2023 TEXAS ESTATES & TRUST CODES
WITH COMMENTARY

GERRY W. BEYER
Governor Preston E. Smith Regents Professor of Law
Texas Tech University School of Law

Revised August 10, 2023

This document contains the Texas Estates Code and the Texas Trusts Code (and related Property Code provisions) showing all changes made by the 2023 Texas Legislature. The changes, most of which take effect on September 1, 2023, are shown in red-lined format for easy comparison of the prior and new versions of the statutes. Also included are charts converting Probate Code to Estates Code sections and Estates Code to Probate Code sections.

I have included commentary entitled Statutes in Context to many sections. These annotations provide background information, explanations, and citations to key cases which should assist you in identifying the significance of the statutes and how they operate.

Despite my best efforts, errors may have crept into the text or the Statutes in Context. In addition, new cases and legislation make important changes to the law. I invite you to assist me in making the next version of this material even more useful. Please let me know if you detect any problems or have suggestions. You may contact me via e-mail at gwb@ProfessorBeyer.com.

Electronic copy available at: https://ssrn.com/abstract=4537861
TABLE OF CONTENTS

Conversion Chart – Probate Code to Estates Code .......................................................... 1
Conversion Chart – Estates Code to Probate Code .......................................................... 17

Texas Estates Code ............................................................................................................. 35

TITLE 1. GENERAL PROVISIONS ................................................................................. 37

Chapter 21. Purpose and Construction ............................................................................ 37
§ 21.001. Purpose of Code .................................................................................................. 37
§ 21.002. Construction ....................................................................................................... 38
§ 21.003. Statutory References .......................................................................................... 38
§ 21.004. Effect of Division of Law .................................................................................... 38
§ 21.005. Applicability of Certain Laws ............................................................................ 38
§ 21.006. Applicability to Probate Proceedings ................................................................. 38

Chapter 22. Definitions .................................................................................................... 38
§ 22.001. Applicability of Definitions ............................................................................... 39
§ 22.002. Authorized Corporate Surety .......................................................................... 39
§ 22.003. Charitable Organization ...................................................................................... 39
§ 22.004. Child ................................................................................................................... 39
§ 22.005. Claims ............................................................................................................... 40
§ 22.006. Corporate Fiduciary .......................................................................................... 40
§ 22.007. Court; County Court, Probate Court, and Statutory Probate Court .................. 40
§ 22.008. Devise ................................................................................................................ 40
§ 22.009. Devisee ............................................................................................................. 40
§ 22.010. Distributee ......................................................................................................... 40
§ 22.011. Docket ............................................................................................................... 40
§ 22.012. Estate ............................................................................................................... 40
§ 22.013. Exempt Property .............................................................................................. 41
§ 22.014. Governmental Agency of the State ................................................................. 41
§ 22.015. Heir .................................................................................................................... 41
§ 22.016. Incapacitated Person ......................................................................................... 41
§ 22.017. Independent Executor ....................................................................................... 41
§ 22.018. Interested Person; Person Interested ................................................................. 41
§ 22.019. Judge ................................................................................................................ 41
§ 22.020. Legacy ............................................................................................................... 41
§ 22.021. Legatee ............................................................................................................. 41
§ 22.022. Minor ............................................................................................................... 41
§ 22.024. Mortgage; Lien .................................................................................................. 42
§ 22.025. Net Estate ......................................................................................................... 42
§ 22.026. Next of Kin ...................................................................................................... 42
§ 22.027. Person ............................................................................................................... 42
§ 22.028. Personal Property ............................................................................................. 42
§ 22.029. Probate Matter; Probate Proceedings; Proceeding in Probate; Proceedings for Probate ................................................................. 42
§ 22.0295. Qualified Delivery Method ............................................................................. 42
§ 22.030. Real Property ................................................................................................... 42
§ 22.031. Representative; Personal Representative ......................................................... 42
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 22.032.</td>
<td>Surety</td>
<td>43</td>
</tr>
<tr>
<td>§ 22.033.</td>
<td>Ward</td>
<td>43</td>
</tr>
<tr>
<td>§ 22.034.</td>
<td>Will</td>
<td>43</td>
</tr>
</tbody>
</table>

