, or one or more of them, or any
interest therein, with like properties of
others having been authorized by the court
having venue, and executed and delivered by
the executors, administrators, or other
fiduciaries of their estates in substantial
conformity to the rules set forth in
statutes heretofore existing, providing for
only seven days notice in some instances,
and also for a brief order designating a
time and place for hearing, are hereby
validated in so far as said period of notice
is concerned, and in so far as the absence
of any order setting a time and place for
hearing is concerned; provided, this shall
not apply to any lease or pooling or
unitization agreement involved in any suit
pending on the effective date of this Code
wherein either the length of time of said
notice or the absence of such order is in
issue.

CHAPTER 359. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS

SUBCHAPTER A. ANNUAL ACCOUNT AND OTHER EXHIBITS

Sec. 359.001. ACCOUNT OF ESTATE REQUIRED

Sec. 359.002. ANNUAL ACCOUNT REQUIRED UNTIL ESTATE
CLOSED

Sec. 359.003. SUPPORTING VOUCHERS AND OTHER DOCUMENTS
ATTACHED TO ACCOUNT

Sec. 359.004. METHOD OF PROOF FOR SECURITIES AND OTHER
ASSETS

Sec. 359.005. VERIFICATION OF ACCOUNT

Sec. 359.006. ADDITIONAL ACCOUNTS

[Sections 359.007-359.050 reserved for expansion]

SUBCHAPTER B. ACTION ON ANNUAL ACCOUNT

Sec. 359.051. FILING AND CONSIDERATION OF ANNUAL
ACCOUNT

Sec. 359.052. CORRECTION OF ANNUAL ACCOUNT

Sec. 359.053. ORDER FOR PAYMENT OF CLAIMS IN FULL

Sec. 359.054. ORDER FOR PRO RATA PAYMENT OF CLAIMS

[Sections 359.055-359.100 reserved for expansion]

SUBCHAPTER C. PENALTIES

Sec. 359.101. PENALTY FOR FAILURE TO FILE ANNUAL
ACCOUNT
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. (Tex. Prob. Code, Sec. 399(a).)
Sec. 399. (a) Estates of Decedents Being Administered Under Order of Court. The personal representative of the estate of a decedent being administered under order of court shall, upon the expiration of twelve (12) months from the date of qualification and receipt of letters, return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were presented to him within the period covered by the account, specifying which have been allowed by him, which have been paid, which have been rejected and the date when rejected, which have been sued upon, and the condition of the suit, and show:

(1) All property that has come to his knowledge or into his possession not previously listed or inventoried as property of the estate.

(2) Any changes in the property of the estate which have not been previously reported.

(3) A complete account of receipts and disbursements for the period covered by the account, and the source and nature thereof, with receipts of principal and income to be shown separately.

(4) A complete, accurate and detailed description of the property being administered, the condition of the property and the use being made thereof, and, if rented, the terms upon and the price for which rented.

(5) The cash balance on hand and the name and location of the depository wherein such balance is kept; also, any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository thereof.

(6) A detailed description of personal property of the estate, which shall, with respect to bonds, notes, and other securities, include the names of obligor and obligee, or if payable to bearer, so state; the date of issue and maturity; the rate of interest; serial or other identifying numbers; in what manner the property is secured; and other data necessary to identify the same fully, and how and where held for safekeeping.

(7) A statement that, during the period covered by the account, all tax returns due have been filed and that all taxes due and owing have been paid and a complete account of the amount of the taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.

(8) If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.

(9) A statement that the personal representative has paid all the required bond premiums for the accounting period.

Revisor’s Note

(1) Section 399(a), Texas Probate Code, refers to the date of qualification and "receipt of letters" by a personal representative of a decedent's estate. For clarity and the convenience of the reader, throughout this chapter the revised law specifies that
the revised law concerns "letters testamentary or of administration," to distinguish those letters from letters of guardianship.

(2) Section 399(a), Texas Probate Code, refers to a written exhibit a personal representative must "return" to the court. Throughout this chapter, the revised law substitutes "file" for "return" for consistency of terminology throughout this chapter.

Revised Law

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. (Tex. Prob. Code, Sec. 399(b).)

Source Law

(b) Annual Reports Continue Until Estate Closed. Each personal representative of the estate of a decedent shall continue to file annual accounts conforming to the essential requirements of those in Subsection (a) hereof as to changes in the assets of the estate after rendition of the former account so that the true condition of the estate, with respect to money, securities, and other property, can be ascertained by the court or by any interested person, by adding to the balances forward the receipts, and then subtracting the disbursements. The description of property sufficiently described in an inventory or previous account may be by reference thereto.

Revised Law

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. (Tex. Prob. Code, Sec. 399(c) (part).)

Source Law
(c) Supporting Vouchers, etc., Attached to Accounts. Annexed to all annual accounts of representatives of estates shall be:
(1) Proper vouchers for each item of credit claimed in the account, or, in the absence of such voucher, the item must be supported by evidence satisfactory to the court. Original vouchers may, upon application, be returned to the representative after approval of his account.
(2) An official letter from the bank or other depository in which the money on hand of the estate is deposited, showing the amounts in general or special deposits.
(3) Proof of the existence and possession of securities owned by the estate, or shown by the accounting, as well as other assets held by a
depository subject to orders of the court, . . . . The
court may require additional evidence as to the
existence and custody of such securities and other
personal property as in his discretion he shall deem
proper; and may require the representative to exhibit
them to the court, or any person designated by him, at
any time at the place where held for safekeeping.

Revisor's Note

(1) Section 399(c), Texas Probate Code, refers
to "representatives" of an estate. For consistency of
termology throughout this chapter, the revised law
substitutes references to "personal representative"
for initial references to "representative" in a
provision for clarity and because, under Section
3(aa), Texas Probate Code, revised as Section 22.031
of this code, the terms are synonymous.

(2) Section 399(c)(1), Texas Probate Code,
refers to a "proper voucher" for each item of credit.
The revised law omits "proper" because an improper
voucher would not satisfy the requirements of law.

Revised Law

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. (Tex. Prob.
Code, Sec. 399(c) (part).)

Source Law

(c) . . . [Annexed to all annual accounts of
representatives of estates shall be:

(3) Proof of the existence and possession
of securities owned by the estate, or shown by the
accounting, as well as other assets held by a
depository subject to orders of the court,) the proof
to be by one of the following means:

a. By an official letter from the
bank or other depository wherein said securities or
other assets are held for safekeeping; provided, that
if such depository is the representative, the official
letter shall be signed by a representative of such
depository other than the one verifying the account;
or

b. By a certificate of an authorized
representative of the corporation which is surety on
the representative's bonds; or

b. By a certificate of the clerk or a
deputy clerk of a court of record in this State; or

d. By an affidavit of any other
reputable person designated by the court upon request
of the representative or other interested party.

Such certificate or affidavit shall be to the
effect that the affiant has examined the assets
exhibited to him by the representative as assets of the
estate in which the accounting is made, and shall
describe the assets by reference to the account or
otherwise sufficiently to identify those so exhibited,
and shall state the time when and the place where
exhibited. In lieu of using a certificate or an affidavit, the representative may exhibit the securities to the judge of the court who shall endorse on the account, or include in his order with respect thereto, a statement that the securities shown therein as on hand were in fact exhibited to him, and that those so exhibited were the same as those shown in the account, or note any variance. If the securities are exhibited at any place other than where deposited for safekeeping, it shall be at the expense and risk of the representative.

Revisor's Note

Section 399(c)(3), Texas Probate Code, refers to a personal representative "using a certificate or an affidavit" as proof of the existence and possession of certain securities and other assets. Because it is clear in context that "using" is referring to attaching the proof to the annual account as previously referenced in that section and revised in Section 359.003(a) of this chapter, the revised law substitutes "attaching a certificate or an affidavit" for the reference to "using a certificate or an affidavit" for consistency of terminology.

Revised Law

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. (Tex. Prob. Code, Sec. 399(d).)

Source Law

(d) Verification of Account. The representative filing the account shall attach thereto his affidavit that it contains a correct and complete statement of the matters to which it relates.

Revised Law

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). (Tex. Prob. Code, Sec. 402.)

Source Law

Sec. 402. At any time after the expiration of
fifteen months from the original grant of letters to an
executor or administrator, any interested person may,
by a complaint in writing filed in the court in which
the estate is pending, cause the representative to be
cited to appear and make an exhibit in writing under
oath, setting forth fully, in connection with previous
exhibits, the condition of the estate he represents;
and, if it shall appear to the court by said exhibit,
or by other evidence, that said representative has any
funds of the estate in his hands subject to
distribution among the creditors of the estate, the
court shall order the same to be paid out to them
according to the provisions of this Code; or any
representative may voluntarily present such exhibit to
the court; and, if he has any of the funds of the estate
in his hands subject to distribution among the
creditors of the estate, a like order shall be made.

Revisor's Note

(1) Section 402, Texas Probate Code, refers to
the estate in the representative's "hands."
Throughout this chapter, the revised law substitutes
"possession" for "hands" because the terms are
synonymous in context and "possession" is more
consistent with modern usage.

(2) Section 402, Texas Probate Code, requires a
court to order certain estate funds to be paid out to
the estate creditors in accordance with "this Code,"
meaning the Texas Probate Code. Throughout this
chapter, the revised law substitutes a reference to "this title" for the reference to "this Code" because the provisions of the Texas Probate Code that relate to decedents' estates are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

[Sections 359.007-359.050 reserved for expansion]

SUBCHAPTER B. ACTION ON ANNUAL ACCOUNT

Revised Law

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.

(Tex. Prob. Code, Secs. 401(a), (b), (c), (d).)

Source Law

Sec. 401. These rules shall govern the handling of annual accounts:

(a) They shall be filed with the county clerk, and the filing thereof shall be noted forthwith upon the judge's docket.

(b) Before being considered by the judge, the account shall remain on file ten (10) days.

(c) At any time after the expiration of ten (10) days after the filing of an annual account, the judge shall consider same, and may continue the hearing thereon until fully advised as to all items of said account.

(d) No accounting shall be approved unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under order of court has been proved as required by law.

Revisor's Note

(1) Section 401(a), Texas Probate Code, requires an annual account to be filed with the county clerk. While the source law does not specify who is
required to file the annual account, Sections 399(a) and (b), Texas Probate Code, revised in this chapter as Sections 359.001 and 359.002, clarify that the personal representative has the duty to file the annual account. The revised law is drafted accordingly.

(2) Section 401(a), Texas Probate Code, provides that the county clerk shall note "forthwith" on the judge's docket the filing of an annual account. The revised law substitutes "promptly" for "forthwith" because the terms are synonymous in context and "promptly" is more consistent with modern usage.

Revised Law
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. (Tex. Prob. Code, Sec. 401(e) (part).)

Source Law
[Sec. 401. These rules shall govern the handling of annual accounts:]

(e) If the account be found incorrect, it shall be corrected. When corrected to the satisfaction of the court, it shall be approved by an order of court, and the court shall then act with respect to unpaid claims, as follows: . . . .

Revised Law
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. (Tex. Prob. Code, Sec. 401(e) (part).)

**Source Law**

[Sec. 401. These rules shall govern the handling of annual accounts:]

(e) . . . [When corrected to the satisfaction of the court, it shall be approved by an order of court, and the court shall then act with respect to unpaid claims, as follows:]

(1) Order for Payment of Claims in Full. If it shall appear from the exhibit, or from other evidence, that the estate is wholly solvent, and that the representative has in his hands sufficient funds for the payment of every character of claims against the estate, the court shall order immediate payment to be made of all claims allowed and approved or established by judgment.

**Revised Law**

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. (Tex. Prob. Code, Sec. 401(e) (part).)

**Source Law**

[Sec. 401. These rules shall govern the handling of annual accounts:]

(e) . . . [When corrected to the satisfaction of the court, it shall be approved by an order of court, and the court shall then act with respect to unpaid claims, as follows:]

(2) Order for Pro Rata Payment of Claims. If it shall appear from the account, or from other evidence, that the funds on hand are not sufficient for the payment of all the said claims, or if the estate is insolvent and the personal
representative has any funds on hand, the court shall order such funds to be applied to the payment of all claims having a preference in the order of their priority if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or established by final judgment, taking into consideration also the claims that were presented within twelve (12) months after the granting of administration, and those which are in suit or on which suit may yet be instituted.

[Sections 359.055-359.100 reserved for expansion]

SUBCHAPTER C. PENALTIES

Revised Law

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. (Tex. Prob. Code, Sec. 400.)

Source Law

Sec. 400. Should any personal representative of an estate fail to return any annual account required by preceding sections of this Code, any person interested in said estate may, upon written complaint, or the court upon its own motion may, cause the personal representative to be cited to return such account, and show cause for such failure. If he fails to return said account after being so cited, or fails to show good cause for his failure so to do, the court, upon hearing, may revoke the letters of such representative, and may fine him in a sum not to exceed Five Hundred Dollars ($500). He and his sureties shall be liable for any fine imposed, and for all damages and costs sustained by reason of such failure, which may be
recovered in any court of competent jurisdiction.

**Revisor's Note**

Section 400, Texas Probate Code, refers to a personal representative's failure to return any annual account required by "preceding sections of this Code," meaning the Texas Probate Code. The revised law substitutes a reference to Sections 359.001 and 359.002 of this chapter for the quoted language because those sections contain the revisions of the relevant portions of Section 399, Texas Probate Code, which is the only section preceding Section 400 in the Texas Probate Code that requires annual accounts.

**Revised Law**

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. (Tex. Prob. Code, Sec. 403.)

**Source Law**

Sec. 403. Should any personal representative fail to file any exhibit or report required by this Code, any person interested in the estate may, upon written complaint filed with the clerk of the court, cause him to be cited to appear and show cause why he should not file such exhibit or report; and, upon hearing, the court may order him to file such exhibit or report, and, unless good cause be shown for such failure, the court may revoke the letters of such personal representative and may fine him in an amount not to exceed One Thousand Dollars.
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(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. (Tex. Prob. Code, Secs. 373(a), (b).)

Sec. 373. (a) Who May Apply. At any time after the expiration of twelve months after the original grant of letters testamentary or of administration, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request the partition and distribution of the estate.

(b) Contents of Application. The application shall state:

(1) The name of the person whose estate is sought to be partitioned and distributed; and

(2) The names and residences of all persons entitled to shares of such estate, and whether adults or minors; and, if these facts be unknown to the applicant, it shall be so stated in the
application; and

(3) The reasons why partition and
distribution should be had.

Revisor's Note

Section 373(a), Texas Probate Code, refers to
"devisees[,] or legatees" of an estate. Throughout
this chapter, the revised law omits references to
"legatees" because Section 3(i), Texas Probate Code,
revised as Section 22.009 of this code, provides that
"devisee" includes "legatee."

Revised Law

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. (Tex. Prob.
Code, Sec. 373(c).)

Source Law

(c) Partial Distribution. At any time after the
original grant of letters testamentary or of
administration, and the filing and approval of the
inventory, the executor or administrator, or the
heirs, devisees, or legatees of the estate, or any of
them, may, by written application filed in the court in
which the estate is pending, request a distribution of
any portion of the estate. All interested parties
shall be personally cited, as in other distributions,
including known creditors. The court may upon proper
citation and hearing distribute any portion of the
estate it deems advisable. In the event a distribution
is to be made to one or more heirs or devisees, and not
to all the heirs or devisees, the court shall require a
refunding bond in an amount to be determined by the
court to be filed with the court and, upon its
approval, the court shall order the distribution of
that portion of the estate, unless such requirement is
waived in writing and the waiver is filed with the
court by all interested parties. This section shall
apply to corpus as well as income, notwithstanding any
other provisions of this Code.

Revisor's Note

(1) Section 373(c), Texas Probate Code, refers
to the filing and approval of the "inventory."
Throughout the Texas Probate Code, the inventory of an
estate is more commonly referred to as an "inventory
and appraisement." In addition, the inventory and
appraisal is filed with a list of claims for the
estate, as provided by Section 251, Texas Probate
Code, revised as Section 309.052 of this code, and
approved with that list, as provided by Section 255,
Texas Probate Code, revised as Section 309.054 of this
code. For accuracy, the revised law substitutes
"inventory, appraisement, and list of claims" for
"inventory."

(2) Section 373(c), Texas Probate Code,
provides that "[t]his section," meaning Section 373,
Texas Probate Code, applies to corpus as well as
income. Section 373, Texas Probate Code, is revised as
this subchapter. However, it is clear from the context
that the provision is relevant only to Section 373(c),
Texas Probate Code, revised as this section, and
therefore, the revised law retains the reference to
"this section."

(3) Section 373(c), Texas Probate Code, refers
to "any other provisions of this Code," meaning the
Texas Probate Code. Throughout this chapter, the revised law substitutes references to "this title" for references to "this Code" because the provisions of the Texas Probate Code applicable to decedents' estates are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

[Sections 360.003-360.050 reserved for expansion]

SUBCHAPTER B. CITATION

Revised Law

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. (Tex. Prob. Code, Sec. 374.)

Source Law

Sec. 374. Upon the filing of such application, the clerk shall issue a citation which shall state the name of the person whose estate is sought to be partitioned and distributed, and the date upon which the court will hear the application, and the citation shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. Such citation shall
be personally served upon each person residing in the
state entitled to a share of the estate whose address
is known; and, if there be any such persons whose
identities or addresses are not known, or who are not
residents of this state, or are residents of but absent
from this state, such citation shall be served by
publication.

Revised Law

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. (Tex. Prob. Code, Sec. 375.)

Source Law

Sec. 375. When application for partition and
distribution is made by any person other than the
executor or administrator, such representative shall
also be cited to appear and answer the application and
to file in court a verified exhibit and account of the
condition of the estate, as in the case of final
settlements.

[Sections 360.053-360.100 reserved for expansion]

SUBCHAPTER C. PROCEEDINGS; EXPENSES

Revised Law

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.

(Tex. Prob. Code, Sec. 377.)

Source Law

Sec. 377. At the hearing upon the application for partition and distribution, the court shall ascertain:

(a) The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment, but not paid, or which may yet be established by judgment, and also the probable future expenses of administration.

(b) The persons who are by law entitled to partition and distribution, and their respective shares.

(c) Whether advancements have been made to any of the persons so entitled and their nature and value. If advancements have been made, the court shall require the same to be placed in hotchpotch as required by the law governing intestate succession.

Revised Law

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. (Tex. Prob. Code,
Sec. 378.)

Source Law

Sec. 378. If the court is of the opinion that
the estate should be partitioned and distributed, it
shall enter a decree which shall state:
(a) The name and address, if known, of each
person entitled to a share of the estate, specifying
those who are known to be minors, and the names of
their guardians, or the guardians ad litem, and the
name of the attorney appointed to represent those who
are unknown or who are not residents of the state.
(b) The proportional part of the estate to which
each is entitled.
(c) A full description of all the estate to be
distributed.
(d) That the executor or administrator retain in
his hands for the payment of all debts, taxes, and
expenses of administration a sufficient amount of
money or property for that purpose, specifying the
amount of money or the property to be so retained.

Revisor’s Note

Section 378(d), Texas Probate Code, refers to a
decree requiring the executor or administrator to
retain money or property "in his hands." The revised
law substitutes "possession" for "hands" because the
terms are synonymous in context and "possession" is
more consistent with modern usage.

Revised Law

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. (Tex.
Prob. Code, Sec. 387.)

Source Law

Sec. 387. Expense of partition of the estate of
a decedent shall be paid by the distributees pro rata.
The portion of the estate allotted each distributee
shall be liable for his portion of such expense, and, if not paid, the court may order execution therefor in the names of the persons entitled thereto.

[Sections 360.104-360.150 reserved for expansion]

SUBCHAPTER D. PARTITION AND DISTRIBUTION IF ESTATE PROPERTY IS CAPABLE OF DIVISION

Revised Law
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. (Tex. Prob. Code, Sec. 380(a).)

Source Law
Sec. 380. (a) Appointment of Commissioners. If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition.

Revised Law
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.

(Tex. Prob. Code, Sec. 380(b).)
Source Law

(b) Writ of Partition and Service Thereof. When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also command them to make due return of said writ, with their proceedings under it, on a date named in the writ. Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

Revisor's Note

(1) Section 380(b), Texas Probate Code, provides that a writ of partition must command the commissioners to proceed "forthwith" to partition and distribute the estate. The revised law substitutes "promptly" for "forthwith" because the terms are synonymous in context and "promptly" is more consistent with modern usage.

(2) Section 380(b), Texas Probate Code, requires the commissioners to make "due" return of the writ. The revised law omits "due" in this context as unnecessary. The requirement that the writ be returned is sufficient to convey that the return must meet the requirements for return of a writ.

Revised Law

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 alloting 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. (Tex. Prob. Code, Sec. 380(c).)

Source Law

(c) Partition by Commissioners. The commissioners shall make a fair, just, and impartial partition and distribution of the estate in the following order:

(1) Of the land or other property, by allotting to each distributee a share in each parcel or shares in one or more parcels, or one or more parcels separately, either with or without the addition of a share or shares of other parcels, as shall be most for the interest of the distributees; provided, the real estate is capable of being divided without manifest injury to all or any of the distributees.

(2) If the real estate is not capable of a fair, just and equal division in kind, but may be made so by alloting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as nearly as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

(3) The commissioners shall proceed to make a like division in kind, as nearly as may be, of the money and other personal property, and shall determine by lot, among equal shares, to whom each particular share shall belong.

Revised Law

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. (Tex. Prob. Code, Sec. 380(d).)

Source Law

(d) Report of Commissioners. The commissioners, having divided the whole or any part of the estate, shall make to the court a written sworn report containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee, and its value. If it be real estate that has been divided, the report shall contain a general plat of said land with the division lines plainly set down and with the number of acres in each share. The report of a majority of the commissioners shall be sufficient.

Revised Law

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. (Tex. Prob. Code, Sec. 380(e).)

Source Law

(e) Action of the Court. Upon the return of such report, the court shall examine the same carefully and hear all exceptions and objections thereto, and evidence in favor of or against the same, and if it be informal, shall cause said informality to be corrected. If such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners; otherwise, the court may set aside said report and division and order a new partition to be made.

Revised Law

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. (Tex. Prob. Code, Sec. 380(f).)

Source Law

(f) Delivery of Property. When the report of commissioners to make partition has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same.

Revised Law

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. (Tex. Prob. Code, Sec. 380(g).)
(g) Fees of Commissioners. Commissioners thus appointed who actually serve in partitioning and distributing an estate shall be entitled to receive Five Dollars each for every day that they are necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

[Sections 360.158-360.200 reserved for expansion]

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. (Tex. Prob. Code, Sec. 381(a).)

Sec. 381. (a) Finding by the Court. When, in the opinion of the court, the whole or any portion of an estate is not capable of a fair and equal partition and distribution, the court shall make a special finding in writing, specifying therein the property incapable of division.

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. (Tex. Prob. Code, Secs. 381(b), (c).)
the whole or any portion of the estate is not capable
of fair and equal division, it shall order a sale of
all property which it has found not to be capable of
such division. Such sale shall be made by the executor
or administrator in the same manner as when sales of
real estate are made for the purpose of satisfying
debts of the estate, and the proceeds of such sale,
when collected, shall be distributed by the court
among those entitled thereto.

(c) Purchase by Distributee. At such sale, if
any distributee shall buy any of the property, he shall
be required to pay or secure only such amount of his
bid as exceeds the amount of his share of such
property.

Revised Law
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. (Tex. Prob. Code, Sec. 381(d).)

Source Law
(d) Applicability of Provisions Relating to
Sales of Real Estate. The provisions of this Code
relative to reports of sales of real estate, the giving
of an increased general or additional bond upon sales
of real estate, and to the vesting of title to the
property sold by decree or by deed, shall also apply to
sales made under this Section.

[Sections 360.204-360.250 reserved for expansion]

SUBCHAPTER F. CERTAIN TYPES OF ESTATE PROPERTY

Revised Law
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. (Tex. Prob. Code, Sec. 379.)

Source Law
Sec. 379. If the estate to be distributed shall
consist only of money or debts due the estate, or both,
the court shall fix the amount to which each
distributee is entitled, and shall order the payment
and delivery thereof by the executor or administrator.
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. (Tex. Prob. Code, Sec. 382.)

Source Law

Sec. 382. (a) Court May Order Sale. When any portion of the estate to be partitioned lies in another county and cannot be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the court in writing; whereupon, if satisfied that the said property cannot be fairly divided, or that its sale would be more advantageous to the distributees, the court may order a sale thereof, which sale shall be conducted in the same manner as is provided in this Code for the sale of property which is not capable of fair and equal division.

(b) Court May Appoint Additional Commissioners. If the court is not satisfied that such property cannot be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as are provided in this Code for commissioners to make partition.

Revisor's Note

(1) Section 382(a), Texas Probate Code, provides that a sale of property must be conducted in
the manner provided by "this Code," meaning the Texas
Probate Code, for the sale of property that is not
capable of fair and equal division. The revised law
substitutes a reference to Subchapter E of this
chapter for the reference to "this Code" because the
provisions of the Texas Probate Code that apply to the
sale of property that is not capable of fair and equal
division are revised as Subchapter E of this chapter.

(2) Section 382(b), Texas Probate Code,
provides that when commissioners are appointed, the
proceedings for commissioners to make partition
provided by "this Code," meaning the Texas Probate
Code, apply. The revised law substitutes a reference
to Subchapter D of this chapter for the reference to
"this Code" because the Texas Probate Code proceedings
that apply when commissioners make partition are
revised as Subchapter D of this chapter.

Revised Law
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, 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.
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.

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.

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. (Tex. Prob. Code, Sec. 385.)

Sec. 385. (a) Application for Partition. When a husband or wife shall die leaving any community property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisement, and list of the claims of the estate have been returned, make application in writing to the court which granted such letters for a partition of such community property.

(b) Bond and Action of the Court. The survivor shall execute and deliver to the judge of said court a bond with a corporate surety or two or more good and sufficient personal sureties, payable to and approved by said judge, for an amount equal to the value of the survivor's interest in such community property, conditioned for the payment of one-half of all debts existing against such community property, and the court shall proceed to make a partition of said community property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased. The provisions of this Code respecting the partition and distribution of estates shall apply to such partition so far as the same are applicable.

(c) Lien Upon Property Delivered. Whenever such partition is made, a lien shall exist upon the property delivered to the survivor to secure the payment of the aforementioned bond; and any creditor of said community estate may sue in his own name on such bond,
and shall have judgment thereon for one-half of such
debt as he shall establish, and for the other one-half
he shall be entitled to be paid by the executor or
administrator of the deceased.

**Revised Law**

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. (Tex. Prob. Code, Sec. 386.)

**Source Law**

Sec. 386. Any person having a joint interest
with the estate of a decedent in any property, real or
personal, may make application to the court from which
letters testamentary or of administration have been
granted thereon to have a partition thereof, whereupon
the court shall make a partition of said property
between the applicant and the estate of the deceased;
and all the provisions of this Code in relation to the
partition and distribution of estates shall govern
partition hereunder, so far as the same are
applicable.

**Revisor's Note**

Section 386, Texas Probate Code, refers to "any
property, real or personal." The revised law omits the
reference to "real or personal" as unnecessary because
Section 311.005(4), Government Code (Code
Construction Act), applicable to the revised law,
defines "property" to mean real and personal property.

[Sections 360.255-360.300 reserved for expansion]

**SUBCHAPTER G. ENFORCEMENT**

**Revised Law**

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. (Tex. Prob. Code, Sec. 384.)

Source Law

Section 384. If any executor or administrator shall neglect to deliver to the person entitled thereto, when demanded, any portion of an estate ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally on such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of such neglect, the court shall enter an order to that effect, and the representative shall be liable to such complainant in damages at the rate of ten per cent of the amount or appraised value of the share so withheld, per month, for each and every month...
or fraction thereof that the share is and/or has been
so withheld after date of demand, which damages may be
recovered in any court of competent jurisdiction.

Revisor's Note

Section 384, Texas Probate Code, provides that
the court shall enter an order if the court finds that
citation was "duly" served and returned. The revised
law substitutes "properly" for "duly" because the
terms are synonymous in context and "properly" is more
consistent with modern usage.

CHAPTER 361. DEATH, RESIGNATION, OR REMOVAL OF PERSONAL
REPRESENTATIVES; APPOINTMENT OF SUCCESSORS

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CHAPTER 361. DEATH, RESIGNATION, OR REMOVAL OF PERSONAL REPRESENTATIVES; APPOINTMENT OF SUCCESSORS

SUBCHAPTER A. RESIGNATION OF PERSONAL REPRESENTATIVE

Revised Law

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. (Tex. Prob. Code, Sec. 221(a).)

Source Law

Sec. 221. (a) Application to Resign. A personal representative who wishes to resign his trust shall file with the clerk his written application to the court to that effect, accompanied by a full and complete exhibit and final account, duly verified, showing the true condition of the estate entrusted to his care.
Revisor's Note

(1) Section 221(a), Texas Probate Code, refers to a "full and complete" exhibit and final account. The revised law omits "full" as unnecessary because, in this context, the meaning of that term is included within the meaning of "complete."

(2) Section 221(a), Texas Probate Code, refers to an exhibit and final account that has been "duly verified." The revised law omits "duly" in this context as unnecessary. The requirement that the exhibit and final account be verified is sufficient to convey that the exhibit and final account must have met the requirements for verification.

Revised Law

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. (Tex. Prob. Code, Sec. 221(b).)

Source Law

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. (Tex. Prob. Code, Sec. 221(c).)

Source Law

(c) Citation. Upon the filing of an application to resign, supported by exhibit and final account, the clerk shall call the application to the attention of the judge, who shall set a date for a hearing upon the matter. The clerk shall then issue a citation to all interested persons, showing that proper application has been filed, and the time and place set for hearing, at which time said persons may appear and contest the exhibit and account. The citation shall be posted, unless the court directs that it be published.

Revisor's Note

Section 221(c), Texas Probate Code, refers both to the "exhibit and final account" and to the "exhibit and account." It is clear from the context that both references refer to the exhibit and final account required by Section 221(a), Texas Probate Code, revised as Section 361.001. Throughout this chapter, the revised law substitutes "exhibit and final account" for "exhibit and account" for consistency of terminology.

Revised Law

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. (Tex. Prob. Code, Sec. 221(d).)

Source Law

(d) Hearing. At the time set for hearing, unless it has been continued by the court, if the court finds that citation has been duly issued and served, he shall proceed to examine such exhibit and account, and hear all evidence for and against the same, and shall, if necessary, restate, and audit and settle the same. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with law, he shall enter an order of approval, and require that the estate remaining in the possession of the applicant, if any, be delivered to the person or persons entitled by law to receive it.

Revisor’s Note

Section 221(d), Texas Probate Code, provides that the court shall proceed with a hearing on a resignation application if the court finds that citation has been "duly" issued and served. The revised law substitutes "properly" for "duly" because the terms are synonymous in context and "properly" is more consistent with modern usage.

Revised Law

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. (Tex. Prob. Code, Secs.
221(e), (f).)

Source Law

(e) Requisites of Discharge. No resigning
personal representative shall be discharged until the
application has been heard, the exhibit and account
examined, settled, and approved, and until he has
satisfied the court that he has delivered the estate,
if there be any remaining in his possession, or has
complied with all lawful orders of the court with
relation to his trust.

(f) Final Discharge. When the resigning
applicant has complied in all respects with the orders
of the court, an order shall be made accepting the
resignation, discharging the applicant, and, if he is
under bond, his sureties.

[Sections 361.006-361.050 reserved for expansion]
(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. (Tex. Prob. Code, Sec. 222(a)(1).)

Source Law

Sec. 222. (a) Without Notice. (1) The court, on its own motion or on motion of any interested person, and without notice, may remove any personal representative, appointed under provisions of this Code, who:

(A) Neglects to qualify in the manner and time required by law;

(B) Fails to return within ninety days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to his knowledge;

(C) Having been required to give a new bond, fails to do so within the time prescribed;

(D) Absents himself from the State for a period of three months at one time without permission of the court, or removes from the State;

(E) Cannot be served with notices or other processes because of the fact that the:

(i) personal representative's whereabouts are unknown;

(ii) personal representative is eluding service; or

(iii) personal representative is a nonresident of this state who does not have a resident agent to accept service of process in any probate proceeding or other action relating to the estate; or

(F) Has misapplied, embezzled, or removed from the State, or is about to misapply, embezzle, or remove from the State, all or any part of the property committed to the personal representative's care.
Revisor's Note

(1) Section 222(a)(1), Texas Probate Code, refers to "this Code," meaning the Texas Probate Code. Throughout this chapter, the revised law substitutes references to "this title" for "this Code" because the provisions of the Texas Probate Code applicable to decedents' estates are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

(2) Section 222(a)(1)(D), Texas Probate Code, provides for the removal of a personal representative who is absent from the state "for a period of three months at one time." It is clear from the context that this section applies to a personal representative who is absent from the state for more than three consecutive months, as well as to a personal representative who is absent for exactly three consecutive months. For that reason, the revised law substitutes "three or more months" for the quoted language.

(3) Section 222(a)(1)(F), Texas Probate Code, refers to property "committed" to the personal representative's care. Throughout this chapter, the revised law substitutes "entrusted" for "committed" for consistency of terminology.

Revised Law
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. (Tex. Prob. Code, Sec. 222(b).)

Source Law

With Notice. The court may remove a
personal representative on its own motion, or on the
complaint of any interested person, after the personal
representative has been cited by personal service to
answer at a time and place fixed in the notice, when:
   (1) Sufficient grounds appear to support
belief that the personal representative has
misapplied, embezzled, or removed from the state, or
that the personal representative is about to misapply,
embezzle, or remove from the state, all or any part of
the property committed to the personal
representative’s care;
   (2) The personal representative fails to
return any account which is required by law to be made;
   (3) The personal representative fails to
obey any proper order of the court having jurisdiction
with respect to the performance of the personal
representative’s duties;
   (4) The personal representative is proved
to have been guilty of gross misconduct, or
mismanagement in the performance of the personal
representative’s duties;
The personal representative becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of the personal representative's trust;

As executor or administrator, the personal representative fails to make a final settlement within three years after the grant of letters, unless the time be extended by the court upon a showing of sufficient cause supported by oath; or

As executor or administrator, the personal representative fails to timely file the affidavit or certificate required by Section 128A of this code.

Revisor's Note
Section 222(b)(6), Texas Probate Code, refers to "the grant of letters." For clarity and the convenience of the reader, throughout this chapter the revised law specifies that the revised law concerns "letters testamentary or of administration" to distinguish those letters from letters of guardianship.