### Title 2. Estates of Decedents; Durable Powers of Attorney

#### Subtitle A. Scope, Jurisdiction, Venue, and Courts

<table>
<thead>
<tr>
<th>Chapter 31.</th>
<th>General Provisions</th>
<th>43</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 31.001.</td>
<td>Scope of “Probate Proceeding” for Purposes of Code</td>
<td>43</td>
</tr>
<tr>
<td>§ 31.002.</td>
<td>Matters Related to Probate Proceeding</td>
<td>43</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 32.</th>
<th>Jurisdiction</th>
<th>44</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 32.001.</td>
<td>General Probate Court Jurisdiction; Appeals</td>
<td>44</td>
</tr>
<tr>
<td>§ 32.002.</td>
<td>Original Jurisdiction for Probate Proceedings</td>
<td>45</td>
</tr>
<tr>
<td>§ 32.003.</td>
<td>Jurisdiction of Contested Probate Proceeding in County with No Statutory Probate Court or Statutory County Court</td>
<td>45</td>
</tr>
<tr>
<td>§ 32.004.</td>
<td>Jurisdiction of Contested Probate Proceeding in County with No Statutory Probate Court</td>
<td>45</td>
</tr>
<tr>
<td>§ 32.005.</td>
<td>Exclusive Jurisdiction of Probate Proceeding in County with Statutory Probate Court</td>
<td>46</td>
</tr>
<tr>
<td>§ 32.006.</td>
<td>Jurisdiction of Statutory Probate Court with Respect to Trusts and Powers of Attorney</td>
<td>46</td>
</tr>
<tr>
<td>§ 32.007.</td>
<td>Concurrent Jurisdiction with District Court</td>
<td>46</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 33.</th>
<th>Venue</th>
<th>46</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subchapter A.</td>
<td>Venue for Certain Proceedings</td>
<td>47</td>
</tr>
<tr>
<td>§ 33.001.</td>
<td>Probate of Wills and Granting of Letters Testamentary and of Administration</td>
<td>47</td>
</tr>
<tr>
<td>§ 33.002.</td>
<td>Action Related to Probate Proceeding in Statutory Probate Court</td>
<td>47</td>
</tr>
<tr>
<td>§ 33.003.</td>
<td>Certain Actions Involving Personal Representative</td>
<td>48</td>
</tr>
<tr>
<td>§ 33.004.</td>
<td>Heirship Proceedings</td>
<td>48</td>
</tr>
<tr>
<td>§ 33.005.</td>
<td>Certain Actions Involving Breach of Fiduciary Duty</td>
<td>48</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter B.</th>
<th>Determination of Venue</th>
<th>48</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 33.051.</td>
<td>Commencement of Proceeding</td>
<td>48</td>
</tr>
<tr>
<td>§ 33.052.</td>
<td>Concurrent Venue</td>
<td>48</td>
</tr>
<tr>
<td>§ 33.053.</td>
<td>Probate Proceedings in More Than One County</td>
<td>48</td>
</tr>
<tr>
<td>§ 33.054.</td>
<td>Jurisdiction to Determine Venue</td>
<td>48</td>
</tr>
<tr>
<td>§ 33.055.</td>
<td>Protection for Certain Purchasers</td>
<td>48</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter C.</th>
<th>Transfer of Probate Proceeding</th>
<th>49</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 33.101.</td>
<td>Transfer to Other County in Which Venue is Proper</td>
<td>49</td>
</tr>
<tr>
<td>§ 33.102.</td>
<td>Transfer for Want of Venue</td>
<td>49</td>
</tr>
<tr>
<td>§ 33.103.</td>
<td>Transfer for Convenience</td>
<td>49</td>
</tr>
<tr>
<td>§ 33.104.</td>
<td>Validation of Previous Proceedings</td>
<td>49</td>
</tr>
<tr>
<td>§ 33.105.</td>
<td>Transfer of Probate Proceeding Record</td>
<td>49</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 34.</th>
<th>Matters Relating to Certain Other Types of Proceedings</th>
<th>50</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 34.001.</td>
<td>Transfer to Statutory Probate Court of Proceeding Related to Probate Proceeding</td>
<td>50</td>
</tr>
<tr>
<td>§ 34.002.</td>
<td>Actions to Collect Delinquent Property Taxes</td>
<td>50</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
TABLE OF CONTENTS