Revised Law
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. (Tex. Prob. Code, Sec. 222(c).)

Source Law
(c) Order of Removal. The order of removal shall state the cause thereof. It shall require that any letters issued to the one removed shall, if he has been personally served with citation, be surrendered, and that all such letters be cancelled of record, whether delivered or not. It shall further require, as to all the estate remaining in the hands of a removed person, delivery thereof to the person or persons...
entitled thereto, or to one who has been appointed and has qualified as successor representative.

Revisor's Note

Section 222(c), Texas Probate Code, refers to the estate remaining in the "hands" of a removed person. Throughout this chapter, the revised law substitutes "possession" for "hands" because the terms are synonymous in context and "possession" is more consistent with modern usage.

Revised Law

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:
set aside any order appointing a successor representative; and 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. (Tex. Prob. Code, Secs. 222(a)(2), 222A.)

Source Law

[Sec. 222. (a) Without Notice.]

(2) The court may remove a personal representative under Paragraph (F), Subdivision (1), of this subsection only on the presentation of clear and convincing evidence given under oath.

Sec. 222A. (a) Not later than the 10th day after the date the court signs the order of removal, a personal representative who is removed under Subsection (a)(1)(F) or (G), Section 222, of this code may file an application with the court for a hearing to determine whether the personal representative should be reinstated.

(b) On the filing of an application for a hearing under this section, the court clerk shall issue a notice stating that the application for reinstatement was filed, the name of the decedent, and the name of the applicant. The clerk shall issue the notice to the applicant and to the successor representative of the decedent's estate. The notice must cite all persons interested in the estate to appear at the time and place stated in the notice if they wish to contest the application.

(c) If, at the conclusion of a hearing under this section, the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, the court shall set aside an order appointing a successor representative, if any, and shall enter an order reinstating the applicant as personal representative of the ward or estate.

(d) If the court sets aside the appointment of a successor representative under this section, the court may require the successor representative to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the property of the estate.

Revisor's Note

(1) Section 222A(a), Texas Probate Code, refers to a personal representative removed under Section 222(a)(1)(G), Texas Probate Code. The revised law
omits the reference to that section because the section was repealed by Section 13, Chapter 1039, Acts of the 74th Legislature, Regular Session, 1995.

(2) Section 222A(c), Texas Probate Code, refers to an order reinstating an applicant as the personal representative of the "ward or estate." The revised law omits the reference to "ward" to correct an obsolete and unnecessary reference.

When the legislature enacted Section 222A, Texas Probate Code, in Chapter 905, Acts of the 73rd Legislature, Regular Session, 1993, that section applied to both decedents' estates and guardianship matters. During that same legislative session, however, the legislature enacted Chapter 957, Acts of the 73rd Legislature, Regular Session, 1993, which separated the decedents' estates statutes and guardianship statutes into distinct portions of the Texas Probate Code. Section 762, Texas Probate Code, redesignated as Section 762 of this code, which addresses the reinstatement of a ward's personal representative following the representative's removal using language virtually identical to the language used in Section 222A, was added to the code by Chapter 957.

In context, it is clear that the reference to "ward" in Section 222A, Texas Probate Code, no longer serves any purpose. Since the separation of the decedents' estates statutes and the guardianship statutes in the Texas Probate Code, Section 222A has been the provision that applies in circumstances involving decedents' estates, and Section 762 has been the provision that applies in circumstances involving guardianships.

[Sections 361.055-361.100 reserved for expansion]
SUBCHAPTER C. APPOINTMENT OF SUCCESSOR REPRESENTATIVE

Revised Law

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. (Tex. Prob. Code, Sec. 220(f).)

Source Law

(f) When Application and Service Necessary.

Except when otherwise expressly provided in this Code, letters shall not be revoked and other letters granted except upon application, and after personal service of citation on the person, if living, whose letters are sought to be revoked, that he appear and show cause why such application should not be granted.

Revised Law

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.

(Tex. Prob. Code, Sec. 220(a).)
Sec. 220. (a) Because of Death, Resignation or Removal. When a person duly appointed a personal representative fails to qualify, or, after qualifying, dies, resigns, or is removed, the court may, upon application appoint a successor if there be necessity therefor, and such appointment may be made prior to the filing of, or action upon, a final accounting. In case of death, the legal representatives of the deceased person shall account for, pay, and deliver to the person or persons legally entitled to receive the same, all the property of every kind belonging to the estate entrusted to his care, at such time and in such manner as the court shall order. Upon the finding that a necessity for the immediate appointment of a successor representative exists, the court may appoint such successor without citation or notice.

Revisor's Note
Section 220(a), Texas Probate Code, refers to a person "duly" appointed as personal representative. The revised law omits "duly" in this context as unnecessary. The reference to a person's appointment as personal representative is sufficient to convey that the person was properly appointed as personal representative.

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.

(Tex. Prob. Code, Sec. 220(b).)

Sec. 361.104. APPOINTMENT WHEN NAMED EXECUTOR BECOMES AN INCOMPETENT PERSON. If a person appointed as executor becomes an incompetent person, the court shall revoke the letters granted to him and appoint another person to administer the estate.
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. (Tex. Prob. Code, Sec. 220(c).)

Source Law

(c) When Named Executor Becomes an Adult. If one named in a will as executor is not an adult when the will is probated and letters in any capacity have been granted to another, such nominated executor, upon proof that he has become an adult and is not otherwise disqualified, shall be entitled to have such former letters revoked and appropriate letters granted to him. And if the will names two or more persons as executor, any one or more of whom are minors when such will is probated, and letters have been issued to such only as are adults, said minor or minors, upon becoming adults, if not otherwise disqualified, shall be permitted to qualify and receive letters.

Revisor's Note

Section 220(c), Texas Probate Code, refers to "letters in any capacity." The revised law substitutes "letters testamentary or of administration" for the quoted language for the reason stated in the revisor's note to Section 361.052.

Revised Law

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. (Tex. Prob. Code, Sec. 220(d).)

Source Law

(d) Upon Return of Sick or Absent Executor. If one named in a will as executor was sick or absent from the State when the testator died, or when the will was proved, and therefore could not present the will for probate within thirty days after the testator's death, or accept and qualify as executor within twenty days after the probate of the will, he may accept and qualify as executor within sixty days after his return or recovery from sickness, upon proof to the court that he was absent or ill; and, if the letters have been issued to others, they shall be revoked.

Revised Law

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. (Tex. Prob. Code, Sec. 220(e).)

Source Law

(e) When Will Is Discovered After Administration Granted. If it is discovered after letters of administration have been issued that the deceased left a lawful will, the letters shall be revoked and proper letters issued to the person or persons entitled thereto.

Revisor's Note

Section 220(e), Texas Probate Code, refers to "the deceased." Throughout the Texas Probate Code, a deceased person is more commonly referred to as a
"decedent." The revised law substitutes a reference
to a "decedent" for the reference to the "deceased" for consistency of terminology throughout this code.

[Sections 361.107-361.150 reserved for expansion]

SUBCHAPTER D. PROCEDURES AFTER DEATH, RESIGNATION, OR REMOVAL OF PERSONAL REPRESENTATIVE

Revised Law

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. (Tex. Prob. Code, Sec. 220(g).)

Source Law

(g) Payment or Tender of Money Due During Vacancy. Money or other thing of value falling due to an estate while the office of the personal representative is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the estate, and the debtor, obligor, or payor shall thereby be discharged of the obligation for all purposes to the extent and purpose of such payment or tender. If the clerk accepts such payment or tender, he shall issue a proper receipt therefor.

Revisor's Note

(1) Section 220(g), Texas Probate Code, provides that "[m]oney or other thing of value . . . may be paid, delivered, or tendered." The revised law omits the term "delivered" as unnecessary because, in this context, the meaning of "delivered" is included within the meaning of "paid." Black's Law Dictionary, revised eighth edition, 2004, defines "payment" as the "[p]erformance of an obligation by the delivery of money or some other valuable thing accepted in partial
or full discharge of the obligation."

(2) Section 220(g), Texas Probate Code, requires a court clerk to issue a "proper receipt."
The revised law omits "proper" in this context as unnecessary. The requirement that the clerk issue a receipt is sufficient to convey that the receipt must be proper.

Revised Law
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. (Tex. Prob. Code, Sec. 223.)

Source Law
Sec. 223. Whenever any estate is unrepresented by reason of the death, removal, or resignation of the personal representative of such estate, the court shall grant further administration of the estate when necessary, and with the will annexed where there is a will, upon application therefor by a qualified person interested in the estate. Such appointments shall be made on notice and after hearing, as in case of original appointments, except that when the court finds that there is a necessity for the immediate appointment of a successor representative, such successor may be appointed upon application but without citation or notice.

Revised Law
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. (Tex. Prob. Code, Secs. 224, 225.)

Source Law

Sec. 224. When a representative of the estate
not administered succeeds another, he shall be clothed
with all rights, powers, and duties of his
predecessor, except such rights and powers conferred
on the predecessor by will which are different from
those conferred by this Code on personal
representatives generally. Subject to this exception,
the successor shall proceed to administer such estate
in like manner as if his administration were a
continuation of the former one. He shall be required
to account for all the estate which came into the hands
of his predecessor and shall be entitled to any order
or remedy which the court has power to give in order to
enforce the delivery of the estate and the liability of
the sureties of his predecessor for so much as is not
delivered. He shall be excused from accounting for
such of the estate as he has failed to recover after
due diligence.

Sec. 225. In addition, such appointee may make
himself, and may be made, a party to suits prosecuted
by or against his predecessors. He may settle with the
predecessor, and receive and receipt for all such
portion of the estate as remains in his hands. He may
bring suit on the bond or bonds of the predecessor in
his own name and capacity, for all the estate that came
into the hands of the predecessor and has not been
accounted for by him.

Revisor's Note

Section 224, Texas Probate Code, refers to a
"representative" of the estate. Section 3(aa), Texas
Probate Code, revised as Section 22.031 of this code,
defines "personal representative" and
"representative" to be synonyms. For consistency of
terminology throughout this chapter, the revised law
substitutes "personal representative" for
"representative."

Revised Law

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. (Tex.
Prob. Code, Sec. 226.)

Source Law

Sec. 226. Whenever an executor shall accept and
qualify after letters of administration shall have
been granted upon the estate, such executor shall, in
like manner, succeed to the previous administrator,
and he shall administer the estate in like manner as if
his administration were a continuation of the former
one, subject, however, to any legal directions of the
testator contained in the will in relation to the
estate.

Revisor's Note

Section 226, Texas Probate Code, provides that
when an executor qualifies after letters of
administration have been granted on an estate, the
executor shall, "in like manner," succeed to the
previous administrator. It is clear from the context
that the quoted language refers to the manner in which
a personal representative succeeds the previous
personal representative as prescribed by Sections 224
and 225, Texas Probate Code. For the convenience of the
reader, the revised law substitutes a reference to
"the manner prescribed by Section 361.153" for the
quoted language because Sections 224 and 225, Texas
Probate Code, are revised as that section.

Revised Law
Sec. 361.155. SUCCESSOR REPRESENTATIVE TO RETURN
INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) An appointee who
has qualified to succeed a former personal representative shall
make and return to the court an inventory, appraisement, and list of
claims of the estate before the 91st day after the date the personal
representative qualifies, in the manner required of an original
appointee, and shall also return additional inventories,
appraisements, and lists of claims in the manner required of an
original appointee.

(b) 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. (Tex. Prob. Code, Sec. 227.)

Source Law
Sec. 227. An appointee who has been qualified to
succeed to a prior personal representative shall make
and return to the court an inventory, appraisement,
and list of claims of the estate, within ninety days
after being qualified, in like manner as is required of
original appointees; and he shall also in like manner
return additional inventories, appraisements, and
lists of claims. In all orders appointing successor
representatives of estates, the court shall appoint
appraisers as in original appointments upon the
application of any person interested in the estate.
CHAPTER 362. CLOSING ADMINISTRATION OF ESTATE

SUBCHAPTER A. SETTLING AND CLOSING ESTATE

Sec. 362.001. SETTLING AND CLOSING ADMINISTRATION OF ESTATE

Sec. 362.002. COMPELLING SETTLEMENT OF ESTATE

Sec. 362.003. VERIFIED ACCOUNT REQUIRED

Sec. 362.004. CONTENTS OF ACCOUNT

Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT

Sec. 362.006. EXAMINATION OF AND HEARING ON ACCOUNT

Sec. 362.007. DELIVERY OF CERTAIN PROPERTY TO GUARDIAN

Sec. 362.008. CERTAIN DEBTS EXCLUDED FROM SETTLEMENT COMPUTATION

Sec. 362.009. MONEY DUE TO ESTATE PENDING FINAL DISCHARGE

Sec. 362.010. PAYMENT OF INHERITANCE TAXES REQUIRED

Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE

Sec. 362.012. DISCHARGE OF PERSONAL REPRESENTATIVE WHEN NO ESTATE PROPERTY REMAINS

Sec. 362.013. DISCHARGE OF PERSONAL REPRESENTATIVE WHEN ESTATE FULLY ADMINISTERED

[Sections 362.014-362.050 reserved for expansion]

SUBCHAPTER B. FAILURE OF PERSONAL REPRESENTATIVE TO ACT

Sec. 362.051. FAILURE TO PRESENT ACCOUNT

Sec. 362.052. LIABILITY FOR FAILURE TO DELIVER ESTATE PROPERTY

CHAPTER 362. CLOSING ADMINISTRATION OF ESTATE

SUBCHAPTER A. SETTLING AND CLOSING ESTATE

Revised Law

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. (Tex. Prob. Code, Sec. 404.)

Source Law

Sec. 404. Administration of the estates of decedents shall be settled and closed when all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration.

Revisor's Note

Section 404, Texas Probate Code, refers to assets in the "hands of an administrator or executor" of an estate. Throughout this chapter, the revised law substitutes "possession" for "hands" because the terms are synonymous in context and "possession" is more consistent with modern usage. In addition, the revised law substitutes a reference to the "personal representative's" possession for the reference to the possession of the "administrator or executor" because "personal representative" is the term more frequently used throughout the law from which the provisions of this chapter are derived, and because Section 3(aa), Texas Probate Code, revised in this code as Section 22.031, defines "personal representative" to include administrators and executors. Similar changes are made throughout this chapter to references that include both administrators and executors.

Revised Law

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. (Tex. Prob. Code, Sec. 92.)
Sec. 92. Where letters testamentary or of administration shall have once been granted, any person interested in the administration of the estate may proceed, after any lapse of time, to compel settlement of the estate when it does not appear from the record that the administration thereof has been closed.

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. (Tex. Prob. Code, Sec. 405 (part).)

Sec. 405. When administration of the estate of a decedent is to be settled and closed, the personal representative of such estate shall present to the court his verified account for final settlement.

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;
any estate property still in the representative's possession;
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;
any advancement or payment made by the representative from that estate to any person entitled to receive part of that estate;
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;
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
that the representative has paid all required bond premiums. (Tex. Prob. Code, Sec. 405 (part).)

Sec. 405. ... In such account it shall be sufficient to refer to the inventory without describing each item of property in detail, and to refer to and adopt any and all proceedings had in the administration concerning sales, renting or hiring, leasing for mineral development, or any other transactions on behalf of the estate including exhibits, accounts, and vouchers previously filed and approved, without restating the particular items thereof. Each final account, however, shall be accompanied by proper vouchers in support of each item thereof not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:
1. The property belonging to the estate which has come into the hands of the executor or administrator.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.

5. The property of the estate, if any, still remaining on hand.

6. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known, and whether adults or minors, and, if minors, the names of their guardians, if any.

7. All advancements or payments that have been made, if any, by the executor or administrator from such estate to any such person.

8. The tax returns due that have been filed and the taxes due and owing that have been paid and a complete account of the amount of taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.

9. If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.

10. The personal representative has paid all required bond premiums.

Revisor's Note

Section 405, Texas Probate Code, refers to a proceeding had in the administration of an estate concerning "renting or hiring," meaning the renting or hiring of estate property. The revised law omits the reference to "hiring" because "hiring" property is synonymous with "renting" property, and "renting" property is more consistent with modern usage. In addition, "renting" is consistent with the terminology used in Chapter 357 of this code, which is the revision of Sections 359-366, Texas Probate Code, relating to renting of estate property.

Revised Law

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 Subsections (c) and (d).

(b) Citation issued under Subsection (a) must contain:

(1) a statement that an account for final settlement has been presented;

(2) the time and place the court will consider the account; and
(3) a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account.

(c) The personal representative shall give notice to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless the court by written order directs another type of notice to be given. The notice must include a copy of the account for final settlement.

(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 notice of an account for final settlement in a proceeding concerning a decedent's estate. (Tex. Prob. Code, Sec. 407.)

Source Law
Sec. 407. Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. In case of the estates of deceased persons, notice shall be given by the personal representative to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another type of notice is directed by the court by written order. The notice must include a copy of the account for final settlement.

2. If the court deems further additional notice necessary, it shall require the same by written order. In its discretion, the court may allow the waiver of notice of an account for final settlement in a proceeding concerning a decedent's estate.