SUBTITLE B. PROCEDURAL MATTERS ................................................................. 51


Subchapter A. Issuance and Form of Notice or Process ................................ 51
  § 51.001. Issuance of Notice or Process in General ...................................... 51
  § 51.002. Direction of Writ or Other Process ............................................. 51
  § 51.003. Contents of Citation or Notice .................................................... 51

Subchapter B. Methods of Serving Citation or Notice; Persons to be Served .... 52
  § 51.051. Personal Service ........................................................................... 52
  § 51.052. Service by Mail or Private Delivery ............................................. 52
  § 51.053. Service by Posting ....................................................................... 52
  § 51.054. Service by Publication ................................................................. 53
  § 51.055. Service on Party’s Attorney of Record ........................................ 53
  § 51.056. Service on Personal Representative or Receiver .......................... 53

Subchapter C. Return and Proof of Service of Citation or Notice ................. 53
  § 51.101. Requirements for Return on Citation or Notice Served by Personal Service .................. 53
  § 51.102. Validity of Service and Return on Citation or Notice Served by Posting .......................... 54
  § 51.103. Proof of Service ............................................................................ 54
  § 51.104. Return to Court ............................................................................ 54

Subchapter D. Alternative Manner of Issuance, Service, and Return ............ 54
  § 51.151. Court-Ordered Issuance, Service, and Return Under Certain Circumstances .......... 54

Subchapter E. Additional Notice Provisions ................................................. 55
  § 51.201. Waiver of Notice of Hearing ....................................................... 55
  § 51.202. Request for Notice of Filing of Pleading ...................................... 55
  § 51.203. Service of Notice of Intention to Take Depositions in Certain Matters ................. 55

Chapter 52. Filing and Recordkeeping ............................................................ 55

Subchapter A. Recordkeeping Requirements ............................................... 55
  § 52.001. Probate Docket ............................................................................ 55
  § 52.002. Claim Docket ............................................................................... 56
  § 52.003. Probate Fee Book ....................................................................... 56
  § 52.004. Alternate Recordkeeping ............................................................. 56

Subchapter B. Files; Index ........................................................................... 56
  § 52.051. Filing Procedures ......................................................................... 56
  § 52.052. Case Files .................................................................................. 56
  § 52.053. Index ......................................................................................... 57

Chapter 53. Other Court Duties and Procedures ............................................ 57

Subchapter A. Enforcement of Orders .......................................................... 57
  § 53.001. Enforcement of Judge’s Orders .................................................. 57

Subchapter B. Costs and Security ................................................................. 57
  § 53.051. Applicability of Certain Laws ...................................................... 57
  § 53.052. Security for Certain Costs .......................................................... 57
  § 53.053. Exemption from Probate Fees for Estates of Certain Military Servicemembers ........ 57
**Table of Contents**

§ 53.054. Exemption from Probate Fees for Estates of Certain Law Enforcement Officers, Firefighters, and Others .......................................................... 58

Subchapter C. Procedures for Probate Matters ........................................................................ 58
§ 53.101. Calling of Dockets .................................................................................................. 58
§ 53.102. Setting of Certain Hearings by Clerk................................................................. 58
§ 53.103. Rendering of Decisions, Orders, Decrees, and Judgments ................................... 58
§ 53.104. Appointment of Attorneys Ad Litem ................................................................. 58
§ 53.106. Executions in Probate Matters ............................................................................. 58

Chapter 54. Pleadings and Evidence in General ................................................................. 59

Subchapter A. Pleadings....................................................................................................... 59
§ 54.001. Effect of Filing or Contesting Pleading .............................................................. 59
§ 54.002. Defect in Pleading ............................................................................................. 59

Subchapter B. Evidence ...................................................................................................... 59
§ 54.051. Applicability of Certain Rules Relating to Witnesses and Evidence .......... 59
§ 54.052. Use of Certain Records as Evidence ................................................................. 59