Revisor's Note
(1) Section 407, Texas Probate Code, refers to the "filing of" an account for final settlement and requires the issuance of citation containing a statement that the account has been "filed." Section 405, Texas Probate Code, revised in relevant part as Section 362.003 of this chapter, requires a personal representative to "present" an account for final settlement when the estate is to be settled and closed.
Furthermore, other portions of Part 12, Chapter VIII, Texas Probate Code, revised in this chapter and of which Section 407 is a part, also refer to the "presentation of" an account for final settlement. In context, the terms "presentation" and "filing" are synonymous. For consistency of terminology throughout this chapter, the revised law substitutes "presentation of" for "filing of" and substitutes "presented" for "filed." Similar changes are made throughout this chapter.

(2) Subdivision 1, Section 407, Texas Probate Code, refers to the notice required "[i]n case of the estates of deceased persons." The revised law omits the quoted language as obsolete and unnecessary for the reasons that follow.

When the legislature enacted Section 407, Texas Probate Code, in Chapter 55, Acts of the 54th Legislature, Regular Session, 1955, that section applied to both decedents' estates and guardianship matters. In 1993 the legislature enacted Chapter 957, Acts of the 73rd Legislature, Regular Session, which separated the decedents' estates statutes and guardianship statutes into distinct portions of the Texas Probate Code. Section 751, Texas Probate Code, which addresses citation and notice on presentation of an account for final settlement in guardianship proceedings and uses language that is very similar to the language used in Section 407, was added to the code by Chapter 957.

In context, it is clear that "[i]n case of the estates of deceased persons" in Section 407, Texas Probate Code, is no longer necessary to limit the provision's applicability to decedents' estates. Since the separation of the decedents' estates
statutes and the guardianship statutes in the Texas Probate Code, Section 407 has been the provision that applies in circumstances involving decedents' estates, and Section 751 of that code has been the provision that applies in circumstances involving guardianships.

**Revised Law**

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.

(Tex. Prob. Code, Sec. 408(a).)

**Source Law**

Sec. 408. (a) Action Upon Account. Upon being satisfied that citation has been duly served upon all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the same, and, after hearing all exceptions or objections thereto, and evidence in support of or against such account, shall audit and settle the same, and restate it if that be necessary.

**Revisor's Note**

Section 408(a), Texas Probate Code, refers to a citation that has been "duly served." The revised law substitutes "properly" for "duly" because the terms are synonymous in context and "properly" is more consistent with modern usage.

**Revised Law**

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. (Tex. Prob. Code, Sec. 405A.)
Sec. 405A. The court may permit a resident executor or administrator who has any of the estate of a ward to deliver the estate to a duly qualified and acting guardian of the ward.

Revisor's Note
Section 405A, Texas Probate Code, refers to a "duly qualified and acting" guardian of a ward. The revised law omits "duly" in this context as unnecessary. The requirement that the guardian be qualified and acting is sufficient to convey that the guardian must have met the requirements to qualify and act as a guardian.

Revised Law
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. (Tex. Prob. Code, Sec. 412.)

Source Law
Sec. 412. In the settlement of any of the accounts of the personal representative of an estate, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation.

Revised Law
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 minutes of the court. 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. (Tex. Prob. Code, Sec. 409.)
Sec. 409. Until the order of final discharge of the personal representative is entered in the minutes of the court, money or other thing of value falling due to the estate while the account for final settlement is pending may be paid, delivered, or tendered to the personal representative, who shall issue receipt therefor, and the obligor and/or payor shall be thereby discharged of the obligation for all purposes.

Revised Law
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. (Tex. Prob. Code, Sec. 410.)

Source Law
Sec. 410. No final account of an executor or administrator shall be approved, and no estate of a decedent shall be closed, unless the final account shows, and the court finds, that all inheritance taxes due and owing to the State of Texas with respect to all interests and properties passing through the hands of the representative have been paid.

Revised Law
Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE. 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. (Tex. Prob. Code, Sec. 408(b).)

Source Law
(b) Distribution of Remaining Property. Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that a partition and distribution be made among the persons entitled to receive such estate.

Revised Law
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. (Tex. Prob.
Code, Sec. 408(c).)

Source Law
(c) Discharge of Representative When No
Property Remains. If, upon such settlement, there be
none of the estate remaining in the hands of the
representative, he shall be discharged from his trust
and the estate ordered closed.

Revised Law
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 delivered all of the estate
remaining in the representative's possession to the person or
persons entitled to receive that part of the estate. (Tex. Prob.
Code, Sec. 408(d).)

Source Law
(d) Discharge When Estate Fully Administered.
Whenever the representative of an estate has fully
administered the same in accordance with this Code and
the orders of the court, and his final account has been
approved, and he has delivered all of said estate
remaining in his hands to the person or persons
entitled to receive the same, it shall be the duty of
the court to enter an order discharging such
representative from his trust, and declaring the
estate closed.

Revisor's Note
Section 408(d), Texas Probate Code, provides that
a personal representative shall be discharged when,
among other requirements, the representative has fully
administered the estate in accordance with "this
Code," meaning the Texas Probate Code. The revised law
substitutes a reference to "this title" for the
reference to "this Code" because the provisions of the
Texas Probate Code applicable to the administration of
an estate are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

[Sections 362.014-362.050 reserved for expansion]

SUBCHAPTER B. FAILURE OF PERSONAL REPRESENTATIVE TO ACT

Revised Law

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. (Tex. Prob. Code, Sec. 406.)

Source Law

Sec. 406. (a) If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the decedent's estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation.

(b) If the whereabouts of the personal representative and heirs of a decedent are unknown and a complaint has not been filed by anyone interested in the decedent's estate, the court may, on or after the fourth anniversary after the last date on which letters testamentary or of administration are issued by the court clerk, close the estate without a final accounting and without appointing a successor personal representative.
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. (Tex. Prob. Code, Sec. 414.)

Sec. 414. If any personal representative of an estate, upon final settlement, shall neglect to deliver to the person entitled thereto when demanded any portion of an estate or any funds or money in his hands ordered to be delivered, such person may file with the clerk of the court his written complaint.
alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally upon such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of the neglect charged, the court shall enter an order to that effect, and the representative shall be liable to such person in damages at the rate of ten per cent of the amount or appraised value of the money or estate so withheld, per month, for each and every month or fraction thereof that said estate or money or funds is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

Revisor's Note

(1) Section 414, Texas Probate Code, refers to "funds or money" in a personal representative's possession. The revised law omits the reference to "funds" as unnecessary because, in this context, "funds" is included within the meaning of "money."

(2) Section 414, Texas Probate Code, refers to a citation that has been "duly served." The revised law substitutes "properly" for "duly" for the reason stated in the revisor's note to Section 362.006.

[Chapters 363-400 reserved for expansion]

SUBTITLE I. INDEPENDENT ADMINISTRATION

[Chapters 401-450 reserved for expansion]

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

Sec. 451.002. HEARING AND ORDER

Sec. 451.003. EFFECT OF ORDER

Sec. 451.004. PROCEEDING TO REVOKE ORDER

CHAPTER 451. ORDER OF NO ADMINISTRATION

Revised Law

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 and minor children of the
decedent are entitled as a family allowance, an application may be
filed by or on behalf of the surviving spouse or minor 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 and minor children, as with other family
allowances provided for by Subchapter C, Chapter 353. (Tex. Prob.
Code, Sec. 139.)

Source Law
Sec. 139. If the value of the entire assets of
an estate, not including homestead and exempt
property, does not exceed the amount to which the
surviving spouse and minor children of the decedent
are entitled as a family allowance, there may be filed
by or on behalf of the surviving spouse or minor
children an application in any court of proper venue
for administration, or, if an application for the
appointment of a personal representative has been
filed but not yet granted, then in the court where such
application has been filed, requesting the court to
make a family allowance and to enter an order that no
administration shall be necessary. The application shall state the names of the heirs or devisees, a list of creditors of the estate together with the amounts of the claims so far as the same are known, and a description of all real and personal property belonging to the estate, together with the estimated value thereof according to the best knowledge and information of the applicant, and the liens and encumbrances thereon, with a prayer that the court make a family allowance and that, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, the same be set aside to the surviving spouse and minor children, as in the case of other family allowances provided for by this Code.

Revisor's Note

(1) Section 139, Texas Probate Code, refers to all "real and personal property" belonging to the estate. The revised law omits "real and personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

(2) Section 139, Texas Probate Code, provides that, under certain circumstances, assets of the estate be set aside to the surviving spouse and minor children, as in the case of other "family allowances provided for by this Code," meaning the Texas Probate Code. Sections 286 through 293, Texas Probate Code, revised as Subchapter C, Chapter 353, of this code, are the sections that govern family allowances. For the convenience of the reader, throughout this chapter the revised law substitutes a reference to "family allowances provided for by Subchapter C, Chapter 353" for the quoted language.

Revised Law

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 and minor 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 and minor children; and

(B) order that there shall be no administration of the estate. (Tex. Prob. Code, Sec. 140.)

Sec. 140. Upon the filing of an application for no administration such as that provided for in the preceding Section, the court may hear the same forthwith without notice, or at such time and upon such notice as the court requires. Upon the hearing of the application, if the court finds that the facts contained therein are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall make a family allowance and, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, shall order that no administration be had of the estate and shall assign to the surviving spouse and minor children the whole of the estate, in the same manner and with the same effect as provided in this Code for the making of family allowances to the surviving spouse and minor children.

Revisor's Note

(1) Section 140, Texas Probate Code, refers to the filing of an application for no administration "such as that provided for in the preceding Section."

Section 451.001 is the revision of Section 139, Texas Probate Code, which precedes Section 140 and describes the procedure and requirements for filing an application for order of no administration. The revised law is drafted accordingly.

(2) Section 140, Texas Probate Code, provides that on the filing of an application for order of no
administration, the court may hear the application "forthwith" without notice. The revised law substitutes "promptly" for "forthwith" because the terms have the same meaning in this context and "promptly" is more consistent with modern usage.

Revised Law
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. (Tex. Prob. Code, Sec. 141.)

Source Law
Sec. 141. The order that no administration be had on the estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to the persons described in the order as entitled to receive the estate without administration, and the persons so described in the order shall be entitled to enforce their right to such payment or transfer by suit.

Revised Law
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. (Tex. Prob. Code, Sec.
142.)

Source Law
Sec. 142. At any time within one year after the
entry of an order of no administration, and not
thereafter, any interested person may file an
application to revoke the same, alleging that other
property has been discovered, or that property
belonging to the estate was not included in the
application for no administration, or that the
property described in the application was incorrectly
valued, and that if said property were added,
included, or correctly valued, as the case may be, the
total value of the property would exceed that
necessary to justify the court in ordering no
administration. Upon proof of any of such grounds, the
court shall revoke the order of no administration. In
case of any contest as to the value of any property,
the court may appoint two appraisers to appraise the
same in accordance with the procedure hereinafter
provided for inventories and appraisements, and the
appraisement of such appraisers shall be received in
evidence but shall not be conclusive.

Revisor's Note
Section 142, Texas Probate Code, provides that,
under certain circumstances, the court may appoint two
appraisers to appraise property "in accordance with
the procedure hereinafter provided for inventories and
appraisements." Sections 248 through 261, Texas
Probate Code, revised as Chapter 309 of this code, are
the sections that govern inventories and appraisements
for decedents' estates. For the convenience of the
reader, the revised law substitutes a reference to
Chapter 309 for the general reference to the procedure
prescribed for inventories and appraisements.

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CHAPTER 452. TEMPORARY ADMINISTRATION OF ESTATES

SUBCHAPTER A. APPOINTMENT OF TEMPORARY ADMINISTRATOR GENERALLY

Revised Law
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. (Tex.
Prob. Code, Sec. 131A(a) (part).)

Source Law
Sec. 131A. (a) If a county judge determines
that the interest of a decedent's estate requires the
immediate appointment of a personal representative, he
shall, by written order, appoint a temporary
administrator with limited powers as the circumstances
of the case require. . . .

Revisor's Note
Section 131A(a), Texas Probate Code, refers to a
"county judge." Section 3(f), Texas Probate Code,
defines "county judge," "probate judge," and "judge"
identically as interchangeable terms, with each term
meaning the presiding judge of a court having original
jurisdiction over probate proceedings. The definition
specifically includes the judge of a district court
exercising jurisdiction in contested probate matters.
See the revisor's note to Section 22.019 of this code
for an analysis of the amendment history of Sections
3(f) and 5, Texas Probate Code, that resulted in the
inclusion of a district judge in the definition.
Section 22.019 of this code, which is the revision of
Section 3(f), Texas Probate Code, omits the terms
"county judge" and "probate judge" because those terms
are synonymous with the term "judge," and defining
"county judge" and "probate judge" to mean, in part, a
"district judge" is misleading. The revisor's note to
that section indicates that, throughout this code, the
term "judge" will be substituted for references to
"county judge" or "probate judge." Accordingly, the
revised law in this section substitutes "judge" for
"county judge."

Revised Law
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. (Tex. Prob. Code, Sec. 131A(b).)

Source Law

(b) Any person may file with the clerk of the court a written application for the appointment of a temporary administrator of a decedent's estate under this section. The application must be verified and must include the information required by Section 81 of this code if the decedent died testate or Section 82 of this code if the decedent died intestate and an affidavit that sets out:

(1) the name, address, and interest of the applicant;

(2) the facts showing an immediate necessity for the appointment of a temporary administrator;

(3) the requested powers and duties of the temporary administrator;

(4) a statement that the applicant is entitled to letters of temporary administration and is not disqualified by law from serving as a temporary administrator; and

(5) a description of the real and personal property that the applicant believes to be in the decedent's estate.
Revisor’s Note

Section 131A(b)(5), Texas Probate Code, refers to "real and personal property." Throughout this chapter, the revised law omits references to "real" and "personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

Revised Law

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. (Tex. Prob. Code, Secs. 131A(a) (part), (c).)

Source Law

(a) . . . The duration of the appointment must be specified in the court's order and may not exceed 180 days unless the appointment is made permanent as provided by Subsection (j) of this section.

(c) An order of appointment must:

(1) designate the appointee as "temporary administrator" of the decedent's estate for the specified period;

(2) define the powers conferred on the appointee; and

(3) set the amount of bond to be given by the appointee.

Revised Law

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. (Tex. Prob. Code, Sec. 131A(d).)

Source Law

(d) AANot later than the third business day after
the date of the order, the appointee shall file with
the county clerk a bond in the amount ordered by the
court. In this subsection, "business day" means a day
other than a Saturday, Sunday, or holiday recognized
by this state.

Revised Law

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. (Tex. Prob. Code, Sec. 131A(e).)

Source Law

(e) AANot later than the third day after the date
on which an appointee qualifies, the county clerk
shall issue to the appointee letters of appointment
that set forth the powers to be exercised by the
appointee as ordered by the court.

Revisor's Note

Section 131A(e), Texas Probate Code, requires the
county clerk to issue "letters of appointment." For
consistency of terminology, the revised law throughout
this chapter substitutes "letters of temporary
administration" for "letters of appointment."

Revised Law

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.

(Tex. Prob. Code, Secs. 131A(f), (g), (h).)

Source Law

(f) On the date that the county clerk issues letters of appointment, the county clerk shall post a notice of the appointment to all interested persons on the courthouse door.

(g) On the date the county clerk issues letters of appointment, the appointee shall notify the known heirs of the decedent of his appointment by certified mail, return receipt requested.

(h) A notice required by Subsection (f) or (g) of this section must state that:

(1) an interested person or an heir may request a hearing to contest the appointment not later than the 15th day after the date that the letters of appointment are issued;

(2) if no contest is made within the period specified by the notice, the appointment will continue for the time specified in the order of appointment; and

(3) the court may make the appointment permanent.

Revised Law

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. (Tex. Prob. Code, Sec. 131A(i).)

Source Law

(i) If an interested person or an heir requests a hearing to contest the appointment of a temporary administrator, a hearing shall be held and a determination made not later than the 10th day after the date the request was made. If a request is not made on or before the 15th day after the date that the letters of appointment are issued, the appointment of a temporary administrator continues for the period specified in the order, unless made permanent under Subsection (j) of this section. During the pendency of a contest of the appointment of a temporary administrator, the temporary appointee shall continue to act as administrator of the estate to the extent of the powers conferred by his appointment. If the court sets aside the appointment, the court may require the temporary administrator to prepare and file, under oath, a complete exhibit of the condition of the estate and detail the disposition the temporary administrator has made of the property of the estate.

Revised Law

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. (Tex. Prob. Code, Sec. 131A(j).)

Source Law

(j) At the conclusion of the term of appointment of a temporary administrator, the court may, by written order, make the appointment permanent if the permanent appointment is in the interest of the estate.

[Sections 452.009-452.050 reserved for expansion]

SUBCHAPTER B. TEMPORARY ADMINISTRATION PENDING CONTEST OF A WILL OR ADMINISTRATION

Revised Law

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. (Tex. Prob. Code, Sec. 132(a).)

Source Law

Sec. 132. (a) Appointment of Temporary Administrator. Pending a contest relative to the probate of a will or the granting of letters of administration, the court may appoint a temporary administrator, with such limited powers as the circumstances of the case require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. The power of appointment in this Subsection is in addition to the court's power of appointment under Section 131A of this Code.