Chapter 55. Complaints and Contests .............................................................................. 60

Subchapter A. Contest of Proceedings in Probate Court .................................................. 60
§ 55.001. Opposition in Probate Proceeding................................................................. 60
§ 55.002. Trial by Jury ....................................................................................................... 60

Subchapter B. Institution of Higher Education or Charitable Organization as Party to Certain Actions ............................................................................... 60
§ 55.051. Definition .......................................................................................................... 60
§ 55.052. Necessary Party .............................................................................................. 61
§ 55.053. Service of Process ........................................................................................... 61

Subchapter C. Mental Capacity of Decedent ................................................................... 61
§ 55.101. Entitlement to Production of Communications and Records ....................... 61
§ 55.102. Release of Records .......................................................................................... 61

Subchapter D. Attachment of Estate Property ................................................................. 61
§ 55.151. Order for Issuance of Writ of Attachment ....................................................... 61
§ 55.152. Bond ................................................................................................................ 61

Subchapter E. Specific Performance of Agreement to Transfer Title ................................ 61
§ 55.201. Complaint and Citation .................................................................................... 61
§ 55.202. Hearing and Order ......................................................................................... 62
§ 55.203. Conveyance .................................................................................................... 62

Subchapter F. Bill of Review ............................................................................................ 62
§ 55.251. Revision and Correction of Order or Judgment in Probate Proceeding .......... 62
§ 55.252. Injunction ......................................................................................................... 62

Chapter 56. Change and Resignation of Resident Agent of Personal Representative for Service of Process ................................................................................. 62
§ 56.001. Change of Resident Agent .............................................................................. 62
§ 56.002. Resignation of Resident Agent ....................................................................... 63
# Table of Contents

## Subtitle C. Passage of Title and Distribution of Decedents’ Property in General ............................................. 63

Subchapter A. Passage and Possession of Decedent’s Estate on Death .................................................. 63

- § 101.001. Passage of Estate on Decedent’s Death ................................................................. 63
- § 101.002. Effect of Joint Ownership of Property ...................................................................... 64
- § 101.003. Possession of Estate by Personal Representative ...................................................... 64

Subchapter B. Liability of Estate for Debts .................................................................................. 64

- § 101.051. Liability of Estate for Debts in General ..................................................................... 64
- § 101.052. Liability of Community Property for Debts [of Deceased Spouse] .......................... 64

Subchapter C. Provision of Certain Information on Death ................................................................... 64

- § 111.101. Definitions .............................................................................................................. 64
- § 111.102. Provision of Information to Personal Representative of Deceased Party .................. 65

## Chapter 102. Probate Assets: Decedent’s Homestead ................................................................. 65

- § 102.001. Treatment of Certain Children .................................................................................. 65
- § 102.002. Homestead Rights Not Affected by Character of the Homestead .................................. 65
- § 102.003. Passage of Homestead .............................................................................................. 65
- § 102.004. Liability of Homestead for Debts ............................................................................. 65
- § 102.005. Prohibitions on Partition of Homestead ..................................................................... 66
- § 102.006. Circumstances Under Which Partition of Homestead is Authorized .......................... 66

## Chapter 111. Nonprobate Assets in General .................................................................................. 66

Subchapter A. Right of Survivorship Agreements Between Joint Tenants ........................................... 66

- § 111.001. Right of Survivorship Agreements Authorized ......................................................... 66
- § 111.002. Agreements Concerning Community Property ......................................................... 66

Subchapter B. Other Provisions for Payment or Transfer of Certain Assets on Death ................. 66

- § 111.051. Definitions .............................................................................................................. 67
- § 111.053. Creditor’s Rights Not Limited ................................................................................... 67
- § 111.054. Application of State Law to Certain Nontestamentary Transfers ............................... 68

## Chapter 112. Community Property with Right of Survivorship .................................................. 68

Subchapter A. General Provisions .................................................................................................. 69

- § 112.001. Definition of Community Property Survivorship Agreement .................................... 69
- § 112.002. Applicability of Other Law to Community Property Held in Multiple-Party Accounts ............................................................................................................... 69