Revised Law

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. (Tex. Prob. Code, Sec. 132(b).)
temporary administration has been granted pending a
will contest, or pending a contest on an application
for letters of administration, the court may, at any
time during the pendency of the contest, confer upon
the temporary administrator all the power and
authority of a permanent administrator with respect to
claims against the estate, and in such case the court
and the temporary administrator shall act in the same
manner as in permanent administration in connection
with such matters as the approval or disapproval of
claims, the payment of claims, and the making of sales
of real or personal property for the payment of claims;
provided, however, that in the event such power and
authority is conferred upon a temporary administrator,
he shall be required to give bond in the full amount
required of a permanent administrator. The provisions
of this Subsection are cumulative and shall not be
construed to exclude the right of the court to order a
temporary administrator to do any and all of the things
covered by this Subsection in other cases where the
doing of such things shall be necessary or expedient to
preserve the estate pending final determination of the
contest.

Revisor's Note
Section 132(b), Texas Probate Code, refers to a
court's authority to give a temporary administrator
certain "power and authority." The revised law omits
the reference to "authority" because, in context,"authority" is included in the meaning of "power."

[Sections 452.053-452.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF TEMPORARY ADMINISTRATOR

Revised Law
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. (Tex. Prob.
Code, Sec. 133 (part).)

Source Law
Sec. 133. Temporary administrators shall have
and exercise only such rights and powers as are
specifically expressed in the order of the court
appointing them, and as may be expressed in subsequent
orders of the court. . . . Any acts performed by
temporary administrators that are not so expressly
authorized shall be void.
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. (Tex. Prob. Code, Sec. 133 (part).)

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. (Tex. Prob. Code, Sec. 134.)

Section 134, Texas Probate Code, refers to estate property that has come into the "hands" of the temporary administrator. The revised law substitutes "possession" for "hands" because the terms are synonymous in context and "possession" is more consistent with modern usage.
Revised Law

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.

(Tex. Prob. Code, Sec. 135.)

Source Law

Sec. 135. The list, return, exhibit, and account so filed shall be acted upon by the court and, whenever temporary letters shall expire or cease to be of effect for any cause, the court shall immediately enter an order requiring such temporary appointee forthwith to deliver the estate remaining in his possession to the person or persons legally entitled to its possession. Upon proof of such delivery, the appointee shall be discharged and the sureties on his bond released as to any future liability.

Revisor's Note

Section 135, Texas Probate Code, refers to a court order requiring a temporary administrator to "forthwith" deliver the estate remaining in the administrator's possession. The revised law substitutes "promptly" for "forthwith" because the terms are synonymous in context and "promptly" is more consistent with modern usage.

CHAPTER 453. ADMINISTRATION OF COMMUNITY PROPERTY

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CHAPTER 453. ADMINISTRATION OF COMMUNITY PROPERTY

Revised Law
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. (Tex. Prob. Code, Sec. 155 (part).)

Source Law
Sec. 155. . . . Nothing in this part of this
chapter prohibits the administration of community
property under other provisions of this code relating
to the administration of an estate.

Revisor's Note
(1) Section 155, Texas Probate Code, refers to
"this part of this chapter," meaning Part 5, Chapter
VI, Texas Probate Code. This chapter is derived
entirely from Part 5, Chapter VI. The other portions
of Part 5 are revised in another chapter of this code.
The revised law substitutes "[t]his chapter" for "this
part of this chapter" and does not reference the
provisions revising other portions of Part 5 because
this part of Section 155 is also revised in the chapter
of this code that contains the revision of those other
portions.

(2) Section 155, Texas Probate Code, refers to
"other provisions of this code relating to the
administration of an estate." The reference to "of
this code" in Section 155 means the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this code" because the provisions of the Texas Probate Code that relate to the administration of an estate are revised in, or redesignated as part of, Title 2 of this code, and this chapter is included in that title.

Revised Law

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. (Tex. Prob. Code, Sec. 155 (part).)

Source Law

Sec. 155. When a husband or wife dies intestate and the community property passes to the survivor, no administration thereon shall be necessary. . . .

Revised Law

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. (Tex. Prob. Code, Secs. 160(a), (c).)

Source Law

Sec. 160. (a) When no one has qualified as executor or administrator of the estate of a deceased spouse, the surviving spouse, whether the husband or wife, as the surviving partner of the marital partnership has power to sue and be sued for the recovery of community property; to sell, mortgage,
lease, and otherwise dispose of community property for
the purpose of paying community debts; to collect
claims due to the community estate; and has such other
powers as shall be necessary to preserve the community
property, discharge community obligations, and wind up
community affairs.

(c) This section does not affect the disposition
of the property of the deceased spouse.

Revised Law

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. (Tex. Prob. Code, Secs. 160(b), (c).)

Source Law

(b) If an affidavit stating that the affiant is
the surviving spouse and that no one has qualified as
executor or administrator of the estate of the
deceased spouse is furnished to a person owing money to
the community estate for current wages at the time of
the death of the deceased spouse, the person making
payment or delivering to the affiant the deceased
spouse's final paycheck for wages, including unpaid
sick pay or vacation pay, if any, is released from
liability to the same extent as if the payment or
delivery was made to a personal representative of the
deceased spouse. The person is not required to inquire
into the truth of the affidavit. The affiant to whom
the payment or delivery is made is answerable to any
person having a prior right and is accountable to any
personal representative who is appointed. The affiant
is liable for any damage or loss to any person that
arises from a payment or delivery made in reliance on
the affidavit. 
(c) This section does not affect the disposition
of the property of the deceased spouse.

Revised Law
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. (Tex. Prob. Code, Sec. 176.)

Source Law
Sec. 176. The remarriage of a surviving spouse
shall not terminate the surviving spouse's powers as a
surviving partner.

Revised Law
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). (Tex. Prob. Code, Secs. 156 (part),
168 (part).)

Source Law
Sec. 156. . . . The surviving spouse or
personal representative shall keep a separate,
distinct account of all community debts allowed or
paid in the administration and settlement of such
estate.
Sec. 168. The survivor shall keep a fair and
full account and statement of all community debts and
expenses paid by him, and of the disposition made of
the community property; and, . . . .

Revised Law
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
devises their interest in the estate, and the increase in and
profits of the interest, after deducting from the interest:
the proportion of the community debts chargeable
to the interest;
unavoidable losses;
necessary and reasonable expenses; and
a reasonable commission for the management of the
interest. (Tex. Prob. Code, Sec. 168 (part).)

Source Law

Sec. 168. [The survivor . . .] upon final
partition of such estate, shall deliver to the heirs,
devises or legatees of the deceased spouse their
interest in such estate, and the increase and profits
of the same, after deducting therefrom the proportion
of the community debts chargeable thereto, unavoidable
losses, necessary and reasonable expenses, and a
reasonable commission for the management of the same.

Revisor's Note

Section 168, Texas Probate Code, refers to the
deceased spouse's "heirs, devisees or legatees." The
revised law omits the reference to "legatees" because
Section 3(i), Texas Probate Code, revised as Section
22.009 of this code, provides that "deviser" includes
"legatee."

Revised Law

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. (Tex. Prob. Code, Sec. 168 (part).)

Source Law

Sec. 168. . . . The survivor may not be liable
for losses sustained by the estate, except when the
survivor has been guilty of gross negligence or bad
faith.

Revised Law

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:
the separate property of the deceased spouse;
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. (Tex. Prob. Code, Sec.
177.)

Source Law

Sec. 177. When a personal representative of the
estate of a deceased spouse has duly qualified, the
personal representative is authorized to administer,
not only the separate property of the deceased spouse,
but also the community property which was by law under
the management of the deceased spouse during the
continuance of the marriage and all of the community
property that was by law under the joint control of the
spouses during the continuance of the marriage. The
surviving spouse, as surviving partner of the marital
partnership, is entitled to retain possession and
control of all community property which was legally
under the sole management of the surviving spouse
during the continuance of the marriage and to exercise
over that property all the powers elsewhere in this
part of this code authorized to be exercised by the
surviving spouse when there is no administration
pending on the estate of the deceased spouse. The
surviving spouse may by written instrument filed with
the clerk waive any right to exercise powers as
community survivor, and in such event the personal
representative of the deceased spouse shall be
authorized to administer upon the entire community
estate.

Revisor's Note

(1) Section 177, Texas Probate Code, refers to a
personal representative who has "duly qualified." The
revised law omits the reference to "duly" in this
case because the word does not add to the clear
meaning of the law. The requirement that the personal
representative be qualified is sufficient to convey
that the personal representative must have met the
requirements for qualification.

(2) Section 177, Texas Probate Code, refers to
"this part of this code," meaning Part 5, Chapter VI,
Texas Probate Code. The relevant portion of Part 5,
Chapter VI, is revised as this chapter, and the revised
law is drafted accordingly.

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. (Tex. Prob. Code, Sec. 72(a)
(part).)

Sec. 72. (a) [The probate of a will or
administration of an estate of a living person shall be
void;] provided, however, that the court shall have
jurisdiction to determine the fact, time and place of
death, and . . . there is no direct evidence that such
person is dead but . . . .

Revisor's Note

Section 72(a), Texas Probate Code, states that
the court has jurisdiction to determine the "fact,
time and place" of death. It is clear from the context
that this provision refers to the court's jurisdiction
in a proceeding to probate the will or administer the
estate of a person who is presumed dead but for whom
there is no direct evidence of death. Generally,
Section 88, Texas Probate Code, revised in relevant
part as Sections 256.151 and 301.151 of this code,
requires an applicant seeking to probate a person's
will or to obtain letters testamentary or of
administration for a person's estate to first prove,
among other facts, that the person is dead. The
revised law is drafted accordingly.

Revised Law

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. (Tex.
Prob. Code, Sec. 72(a) (part).)

Source Law

(a) . . . where application is made for the grant
of letters testamentary or of administration upon the
estate of a person believed to be dead and . . . the
death of such person shall be proved by circumstantial
evidence to the satisfaction of the court, such
letters shall be granted. . . .

Revisor's Note

Section 72(a), Texas Probate Code, refers to "a
person believed to be dead." The revised law
substitutes "presumed" for "believed" for consistency
of terminology throughout this chapter.
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. (Tex. Prob. Code, Sec. 72(b).)

Revisor's Note
Section 72(b), Texas Probate Code, refers to "the person supposed to be dead." The revised law substitutes "presumed" for "supposed" for consistency of terminology throughout this chapter.
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. (Tex. Prob. Code, Sec. 72(a) (part).)

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. (Tex. Prob. Code, Sec. 72(a) (part).)
be limited to the proceeds of such sale or the residue thereof with the increase thereof.

Revisor's Note

Section 72(a), Texas Probate Code, refers to "real or personal property." The revised law omits "real or personal" in this context as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

Revised Law

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. (Tex. Prob. Code, Sec. 72(a) (part).)

Source Law

(a) . . . If in a subsequent action such person shall be proved by direct evidence to have been living at any time subsequent to the date of grant of such letters, neither the personal representative nor anyone who shall deliver said estate or any part thereof to another under orders of the court shall be liable therefor; . . . . In no event shall the bonds of such personal representative be void provided, however, that the surety shall have no liability for any acts of the personal representative which were done in compliance with or approved by an order of the court. . . .
Section 72(a), Texas Probate Code, validates certain probate proceedings that were commenced before or pending on January 1, 1956, the effective date of that code. The revised law omits that provision because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable in this context as a result of Section 311.002(3), Government Code (Code Construction Act), provides that the repeal of a statute does not affect any validation previously made under the statute. The omitted law reads:

(a) . . . Probate proceedings upon estates of persons believed to be dead brought prior to the effective date of this Act and all such probate proceedings then pending, except such probate proceedings contested in any litigation pending on the effective date of this Act, are hereby validated insofar as the court's finding of death of such person is concerned.

[Chapters 455-500 reserved for expansion]

SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND FIDUCIARIES

CHAPTER 501. ANCILLARY PROBATE OF FOREIGN WILL

Sec. 501.001. AUTHORITY FOR ANCILLARY PROBATE OF FOREIGN WILL .......................... 738

Sec. 501.002. APPLICATION FOR ANCILLARY PROBATE OF FOREIGN WILL .......................... 739

Sec. 501.003. CITATION AND NOTICE .......................... 741

Sec. 501.004. RECORDING BY CLERK .......................... 741

Sec. 501.005. EFFECT OF FILING AND RECORDING FOREIGN WILL .......................... 742

Sec. 501.006. ANCILLARY LETTERS TESTAMENTARY .......................... 743

Sec. 501.007. EFFECT ON PROPERTY .......................... 744

Sec. 501.008. SETTING ASIDE OF CERTAIN FOREIGN WILLS .......................... 745
Revised Law

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. (Tex. Prob. Code, Sec. 95(a).)

Source Law

Sec. 95. (a) Foreign Will May Be Probated. The written will of a testator who was not domiciled in Texas at the time of his death which would affect any real or personal property in this State, may be admitted to probate upon proof that it stands probated or established in any of the United States, its territories, the District of Columbia, or any foreign nation.

Revisor's Note

(1) Section 95(a), Texas Probate Code, refers to "real or personal property." Throughout this chapter, the revised law omits references to "real or personal" as unnecessary because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

(2) Section 95(a), Texas Probate Code, provides that a foreign will "may be admitted to probate" on proof that the will stands probated or "established" in another jurisdiction. Throughout this chapter, the revised law adds "in this state" to "may be admitted to probate" and similar phrases for clarity to distinguish the ancillary probate authorized by this chapter from the original probate authorized in another jurisdiction. Also, throughout this chapter, the revised law substitutes "otherwise established"
for "established" in this context for accuracy and
consistency of terminology.

(3) Section 95(a), Texas Probate Code, refers to
a will that has been probated or established in "any of
the United States, its territories, [or] the District
of Columbia." The revised law substitutes references
to "any state of the United States" for the quoted
phrase because Section 311.005(7), Government Code
(Code Construction Act), applicable to the revised
law, provides that "'[s]tate,' when referring to a part
of the United States, includes any state, district,
commonwealth, territory, and insular possession of the
United States and any area subject to the legislative
authority of the United States of America."

**Revised Law**

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. (Tex. Prob. Code, Secs. 95(b)(1) (part), (2) (part), (c) 
(part).)

Source Law

(b) Application and Citation. (1) Will 
probated in domiciliary jurisdiction. If a foreign 
will has been admitted to probate or established in the 
jurisdiction in which the testator was domiciled at 
the time of his death, the application need state only 
that probate is requested on the basis of the 
authenticated copy of the foreign proceedings in which 
the will was probated or established. . . .

(2) Will probated in non-domiciliary 
jurisdiction. If a foreign will has been admitted to 
probate or established in any jurisdiction other than 
the domicile of the testator at the time of his death, 
the application for its probate shall contain all of 
the information required in an application for the 
probate of a domestic will, and shall also set out the 
name and address of each devisee and each person who 
will be entitled to a portion of the estate as an heir 
in the absence of a will. . . .

(c) Copy of Will and Proceedings To Be Filed. A 
copy of the will and of the judgment, order, or decree 
by which it was admitted to probate or otherwise 
established, attested by and with the original 
signature of the clerk of the court or of such other 
official as has custody of such will or is in charge of 
probate records, with the seal of the court affixed, if 
there is a seal, together with a certificate 
containing the original signature of the judge or 
presiding magistrate of such court that the said 
attestation is in due form, shall be filed with the 
application. . . .

Revisor's Note

(1) Section 95(b)(1), Texas Probate Code, 
refers to the authenticated copy of the foreign 
proceedings in which a foreign will "was probated" or 
established. The revised law throughout this chapter 
substitutes "was admitted to probate," or a similar
phrase, for "was probated," "has been probated," or "had been probated" because those phrases are synonymous and "was admitted to probate" is more consistent with the terminology used in this chapter.

(2) Section 95(c), Texas Probate Code, refers to a certificate signed by a judge or magistrate that an attestation required under that section is "in due form." The revised law substitutes "in proper form" for "in due form" because the phrases are synonymous in that context and the former phrase is more consistent with modern usage.

Revised Law
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. (Tex. Prob. Code, Secs. 95(b)(1) (part), (2) (part).)

Source Law
Sec. 501.003. CITATION AND NOTICE. (a) Citation or notice is not required. (2) . . . Citations shall be issued and served on each such devisee and heir by registered or certified mail.

Revised Law
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 minutes of the court.

(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 minutes of the court.

(c) A court order is not necessary for the recording of a
foreign will in accordance with this section. (Tex. Prob. Code,
Secs. 95(d)(1) (part), (2) (part).)

Source Law

(d) Probate Accomplished by Recording. (1) Will admitted in domiciliary jurisdiction. If the
will has been probated or established in the
jurisdiction in which the testator was domiciled at
the time of his death, it shall be the ministerial duty
of the clerk to record such will and the evidence of
its probate or establishment in the minutes of the
court. No order of the court is necessary. . . .

(2) Will admitted in non-domiciliary
jurisdiction. If the will has been probated or
established in another jurisdiction not the domicile
of the testator, its probate in this State may be
contested in the same manner as if the testator had
been domiciled in this State at the time of his death.
If no contest is filed, the clerk shall record such
will and the evidence of its probate or establishment
in the minutes of the court, and no order of the court
shall be necessary. . . .

Revisor's Note

Section 95(d)(2), Texas Probate Code, provides
for the recording by the court clerk of a foreign will
that was probated in a jurisdiction other than the
jurisdiction that was the testator's domicile at the
time of death, provided that "no contest is filed"
against the will. The contest of a foreign will is
governed by Chapter 504 of this code, and the revised
law adds a reference to that chapter for the
convenience of the reader.

Revised Law

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. (Tex. Prob. Code, Secs. 95(d)(1) (part),
(2) (part).)

Source Law

(1) When so filed and recorded, the will shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had been probated by order of the court, subject to contest in the manner and to the extent hereinafter provided.

(2) When so filed and recorded, it shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had been probated by order of the court, subject to contest in the manner and to the extent hereafter provided.

Revisor's Note

(1) Sections 95(d)(1) and (2), Texas Probate Code, refer to the "force and effect" of the filing and recording of a foreign will in accordance with this chapter. The revised law omits the reference to "force" because, in context, the meaning of that term is included in the meaning of "effect."

(2) Sections 95(d)(1) and (2), Texas Probate Code, provide that a foreign will is subject to contest in the manner and to the extent "hereinafter" or "hereafter" provided. The revised law substitutes a reference to Chapter 504 of this code for "hereinafter provided" and "hereafter provided" because that chapter contains the relevant law prescribing the procedures and grounds for contesting a foreign will.

Revised Law

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. (Tex.
Prob. Code, Sec. 105.)

Source Law

Sec. 105. When a foreign will is admitted to
ancillary probate in accordance with Section 95 of
this Code, the executor named in such will shall be
entitled to receive, upon application, letters
testamentary upon proof that he has qualified as such
in the jurisdiction in which the will was admitted to
probate, and that he is not disqualified to serve as
executor in this State. After such proof is made, the
court shall enter an order directing that ancillary
letters testamentary be issued to him. If letters of
administration have previously been granted by such
court in this State to any other person, such letters
shall be revoked upon the application of the executor
after personal service of citation upon the person to
whom such letters were granted.

Revised Law

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. (Tex. Prob. Code, Sec. 95(e).)

Source Law

(e) Effect of Foreign Will on Local Property.
If a foreign will has been admitted to probate or
established in the jurisdiction in which the testator
was domiciled at the time of his death, such will, when
probated as herein provided, shall be effectual to
dispose of both real and personal property in this
State irrespective of whether such will was executed
with the formalities required by this Code.

Revisor's Note

(1) Section 95(e), Texas Probate Code, refers to
the probate of a will as "herein" provided, meaning as
provided by Section 95, Texas Probate Code. The
revised law substitutes "by this chapter" for "herein"
because the relevant part of Section 95, Texas Probate
Code, is revised as this chapter.

(2) Section 95(e), Texas Probate Code, refers to
execution of a will with the formalities required by
"this Code," meaning the Texas Probate Code. The
revised law substitutes a reference to "this title"
for the reference to "this Code" because the
provisions of the Texas Probate Code that relate to the
formalities for execution of a will are revised in
Title 2 of this code, and this chapter is included in
that title.

Revised Law
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. (Tex. Prob. Code, Sec. 95(f).)

Source Law
(f) Protection of Purchasers. When a foreign
will has been probated in this State in accordance with
the procedure prescribed in this section for a will that has been admitted to probate in the domicile of the testator, and it is later proved in a proceeding brought for that purpose that the foreign jurisdiction in which the will was admitted to probate was not in fact the domicile of the testator, the probate in this State shall be set aside. If any person has purchased property from the personal representative or any legatee or devisee, in good faith and for value, or otherwise dealt with any of them in good faith, prior to the commencement of the proceeding, his title or rights shall not be affected by the fact that the probate in this State is subsequently set aside.

Revisor's Note

(1) Section 95(f), Texas Probate Code, refers to a foreign will "admitted to probate in the domicile of the testator" and provides that admission to probate in this state shall be set aside if it is later shown that the initial jurisdiction in which the will was admitted to probate "was not in fact the domicile of the testator." The revised law adds "at the time of the testator's death" to the quoted language for clarity and consistency with other language revised in this chapter.

(2) Section 95(f), Texas Probate Code, refers to any "legatee or devisee." The revised law omits the reference to "legatee" as unnecessary. Section 3(i), Texas Probate Code, revised in this code as Section 22.009, defines "devisee" to include a "legatee."

CHAPTER 502. ORIGINAL PROBATE OF FOREIGN WILL

Sec. 502.001. ORIGINAL PROBATE OF FOREIGN WILL

AUTHORIZED .......................... 746

Sec. 502.002. PROOF OF FOREIGN WILL IN ORIGINAL PROBATE PROCEEDING .......................... 748

CHAPTER 502. ORIGINAL PROBATE OF FOREIGN WILL

Revised Law

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. (Tex. Prob. Code, Sec. 103.)

Source Law

Sec. 103. Original probate of the will of a testator who died domiciled outside this State which, upon probate, may operate upon any property in this State, and which is valid under the laws of this State, may be granted in the same manner as the probate of other wills is granted under this Code, if the will does not stand rejected from probate or establishment in the jurisdiction where the testator died domiciled, or if it stands rejected from probate or establishment in the jurisdiction where the testator died domiciled solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State. The court may delay passing on the application for probate of a foreign will pending the result of probate or establishment, or of a contest thereof, at the domicile of the testator.

Revisor's Note

Section 103, Texas Probate Code, provides that, under certain circumstances, probate of the will of a testator who died domiciled outside of this state may be granted in the same manner as the probate of other wills is granted under "this Code," meaning the Texas Probate Code. The revised law substitutes a reference to "this title" for the reference to "this Code" because the provisions of the Texas Probate Code that relate to the probate of a will are revised in, or
redesignated as part of, Title 2 of this code, and this chapter is included in that title. Similar changes have been made throughout this chapter.

Revised Law

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. (Tex. Prob. Code, Sec. 104.)

Source Law

Sec. 104. If a testator dies domiciled outside this State, a copy of his will, authenticated in the manner required by this Code, shall be sufficient proof of the contents of the will to admit it to probate in an original proceeding in this State if no objection is made thereto. This Section does not authorize the probate of any will which would not otherwise be admissible to probate, or, in case objection is made to the will, relieve the proponent from offering proof of the contents and legal sufficiency of the will as otherwise required, except that the original will need not be produced unless the court so orders.
Sec. 503.003. CONTEST OF RECORDED FOREIGN TESTAMENTARY INSTRUMENT PERMITTED ........................ 753
[Sections 503.004-503.050 reserved for expansion]

SUBCHAPTER B. EFFECTS OF RECORDED FOREIGN TESTAMENTARY INSTRUMENT

Sec. 503.051. RECORDED FOREIGN TESTAMENTARY INSTRUMENT AS CONVEYANCE ............................ 754

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CHAPTER 503. RECORDING OF FOREIGN TESTAMENTARY INSTRUMENT

SUBCHAPTER A. REQUIREMENTS FOR RECORDING FOREIGN TESTAMENTARY INSTRUMENT

Revised Law

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. (Tex. Prob. Code, Secs. 96 (part), 97.)

Source Law

Sec. 96. When any will or testamentary instrument conveying or in any manner disposing of land in this State has been duly probated according to the laws of any of the United States, or territories thereof, or the District of Columbia, or of any country out of the limits of the United States, a copy thereof and of its probate which bears the attestation, seal and certificate required by the preceding Section, may be filed and recorded in the deed records in any county of this State in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded under the laws of this State, and without further proof or authentication; provided that

Sec. 97. A copy of such foreign will or testamentary instrument, and of its probate attested as provided above, together with the certificate that said attestation is in due form, shall be prima facie evidence that said will or testamentary instrument has been duly admitted to probate, according to the laws of the state, territory, district, or country wherein it has allegedly been admitted to probate, and shall be sufficient to authorize the same to be recorded in the deed records in the proper county or counties in this State.

Revisor's Note

(1) Section 96, Texas Probate Code, refers to a testamentary instrument that has been "duly probated," and Section 97, Texas Probate Code, refers to a testamentary instrument that has been "duly admitted to probate." The revised law omits "duly" in this context because the word does not add to the clear meaning of the law. The requirement that the testamentary instrument be probated is sufficient to convey that the instrument must have met the requirements for probate.

(2) Section 96, Texas Probate Code, refers to a testamentary instrument that has been probated according to the laws of "any of the United States, or territories thereof, or the District of Columbia" and
Section 97, Texas Probate Code, refers to a testamentary instrument having been admitted to probate according to the laws of "the state, territory, [or] district" in which it was alleged to have been admitted. The revised law substitutes references to "any state of the United States" and "the state" for the quoted phrases, respectively, because Section 311.005(7), Government Code (Code Construction Act), applicable to the revised law, provides that "'[s]tate,' when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America."

(3) Sections 96 and 97, Texas Probate Code, refer to a copy of a foreign testamentary instrument and of "its probate." The revised law substitutes references to a copy of "the judgment, order, or decree by which the instrument was admitted to probate" for the quoted phrase for consistency with the terminology used in Section 95(c), Texas Probate Code, revised in relevant part as Section 501.002(c) of this code, that describes the required evidence of the probate of a foreign testamentary instrument. Similar changes are made throughout this chapter.

(4) Section 96, Texas Probate Code, refers to evidence of the probate of a foreign testamentary instrument bearing the attestation, seal, and certificate required by "the preceding Section." Section 501.002(c) of this code is the revision of the relevant part of Section 95(c), Texas Probate Code, which precedes Section 96 and requires the attestation, seal, and certificate regarding the probate of a foreign will in another jurisdiction.
Section 97, Texas Probate Code, refers to the probate of a foreign testamentary instrument that is "attested as provided above," and to the "certificate that said attestation is in due form." The revised law substitutes a reference to the "attestation and certificate required by Section 501.002(c)" of this code for the quoted phrases because, as explained in Revisor's Note (4) to this section, the referenced attestation and certificate are required by Section 95(c), Texas Probate Code, which is revised in relevant part in this code as Section 501.002(c).

Revised Law

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. (Tex. Prob. Code, Sec. 95(c) (part).)

Source Law

(c) Original signatures shall not be required for recordation in the deed records pursuant to Sections 96 through 99 or . . . of this code.

Revisor's Note

Section 95(c), Texas Probate Code, provides in part that original signatures are not required "for recordation in the deed records pursuant to Sections 96 through 99" of the Texas Probate Code. Section 96, Texas Probate Code, revised in relevant part in Section 503.001 of this chapter, and Section 97, Texas Probate Code, which is also revised in that section, describe the requirements for recording a foreign testamentary instrument in the deed records. However, Sections 98 and 99, Texas Probate Code, which are revised in this chapter as Sections 503.051 and
503.052, respectively, describe the legal effects of recording a foreign testamentary instrument. Therefore, the revised law substitutes "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" for the quoted phrase for accuracy.

Revised Law

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. (Tex. Prob. Code, Sec. 96 (part).)

Source Law

Sec. 96. . . . the validity of such a will or testamentary instrument filed under this Section may be contested in the manner and to the extent hereinafter provided.

Revisor's Note

(1) Section 96, Texas Probate Code, refers to a copy of a foreign testamentary instrument "filed" under that section. The relevant portion of Section 96, Texas Probate Code, is revised in this chapter as Section 503.001, and that section refers to the copy of the instrument being "filed and recorded." Therefore, the revised law in this section adds a reference to the copy of the instrument being "recorded" for consistency of terminology throughout this chapter.

(2) Section 96, Texas Probate Code, provides that a foreign testamentary instrument may be contested in the manner and to the extent "hereinafter provided." Section 100, Texas Probate Code, revised in this code in Subchapter A, Chapter 504, is the section following Section 96 that provides for the contest of a foreign will. For the convenience of the
reader, the revised law substitutes a reference to the revision of that section for the quoted phrase.

[Sections 503.004-503.050 reserved for expansion]

SUBCHAPTER B. EFFECTS OF RECORDED FOREIGN TESTAMENTARY INSTRUMENT

Revised Law

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. (Tex. Prob. Code, Sec. 98.)

Source Law

Sec. 98. Every such foreign will, or testamentary instrument, and the record of its probate, which shall be attested and proved, as hereinabove provided, and delivered to the county clerk of the proper county in this State to be recorded in the deed records, shall take effect and be valid and effectual as a deed of conveyance of all property in this State covered by said foreign will or testamentary instrument; and the record thereof shall have the same force and effect as the record of deeds or other conveyances of land from the time when such instrument is delivered to the clerk to be recorded, and from that time only.

Revisor's Note

(1) Section 98, Texas Probate Code, refers to "[e]very such foreign will, or testamentary instrument," meaning a foreign testamentary instrument described by Section 96, Texas Probate Code, revised in relevant part in this chapter in Section 503.001, and to the "record" of the probate of that instrument. Section 96 requires a "copy" of the
foreign testamentary instrument to record the instrument in the deed records. The revised law therefore adds a reference to a "copy" of the instrument for accuracy. In addition, as explained in Revisor's Note (3) to Section 503.001, the revision of Section 96 requires a "copy of the judgment, order, or decree by which the instrument was admitted to probate" for recording the instrument in the deed records. For consistency of terminology throughout this chapter, the revised law substitutes that phrase for the reference to a "record" of the probate of the instrument.

(2) Section 98, Texas Probate Code, refers to the attestation and proof of a foreign testamentary instrument "as hereinabove provided" for purposes of recording the instrument in the deed records of a county. Section 96, Texas Probate Code, revised in relevant part in this chapter in Section 503.001, and Section 97, Texas Probate Code, which is also revised in that section, specify the attestation and proof requirements. Therefore, the revised law substitutes a reference to Section 503.001 for the quoted phrase.

(3) Section 98, Texas Probate Code, provides that a recorded foreign testamentary instrument is "valid and effectual" as a deed of conveyance. The revised law omits the reference to "effectual" because, in context, the meaning of that term is included within the meaning of "valid."

(4) Section 98, Texas Probate Code, refers to the "force and effect" of the recording of a foreign testamentary instrument in the deed records. The revised law omits the reference to "force" because, in context, the meaning of that term is included within the meaning of "effect."
(5) Section 98, Texas Probate Code, provides that a recorded foreign testamentary instrument is effective when the instrument is delivered to the county clerk, "and from that time only." The revised law omits the quoted phrase as unnecessary because specifying that the instrument is effective on delivery is sufficient to convey that it is not effective before that time.

Revised Law

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.

(Tex. Prob. Code, Sec. 99.)

Source Law

Sec. 99. The record of any such foreign will, or testamentary instrument, and of its probate, duly attested and proved and filed for recording in the deed records of the proper county, shall be notice to all persons of the existence of such will or testamentary instrument, and of the title or titles conferred thereby.

Revisor's Note

(1) Section 99, Texas Probate Code, refers to the "record" of a foreign testamentary instrument and of the instrument's probate. The revised law substitutes references to a "copy" of the foreign testamentary instrument and to a "copy of the judgment, order, or decree by which the instrument was admitted to probate" for the references to the "record" of those documents for the reason stated in Revisor's Note (1) to Section 503.051 of this chapter.
(2) Section 99, Texas Probate Code, refers to evidence of the probate of a foreign testamentary instrument that is "duly attested and proved." The revised law omits "duly" in this context for the reason stated in Revisor's Note (1) to Section 503.001 of this chapter.

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

Sec. 504.002. GROUNDS FOR CONTESTING FOREIGN WILL PROBATED IN NON-DOMICILIARY JURISDICTION

Sec. 504.003. PROCEDURES AND TIME LIMITS FOR CONTESTING FOREIGN WILL

Sec. 504.004. PROBATE OF FOREIGN WILL SET ASIDE FOR LACK OF SERVICE

[Sections 504.005-504.050 reserved for expansion]

SUBCHAPTER B. CONTEST OR FINAL REJECTION IN FOREIGN JURISDICTION

Sec. 504.051. NOTICE OF WILL CONTEST IN FOREIGN JURISDICTION

Sec. 504.052. EFFECT OF NOTICE

Sec. 504.053. EFFECT OF REJECTION OF TESTAMENTARY INSTRUMENT BY FOREIGN JURISDICTION

CHAPTER 504. CONTEST OF OR OTHER CHALLENGE TO FOREIGN TESTAMENTARY INSTRUMENT

SUBCHAPTER A. CONTEST OR SETTING ASIDE PROBATE OF FOREIGN WILL IN THIS STATE

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:
admitted to probate or established in the
domestic 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. (Tex. Prob. Code, Sec. 100(a).)

Source Law

Sec. 100. (a) Will Admitted in Domiciliary
Jurisdiction. A foreign will that has been admitted to
probate or established in the jurisdiction in which
the testator was domiciled at the time of his death,
and either admitted to probate in this State or filed
in the deed records of any county of this State, may be
contested by any interested person but only upon the
following grounds:

(1) That the foreign proceedings were not
authenticated in the manner required for ancillary
probate or recording in the deed records.

(2) That the will has been finally
rejected for probate in this State in another
proceeding.

(3) That the probate of the will has been
set aside in the jurisdiction in which the testator
died domiciled.

Revised Law

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. (Tex. Prob. Code, Sec. 100(b)
(part).)
(b) Will Probated in Non-Domiciliary Jurisdiction. A foreign will that has been admitted to probate or established in any jurisdiction other than that of the testator's domicile at the time of his death may be contested on any grounds that are the basis for the contest of a domestic will. . . .

Revised Law

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. (Tex. Prob. Code, Secs. 95(d)(2) (part), 100(c).)

Source Law

[Sec. 95]

(d) . . .

(2) Will admitted in non-domiciliary jurisdiction. If the will has been probated or established in another jurisdiction not the domicile of the testator, its probate in this State may be contested in the same manner as if the testator had been domiciled in this State at the time of his death. . . .

[Sec. 100]

(c) Time and Method. A foreign will that has been admitted to ancillary probate in this State or filed in the deed records in this State may be contested by the same procedures, and within the same time limits, as wills admitted to probate in this State in original proceedings.

Revisor's Note

Section 95(d)(2), Texas Probate Code, provides the procedures and time limits for contesting a foreign will probated or established in a jurisdiction other than the jurisdiction in which the testator was domiciled. For accuracy and consistency of terminology throughout this code, the revised law adds the phrase
"at the time of the testator's death" to the reference
to the jurisdiction of the testator's domicile to
clarify that that is the jurisdiction being referred
to. Similar changes are made throughout this chapter.

**Revised Law**

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. (Tex. Prob. Code, Sec. 100(b) (part).)

**Source Law**

(b) . . . If a will has been probated in this
State in accordance with the procedure applicable for
the probate of a will that has been admitted in the
state of domicile, without the service of citation
required for a will admitted in another jurisdiction
that is not the domicile of the testator, and it is
proved that the foreign jurisdiction in which the will
was probated was not in fact the domicile of the
testator, the probate in this State shall be set aside.
If otherwise entitled, the will may be reprobated in
accordance with the procedure prescribed for the
probate of a will admitted in a non-domiciliary
jurisdiction, or it may be admitted to original
probate in this State in the same or a subsequent
proceeding.

Revisor's Note
(1) Section 100(b), Texas Probate Code, refers
to certain procedures applicable to a will admitted in
the testator's "state" of domicile. The revised law
substitutes "jurisdiction" for "state" for
consistency of terminology throughout this chapter.

(2) Section 100(b), Texas Probate Code,
provides that when the probate in this state of a will
probated in the testator's domicile is set aside, the
will may be admitted to original probate in this state
in "the same . . . proceeding." The procedure
applicable to the probate of a will admitted to probate
in the jurisdiction of the testator's domicile is
referred to as "ancillary probate." The revised law
substitutes a reference to "the proceeding in which
the ancillary probate was set aside" for "the same
. . . proceeding" for clarity.

[Sections 504.005-504.050 reserved for expansion]

SUBCHAPTER B. CONTEST OR FINAL REJECTION IN FOREIGN JURISDICTION

Revised Law
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
minutes 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. (Tex. Prob. Code, Sec. 101
(part).)

Source Law
Sec. 101. Within the time permitted for the
contest of a foreign will in this State, verified
notice may be filed and recorded in the minutes of the
court in this State in which the will was probated, or
the deed records of any county in this State in which
such will was recorded, that proceedings have been
instituted to contest the will in the foreign
jurisdiction where it was probated or
established. . . .

Revised Law
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. (Tex. Prob. Code, Sec. 101
(part).)

Source Law
Sec. 101. . . . Upon such filing and recording,
the force and effect of the probate or recording of the
will shall cease until verified proof is filed and
recorded that the foreign proceedings have been
terminated in favor of the will, or that such
proceedings were never actually instituted.

Revisor's Note
Section 101, Texas Probate Code, refers to the
"force and effect" of the probate or recording of
certain wills. The revised law omits the reference to
"force" because, in context, the meaning of the term is
included within the meaning of "effect."

Revised Law
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. (Tex. Prob. Code, Sec. 102.)

Source Law

Sec. 102. Final rejection of a will or other
testamentary instrument from probate or establishment
in the jurisdiction in which the testator was
domiciled shall be conclusive in this State, except
where the will or other testamentary instrument has
been rejected solely for a cause which is not ground
for rejection of a will of a testator who died
domiciled in this State, in which case the will or
testamentary instrument may nevertheless be admitted
to probate or continue to be effective in this State.

CHAPTER 505. FOREIGN PERSONAL REPRESENTATIVES, TRUSTEES, AND
FIDUCIARIES

SUBCHAPTER A. FOREIGN CORPORATE FIDUCIARY

Sec. 505.001. DEFINITION
Sec. 505.002. APPLICABILITY OF OTHER LAW
Sec. 505.003. AUTHORITY OF FOREIGN CORPORATE FIDUCIARY
TO SERVE IN FIDUCIARY CAPACITY
Sec. 505.004. FILING REQUIREMENTS; DESIGNATION
Sec. 505.005. SERVICE OF NOTICE OR PROCESS ON
SECRETARY OF STATE
Sec. 505.006. CRIMINAL PENALTY; EFFECT OF CONVICTION

[Sections 505.007-505.050 reserved for expansion]

SUBCHAPTER B. FOREIGN EXECUTORS AND TRUSTEES

Sec. 505.051. APPLICABILITY OF BOND REQUIREMENT
Sec. 505.052. POWER TO SELL PROPERTY

[Sections 505.053-505.100 reserved for expansion]

SUBCHAPTER C. RECOVERY OF DEBTS BY FOREIGN EXECUTOR OR
ADMINISTRATOR

Sec. 505.101. SUIT TO RECOVER DEBT
Sec. 505.102. JURISDICTION
Sec. 505.103. RESTRICTION ON SUIT BROUGHT BY FOREIGN
EXECUTOR OR ADMINISTRATOR
CHAPTER 505. FOREIGN PERSONAL REPRESENTATIVES, TRUSTEES, AND FIDUCIARIES

SUBCHAPTER A. FOREIGN CORPORATE FIDUCIARY

Revised Law

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. (Tex. Prob. Code, Sec. 105A(a) (part).)

Source Law

Sec. 105A. (a) A corporate fiduciary that does not have its main office or a branch office in this state, hereinafter called "foreign corporate fiduciaries", . . . .

Revised Law

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. (Tex. Prob. Code, Secs. 105A(c), (d).)

Source Law

(c) Any foreign corporate fiduciary acting in a fiduciary capacity in this state in strict accordance with the provisions of this Section shall not be deemed to be doing business in the State of Texas within the meaning of Article 8.01 of the Texas Business Corporation Act; and shall be deemed qualified to serve in such capacity under the provisions of Section 105 of this Code.

(d) The provisions hereof are in addition to, and not a limitation on, the provisions of Subtitle F or G, Title 3, Finance Code.

Revisor's Note

(1) Section 105A(c), Texas Probate Code, provides that certain foreign corporate fiduciaries are not considered to be "doing business in the State of Texas within the meaning of Article 8.01 of the
Texas Business Corporation Act." The provision of Article 8.01, Texas Business Corporation Act, to which this section refers was codified as Section 9.001, Business Organizations Code, by Section 1, Chapter 182, Acts of the 78th Legislature, Regular Session, 2003. Therefore, the revised law substitutes a reference to Section 9.001, Business Organizations Code, for the reference to Article 8.01, Texas Business Corporation Act.

(2) Section 105A(d), Texas Probate Code, provides that the provisions "hereof," meaning Section 105A, Texas Probate Code, are in addition to certain provisions of the Finance Code. The revised law substitutes a reference to "this subchapter" for "hereof" because Section 105A, Texas Probate Code, is revised as Subchapter A of this chapter.

Revised Law

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. (Tex. Prob. Code, Sec. 105A(a) (part).)

Source Law

(a) [A corporate fiduciary that does not have
its main office or a branch office in this state] . . .
having the corporate power to so act, may be appointed
and may serve in the State of Texas as trustee (whether
of a personal or corporate trust), executor,
administrator, guardian of the estate, or in any other
fiduciary capacity, whether the appointment be by
will, deed, agreement, declaration, indenture, court
order or decree, or otherwise, when and to the extent
that the home state of the corporate fiduciary grants
authority to serve in like fiduciary capacity to a
corporate fiduciary whose home state is this state.

Revisor's Note

For the convenience of the reader, the revised
law includes cross-references to Sections 505.003(b)
and (c) and 505.004 of this chapter because the
referenced sections provide conditions precedent to
the appointment, and service as a fiduciary, of a
foreign corporate fiduciary.

Revised Law

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. (Tex. Prob. Code, Sec. 105A(b) (part).)

Source Law

(b) Before qualifying or serving in the State of
Texas in any fiduciary capacity, as aforesaid, such a foreign corporate fiduciary shall file in the office
of the Secretary of the State of the State of Texas (1)
a copy of its charter, articles of incorporation or of
association, and all amendments thereto, certified by
its secretary under its corporate seal; (2) a duly
executed instrument in writing, by its terms of
indefinite duration and irrevocable, appointing the
Secretary of State and his successors its agent for
service of process upon whom all notices and processes
issued by any court of this state may be served in any
action or proceeding relating to any trust, estate,
fund or other matter within this state with respect to
which such foreign corporate fiduciary is acting in
any fiduciary capacity, including the acts or defaults
of such foreign corporate fiduciary with respect to
any such trust, estate or fund; and (3) a written
certificate of designation, which may be changed from
time to time thereafter by the filing of a new
certificate of designation, specifying the name and
address of the officer, agent or other person to whom
such notice or process shall be forwarded by the
Secretary of State. . . .

Revisor's Note

(1) Section 105A(b)(2), Texas Probate Code,
provides that a foreign corporate fiduciary must file
a "duly" executed instrument. The revised law
substitutes "properly" for "duly" because the terms
are synonymous in context and "properly" is more
consistent with modern usage.

(2) Section 105A(b)(3), Texas Probate Code,
provides that a foreign corporate fiduciary may change
a written certificate of designation "from time to
time." The revised law omits the quoted language
because the authority to take an action implies the
authority to do so at any time.

Revised Law

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. (Tex. Prob. Code, Sec. 105A(b) (part).)

Source Law

(b) . . . Upon receipt of such notice or process, it shall be the duty of the Secretary of State forthwith to forward same by registered or certified mail to the officer, agent or other person so designated. Service of notice or process upon the Secretary of State as agent for such a foreign corporate fiduciary shall in all ways and for all purposes have the same effect as if personal service had been had within this state upon such foreign corporate fiduciary.

Revisor's Note

Section 105A(b), Texas Probate Code, provides that on receipt of a notice or process, it is the duty of the secretary of state "forthwith" to forward the notice or process. The revised law substitutes "promptly" for "forthwith" because the terms are synonymous in context and "promptly" is more consistent with modern usage.

Revised Law

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. (Tex. Prob. Code, Sec. 105A(e).)
(e) Any foreign corporate fiduciary which shall violate any provision of this Section 105a shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not exceeding Five Thousand Dollars ($5,000.00), and may, in the discretion of the court, be prohibited from thereafter serving in this state in any fiduciary capacity.

[Sections 505.007-505.050 reserved for expansion]

SUBCHAPTER B. FOREIGN EXECUTORS AND TRUSTEES

Revised Law
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. (Tex. Prob. Code, Sec. 106.)

Source Law
Sec. 106. A foreign executor shall not be required to give bond if the will appointing him so provides. If the will does not exempt him from giving bond, the provisions of this Code with respect to the bonds of domestic representatives shall be applicable.

Revisor's Note
Section 106, Texas Probate Code, provides that, under certain circumstances, the bond requirements for domestic representatives in "this Code," meaning the Texas Probate Code, apply. The revised law substitutes a reference to "this title" for the reference to "this Code" because the provisions of the Texas Probate Code that relate to the bond requirements for domestic representatives are revised in Title 2 of this code, and this chapter is included in that title.

Revised Law
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. (Tex. Prob. Code, Secs. 95(c) (part),
107.)

Source Law

[Sec. 95]
(c) . . . Original signatures shall not be
required for recordation in the deed records pursuant
to [Sections 96 through 99 or] Section 107 of this
code.

Sec. 107. When by any foreign will recorded in
the deed records of any county in this state in the
manner provided herein, power is given an executor or
trustee to sell any real or personal property situated
in this state, no order of a court of this state shall
be necessary to authorize such executor or trustee to
make such sale and execute proper conveyance, and
whenever any particular directions are given by a
testator in any such will respecting the sale of any
such property situated in this state, belonging to his
estate, the same shall be followed unless such
directions have been annulled or suspended by order of
a court of competent jurisdiction.

Revisor's Note

(1) Section 95(c), Texas Probate Code, provides
in part that original signatures are not required "for
recordation [of a foreign will] in the deed records
pursuant to [Sections 96 through 99 or] Section 107" of
the Texas Probate Code. Sections 96 and 97, Texas
Probate Code, which are revised in relevant part in
this code as Section 503.001, describe the procedures
and requirements for recording a foreign will in the
deed records. In contrast, Section 107, Texas Probate Code, which is revised in this section, describes a foreign executor's or trustee's authority to sell estate property that is granted by a foreign will recorded in the deed records. Therefore, the revised law substitutes "for purposes of this section" for the quoted phrase for accuracy.

(2) Section 107, Texas Probate Code, refers to a foreign will recorded in the deed records of a county in the manner provided "herein," which, in this context, means the Texas Probate Code. The revised law substitutes "by this subtitle" for "herein" because the provisions of the Texas Probate Code that relate to the procedures for filing wills are revised in Subtitle K, Title 2, of this code, and this chapter is included in that subtitle.

(3) Section 107, Texas Probate Code, refers to "real or personal property." The revised law omits "real or personal" because Section 311.005(4), Government Code (Code Construction Act), applicable to the revised law, defines "property" to mean real and personal property.

[Sections 505.053-505.100 reserved for expansion]

SUBCHAPTER C. RECOVERY OF DEBTS BY FOREIGN EXECUTOR OR ADMINISTRATOR

Revised Law

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. (Tex. Prob. Code, Secs. 107A(a), (b).)

Source Law

Sec. 107A. (a) On giving notice by registered or certified mail to all creditors of the decedent in this state who have filed a claim against the estate of the decedent for a debt due to the creditor, a foreign executor or administrator of a person who was a nonresident at the time of death may prosecute a suit in this state for the recovery of debts due to the decedent. (b) The plaintiff's letters testamentary or letters of administration granted by a competent tribunal, properly authenticated, shall be filed with the suit.

Revised Law

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. (Tex. Prob. Code, Sec. 107A(c).)

Source Law

(c) By filing suit in this state for the recovery of a debt due to the decedent, a foreign executor or administrator submits personally to the jurisdiction of the courts of this state in a proceeding relating to the recovery of a debt due by his decedent to a resident of this state. Jurisdiction under this subsection is limited to the money or value of personal property recovered in this state by the foreign executor or administrator.

Revised Law

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. (Tex. Prob. Code, Sec. 107A(d).)

Source Law

(d) A suit may not be maintained in this state by a foreign executor or administrator if there is an executor or administrator of the decedent qualified by a court of this state or if there is pending in this state an application for appointment as an executor or administrator.

[Chapters 506-550 reserved for expansion]

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

Sec. 551.002. PAYMENT OF PORTION THAT IS IN MONEY

Sec. 551.003. PAYMENT OF PORTION THAT IS NOT IN MONEY

Sec. 551.004. COMPENSATION TO EXECUTOR OR ADMINISTRATOR

Sec. 551.005. COMPTROLLER INDISPENSABLE PARTY

Sec. 551.006. COMPTROLLER'S RECEIPT

[Sections 551.007-551.050 reserved for expansion]

SUBCHAPTER B. RECOVERY OF FUNDS PAID TO STATE

Sec. 551.051. RECOVERY OF FUNDS

Sec. 551.052. ACTION FOR RECOVERY

Sec. 551.053. JUDGMENT

Sec. 551.054. PAYMENT OF COSTS

Sec. 551.055. REPRESENTATION OF COMPTROLLER

[Sections 551.056-551.100 reserved for expansion]

SUBCHAPTER C. PENALTIES; ENFORCEMENT

Sec. 551.101. LIABILITY OF COURT CLERK; PENALTY

Sec. 551.102. DAMAGES FOR FAILURE TO MAKE PAYMENTS

Sec. 551.103. ENFORCEMENT OF PAYMENT AND DAMAGES;

RECOVERY ON BOND
CHAPTER 551. PAYMENT OF CERTAIN ESTATES TO STATE

SUBCHAPTER A. PAYMENT OF CERTAIN FUNDS TO STATE

Revised Law

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 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. (Tex. Prob. Code, Sec. 427 (part).)

Source Law

Sec. 427. If any person entitled to a portion of an estate, except a resident minor without a guardian, shall not demand his portion from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, the court by written order shall require the executor or administrator to pay... to the comptroller;...

Revisor's Note

Section 427, Texas Probate Code, refers to "an order of court approving the report of commissioners of partition." Section 380(d), Texas Probate Code, provides for the report of the commissioners of partition and is revised as Section 360.154 of this code. For the convenience of the reader, the revised law adds a cross-reference to that section.

Revised Law

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.

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Source Law

Sec. 427. . . . [the executor or administrator to pay] so much of said portion as is in money [to the comptroller;] . . . .

Revised Law

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. (Tex. Prob. Code, Sec. 427 (part).)

Source Law

Sec. 427. . . . and such portion as is in other property he shall order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, the court shall order the same to be paid to the comptroller, . . . . A suit to recover proceeds of the sale is governed by Section 433 of this Code.

Revisor's Note

Section 427, Texas Probate Code, provides in part that "such portion as is in other property he shall order the executor or administrator to sell." It is clear from the context that the reference to "he" relates to the judge of the court. The revised law is drafted accordingly.

Revised Law

Sec. 551.004. COMPENSATION TO EXECUTOR OR ADMINISTRATOR. The executor or administrator is entitled to reasonable compensation for services performed under Section 551.003. (Tex. Prob. Code, Sec. 427 (part).)
Sec. 427. ... in all such cases allowing the executor or administrator reasonable compensation for his services. ...

Revised Law
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. (Tex. Prob. Code, Sec. 428.)

Sec. 428. The comptroller is an indispensable party to any judicial or administrative proceeding concerning the disposition and handling of any portion of an estate that is or may be payable to the comptroller under Section 427 of this Code. Whenever an order shall be made by the court for an executor or administrator to pay any funds to the comptroller under Section 427 of this Code, the clerk of the court in which such order is made shall serve on the comptroller by personal service of citation a certified copy of such order within five days after the same has been made.

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 minutes of the court. (Tex. Prob. Code, Sec. 430.)

Sec. 430. Whenever an executor or administrator
pays the comptroller any funds of the estate he
represents, under the preceding provisions of this
Code, he shall take from the comptroller a receipt for
such payment, with official seal attached, and shall
file the same with the clerk of the court ordering such
payment; and such receipt shall be recorded in the
minutes of the court.

Revisor's Note

Section 430, Texas Probate Code, provides in part
that the comptroller's receipt "shall be recorded in
the minutes of the court." The revised law provides
that the court clerk shall record the receipt in the
minutes because Section 15, Texas Probate Code,
revised as Section 52.052 of this code, requires the
clerk to maintain a case file for each decedent's
estate in which a probate proceeding is filed.

[Sections 551.007-551.050 reserved for expansion]

SUBCHAPTER B. RECOVERY OF FUNDS PAID TO STATE

Revised Law

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. (Tex.
Prob. Code, Sec. 433(a) (part).)

Source Law

Sec. 433. (a) Mode of Recovery. When funds of
an estate have been paid to the comptroller, any heir, devisee, or legatee of the estate, or their assigns, or
any of them, may recover the portion of such funds to
which he, she, or they are entitled. . . .

Revisor's Note

(1) Section 433(a), Texas Probate Code, refers
to funds of an estate paid to the comptroller. It is
clear from the context that the referenced funds are
the funds paid to the comptroller under Chapter X,
Texas Probate Code, which is revised as this chapter.
The revised law is drafted accordingly and similar
changes are made throughout this subchapter.

(2) Section 433(a), Texas Probate Code, refers
to an "heir, devisee, or legatee" of an estate. The
revised law omits the reference to "legatee" because
Section 3(i), Texas Probate Code, revised as Section
22.009 of this code, provides that "devisee" includes
"legatee."

Revised Law
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. (Tex.
Prob. Code, Secs. 433(a) (part), (b) (part), (c) (part).)

Source Law
(a) . . . The person claiming such funds shall
institute suit on or before the fourth anniversary of
the date of the order requiring payment to the
comptroller, by petition filed in the district court
of Travis County, against the comptroller, setting
forth the plaintiff's right to such funds, and the
amount claimed by him.
(b) Citation. Upon the filing of such petition,
the clerk shall issue a citation for the comptroller,
to be served by personal service, to appear and
represent the interest of the state in such suit. . . .
(c) Procedure. The proceedings in such suit
shall be governed by the rules for other civil suits;
and, . . . .

Revised Law
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. (Tex. Prob. Code, Sec. 433(c) (part).)

Source Law

(c) ... should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the comptroller to pay the same.

Revised Law

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. (Tex. Prob. Code, Sec. 433(d).)

Source Law

(d) The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required to secure the costs.

Revised Law

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. (Tex. Prob. Code, Sec. 433(b) (part).)

Source Law

(b) ... 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.

[Sections 551.056-551.100 reserved for expansion]

SUBCHAPTER C. PENALTIES; ENFORCEMENT

Revised Law

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. (Tex. Prob. Code, Sec. 429.)

Source Law

Sec. 429. Any clerk who shall neglect to have
served on the comptroller by personal citation a
certified copy of any such order within the time
prescribed by Section 428 of this Code shall be liable
in a penalty of One Hundred Dollars, to be recovered in
an action in the name of the state, after personal
service of citation, on the information of any
citizen, one-half of which penalty shall be paid to the
informer and the other one-half to the state.

Revisor's Note

Section 429, Texas Probate Code, refers to a
"citizen." The revised law substitutes "resident" for
"citizen" because, in the context of this section,
"citizen" and "resident" are synonymous and "resident"
is more commonly used.

Revised Law

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. (Tex. Prob. Code, Sec. 431.)

Source Law

Sec. 431. When an executor or administrator
fails to pay to the comptroller any funds of an estate
which he has been ordered by the court so to pay,
within 30 days after such order has been made, such
executor or administrator shall, after personal
service of citation charging such failure and after
proof thereof, be liable to pay out of his own estate
to the comptroller damages thereon at the rate of five
per cent per month for each month, or fraction thereof, that he fails to make such payment after 30 days from such order, which damages may be recovered in any court of competent jurisdiction.

Revised Law

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. (Tex. Prob. Code, Sec. 432.)

Source Law

Sec. 432. The Comptroller shall have the right in the name of the state to apply to the court in which the order for payment was made to enforce the payment of funds which the executor or administrator has failed to pay to him pursuant to order of court, together with the payment of any damages that shall have accrued under the provisions of the preceding section of this code, and the court shall enforce such payment in like manner as other orders of payment are required to be enforced. The comptroller shall also have the right to institute suit in the name of the state against such executor or administrator, and the sureties on his bond, for the recovery of the funds so ordered to be paid and such damages as have accrued. The county attorney or criminal district attorney of the county, the district attorney of the district, or
the attorney general, at the election of the comptroller and with the approval of the attorney general, shall represent the comptroller in all such proceedings, and shall also represent the interests of the state in all other matters arising under any provisions of this Code.

[Chapters 552-600 reserved for expansion]

SUBTITLE M. DURABLE POWERS OF ATTORNEY
[Chapters 601-650 reserved for expansion]
[Subtitles N-W reserved for expansion]

SUBTITLE X. TEXAS PROBATE CODE: SCOPE, JURISDICTION, AND COURTS

CHAPTER I. GENERAL PROVISIONS
[Reserved for expansion]

SUBTITLE Y. TEXAS PROBATE CODE: INDEPENDENT ADMINISTRATION

CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION

PART 4. INDEPENDENT ADMINISTRATION
[Reserved for expansion]

SUBTITLE Z. TEXAS PROBATE CODE: DURABLE POWERS OF ATTORNEY
[Reserved for expansion]
[Titles 3-24 reserved for expansion]

TITLE 25. TEXAS PROBATE CODE: GUARDIANSHIP
[Reserved for expansion]
APPENDIX A

TRANSFERS AND REDESIGNATIONS

SECTION 2. TRANSFER AND REDESIGNATION. Sections 2, 4, 5, 5A, 5B, 5C, 6, and 8, Texas Probate Code, are transferred to Chapter I, Subtitle X, Title 2, Estates Code, as added by Section 1 of this Act, and redesignated as Sections 2, 4, 5, 5A, 5B, 5C, 6, and 8, Estates Code, respectively.

SECTION 3. TRANSFER AND REDESIGNATION. Sections 145 through 154A, Texas Probate Code, are transferred to Part 4, Chapter VI, Subtitle Y, Title 2, Estates Code, as added by Section 1 of this Act, and redesignated as Sections 145 through 154A, Estates Code, respectively.

SECTION 4. TRANSFER AND REDESIGNATION. Chapter XII, Texas Probate Code, is transferred to Subtitle Z, Title 2, Estates Code, as added by Section 1 of this Act, and Sections 481 through 506 of that chapter are redesignated as Sections 481 through 506, Estates Code, respectively.

SECTION 5. TRANSFER AND REDESIGNATION. Chapter XIII, Texas Probate Code, is transferred to Title 25, Estates Code, as added by Section 1 of this Act, and redesignated as Chapter XIII of that title, and Sections 601 through 905 of that chapter are redesignated as Sections 601 through 905, Estates Code, respectively.
APPENDIX B

CONFORMING AMENDMENTS

SECTION 6. CONFORMING AMENDMENT. Section 2, Texas Probate Code, redesignated as Section 2, Estates Code, by Section 2 of this Act, is amended to read as follows:

Sec. 2. EFFECTIVE DATE AND APPLICATION. [(a) Effective Date. This Code shall take effect and be in force on and after January 1, 1956. The procedure herein prescribed shall govern all probate proceedings in county and probate courts brought after the effective date of this Act, and also all further procedure in proceedings in probate then pending, except to the extent that in the opinion of the court, with respect to proceedings in probate then pending, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

[(b) Rights Not Affected. No act done in any proceeding commenced before this Code takes effect, and no accrued right, shall be impaired by the provisions of this Code. When a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be deemed a part of this Code with respect to such right. All things properly done under any previously existing statute prior to the taking effect of this Code shall be treated as valid. Where citation or other process or notice is issued and served in compliance with existing statutes prior to the taking effect of this Code, the party upon whom such citation or other process has been served shall have the time provided for under such previously existing statutes in which to comply therewith.

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

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

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

SECTION 7. CONFORMING AMENDMENT. Section 145(q), Texas Probate Code, redesignated as Section 145(q), Estates Code, by Section 3 of this Act, is amended to read as follows:

(q) Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor or independent administrator under Subsections (c), (d), and (e) of the section. [Section 36 of this code does not apply to the appointment of an independent executor or administrator under Subsection (c), (d), or (e) of this section.]

SECTION 8. CONFORMING AMENDMENT. Section 154A(i), Texas Probate Code, redesignated as Section 154A(i), Estates Code, by Section 3 of this Act, is amended to read as follows:

(i) Absent proof of fraud or collusion on the part of a judge, the judge may not be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent executor under this section. [Section 36 of this code does not apply to an appointment of a successor independent executor under this
SECTION 9. CONFORMING AMENDMENT. Section 490(a), Texas Probate Code, redesignated as Section 490(a), Estates Code, by Section 4 of this Act, is amended to read as follows:

(a) The following form is known as a "statutory durable power of attorney." A person may use a statutory durable power of attorney to grant an attorney in fact or agent powers with respect to a person's property and financial matters. A power of attorney in substantially the following form has the meaning and effect prescribed by this chapter. The validity of a power of attorney as meeting the requirements of a statutory durable power of attorney is not affected by the fact that one or more of the categories of optional powers listed in the form are struck or the form includes specific limitations on or additions to the attorney in fact's or agent's powers.

The following form is not exclusive, and other forms of power of attorney may be used.

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, ESTATES [TEXAS PROBATE] CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, __________ (insert your name and address), appoint __________ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

Real property transactions;
Tangible personal property transactions;
Stock and bond transactions;
Commodity and option transactions;
Banking and other financial institution transactions;
Business operating transactions;
Insurance and annuity transactions;
Estate, trust, and other beneficiary transactions;
Claims and litigation;
Personal and family maintenance;
Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
Retirement plan transactions;
Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):
I grant my agent (attorney in fact) the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

________________________________________________________________
________________________________________________________________
________________________________________________________________
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________________________________________________________________
________________________________________________________________
________________________________________________________________

82C95 MTB-D 787
UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS
EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent
disability or incapacity.

(B) This power of attorney becomes effective upon my
disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY
IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT
YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my
disability or incapacity is not contained in this power of
attorney, I shall be considered disabled or incapacitated for
purposes of this power of attorney if a physician certifies in
writing at a date later than the date this power of attorney is
executed that, based on the physician's medical examination of me,
I am mentally incapable of managing my financial affairs. I
authorize the physician who examines me for this purpose to
disclose my physical or mental condition to another person for
purposes of this power of attorney. A third party who accepts this
power of attorney is fully protected from any action taken under
this power of attorney that is based on the determination made by a
physician of my disability or incapacity.

I agree that any third party who receives a copy of this
document may act under it. Revocation of the durable power of
attorney is not effective as to a third party until the third party
receives actual notice of the revocation. I agree to indemnify the
third party for any claims that arise against the third party
because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled,
resigns, or refuses to act, I name the following (each to act alone
and successively, in the order named) as successor(s) to that
agent: __________.

Signed this _____ day of __________, [19]_____________

___________________________
(your signature)

State of _______________________

County of _______________________

This document was acknowledged before me on ____________ (date) by
_________________________
(name of principal)

______________________________
(signature of notarial officer)

(Seal, if any, of notary) _____________________________________

(printed name)

My commission expires: _____________

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER
THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
RESPONSIBILITIES OF AN AGENT.

SECTION 10. REPEALER. (a) Sections 3, 9, 10, 10A, 10B, 10C,
11, 11A, 12, 13, 14, 15, 16, 17, 17A, 18, 19, 20, 21, 22, 23, 24, 25,
26, 27, 28, 29, 31, 32, 33, 34, 34A, 35, 36, 36B, 36C, 36D, 36E, 36F,
37, 37A, 37B, 37C, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 47A, 48,
58A, 58B, 58C, 59, 59A, 60, 61, 62, 63, 67, 68, 69, 69A, 70, 70A, 71,
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208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 220, 221,
234, 235, 238, 238A, 239, 240, 241, 242, 243, 244, 245, 249, 250,
Section 248, Texas Probate Code, as amended by Chapters 701 (S.B. 347) and 765 (H.B. 3434), Acts of the 79th Legislature, Regular session, 2005, is repealed.

SECTION 11. LEGISLATIVE INTENT. This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a recodification only, and no substantive change in law is intended by this Act.

SECTION 12. EFFECTIVE DATE. This Act takes effect January 1, 2014.
APPENDIX C

CHAPTER 311. CODE CONSTRUCTION ACT

(current as of end of 81st Legislature, 1st Called Session, 2009)

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. SHORT TITLE. This chapter may be cited as the Code Construction Act.

Sec. 311.002. APPLICATION. This chapter applies to:

1. each code enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program;
2. each amendment, repeal, revision, and reenactment of a code or code provision by the 60th or a subsequent legislature;
3. each repeal of a statute by a code; and
4. each rule adopted under a code.

Sec. 311.003. RULES NOT EXCLUSIVE. The rules provided in this chapter are not exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of codes.

Sec. 311.004. CITATION OF CODES. A code may be cited by its name preceded by the specific part concerned. Examples of citations are:

1. Title 1, Business & Commerce Code;
2. Chapter 5, Business & Commerce Code;
3. Section 9.304, Business & Commerce Code;
4. Section 15.06(a), Business & Commerce Code; and
5. Section 17.18(b)(1)(B)(ii), Business & Commerce Code.

Sec. 311.005. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

1. "Oath" includes affirmation.
2. "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal
"Population" means the population shown by the most recent federal decennial census.

"Property" means real and personal property.

"Rule" includes regulation.

"Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.

"State," when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.

"Swear" includes affirm.

"United States" includes a department, bureau, or other agency of the United States of America.

"Week" means seven consecutive days.

"Written" includes any representation of words, letters, symbols, or figures.

"Year" means 12 consecutive months.

"Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Sec. 311.006. INTERNAL REFERENCES. In a code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of the code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of the code in which the reference appears.

SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS. (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.
(b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Sec. 311.012. TENSE, NUMBER, AND GENDER. (a) Words in the present tense include the future tense.
(b) The singular includes the plural and the plural includes the singular.
(c) Words of one gender include the other genders.

Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute.
(b) A quorum of a public body is a majority of the number of members fixed by statute.

Sec. 311.014. COMPUTATION OF TIME. (a) In computing a period of days, the first day is excluded and the last day is included.
(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.
(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Sec. 311.015. REFERENCE TO A SERIES. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:
(1) "May" creates discretionary authority or grants
permission or a power.

(2) "Shall" imposes a duty.

(3) "Must" creates or recognizes a condition precedent.

(4) "Is entitled to" creates or recognizes a right.

(5) "May not" imposes a prohibition and is synonymous with "shall not."

(6) "Is not entitled to" negates a right.

(7) "Is not required to" negates a duty or condition precedent.

SUBCHAPTER C. CONSTRUCTION OF STATUTES

Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In enacting a statute, it is presumed that:

(1) compliance with the constitutions of this state and the United States is intended;

(2) the entire statute is intended to be effective;

(3) a just and reasonable result is intended;

(4) a result feasible of execution is intended; and

(5) public interest is favored over any private interest.

Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A statute is presumed to be prospective in its operation unless expressly made retrospective.

Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

(1) object sought to be attained;

(2) circumstances under which the statute was enacted;

(3) legislative history;

(4) common law or former statutory provisions, including laws on the same or similar subjects;

(5) consequences of a particular construction;

(6) administrative construction of the statute; and

(7) title (caption), preamble, and emergency
Sec. 311.024. HEADINGS. The heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.

Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS. (a) Except as provided by Section 311.031(d), if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided by Section 311.031(d), if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:

(1) the date on which the last presiding officer signed the bill;

(2) the date on which the governor signed the bill; or

(3) the date on which the bill became law by operation
Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL. (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effect its general purpose to make uniform the law of those states that enact it.

Sec. 311.029. ENROLLED BILL CONTROLS. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

Sec. 311.031. SAVING PROVISIONS. (a) Except as provided by Subsection (b), the reenactment, revision, amendment, or repeal of a statute does not affect:

(1) the prior operation of the statute or any prior action taken under it;

(2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;

(3) any violation of the statute or any penalty,
forfeiture, or punishment incurred under the statute before its amendment or repeal; or

(4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

(c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(d) If any provision of a code conflicts with a statute enacted by the same legislature that enacted the code, the statute controls.

Sec. 311.032. SEVERABILITY OF STATUTES. (a) If any statute contains a provision for severability, that provision prevails in interpreting that statute.

(b) If any statute contains a provision for nonseverability, that provision prevails in interpreting that statute.

(c) In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.
Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction. Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.
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13 665B as amended by Ch. 930, 81st Leg., R.S.  .665B*
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*Temporary placement pending future revision or redesignation.