Subchapter B. Community Property Survivorship Agreements ...................................................... 69

- § 112.051. Agreement for Right of Survivorship in Community Property .................................. 69
- § 112.052. Form of Agreement .................................................................................................. 69
- § 112.053. Adjudication Not Required ....................................................................................... 69
- § 112.054. Revocation of Agreement ......................................................................................... 69

Subchapter C. Adjudication to Prove Community Property Survivorship Agreement .................. 70

- § 112.101. Application Authorized ............................................................................................. 70
- § 112.102. Proof Required by Court ......................................................................................... 70
- § 112.103. Method of Proof of Signatures .................................................................................. 70
- § 112.104. Court Action; Issuance of Order .............................................................................. 70
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 112.105</td>
<td>Effect of Order</td>
<td>70</td>
</tr>
<tr>
<td>§ 112.106</td>
<td>Custody of Adjudicated Agreement</td>
<td>71</td>
</tr>
<tr>
<td>Subchapter D.</td>
<td>Ownership and Transfer of Community Property Subject to Agreement</td>
<td>71</td>
</tr>
<tr>
<td>§ 112.151</td>
<td>Ownership of Property During Marriage; Management Rights</td>
<td>71</td>
</tr>
<tr>
<td>§ 112.152</td>
<td>Nontestamentary Nature of Transfers Under Agreement</td>
<td>71</td>
</tr>
<tr>
<td>Subchapter E.</td>
<td>Third Parties Dealing With Community Property Subject to Right of Survivorship</td>
<td>71</td>
</tr>
<tr>
<td>§ 112.201</td>
<td>Definition of Certified Copy</td>
<td>71</td>
</tr>
<tr>
<td>§ 112.202</td>
<td>Actual Knowledge or Notice of Agreement</td>
<td>71</td>
</tr>
<tr>
<td>§ 112.203</td>
<td>Personal Representative Without Actual Knowledge of Agreement</td>
<td>71</td>
</tr>
<tr>
<td>§ 112.204</td>
<td>Third-Party Purchaser Without Notice of Agreement</td>
<td>71</td>
</tr>
<tr>
<td>§ 112.205</td>
<td>Debtors and Other Persons Without Notice of Agreement</td>
<td>72</td>
</tr>
<tr>
<td>§ 112.206</td>
<td>Third-Party Purchaser Without Notice of Revocation of Agreement</td>
<td>72</td>
</tr>
<tr>
<td>§ 112.207</td>
<td>Debtors and Other Persons Without Notice of Revocation of Agreement</td>
<td>72</td>
</tr>
<tr>
<td>§ 112.208</td>
<td>Rights of Surviving Spouse Against Creditors</td>
<td>72</td>
</tr>
<tr>
<td>Subchapter F.</td>
<td>Rights of Creditors</td>
<td>72</td>
</tr>
<tr>
<td>§ 112.251</td>
<td>Multiple-Party Accounts</td>
<td>72</td>
</tr>
<tr>
<td>§ 112.252</td>
<td>Liabilities of Deceased Spouse Not Affected by Right of Survivorship</td>
<td>73</td>
</tr>
<tr>
<td>§ 112.253</td>
<td>Rights of Deceased Spouse’s Creditors in Relation to Third Parties</td>
<td>73</td>
</tr>
<tr>
<td>Chapter 113.</td>
<td>Multiple-Party Accounts</td>
<td>74</td>
</tr>
<tr>
<td>Subchapter A.</td>
<td>General Provisions</td>
<td>74</td>
</tr>
<tr>
<td>§ 113.001</td>
<td>General Definitions</td>
<td>74</td>
</tr>
<tr>
<td>§ 113.002</td>
<td>Definition of Party</td>
<td>75</td>
</tr>
<tr>
<td>§ 113.003</td>
<td>Definition of Net Contribution</td>
<td>75</td>
</tr>
<tr>
<td>§ 113.004</td>
<td>Types of Accounts</td>
<td>75</td>
</tr>
<tr>
<td>§ 113.005</td>
<td>Authority of Financial Institutions to Enter into Certain Accounts</td>
<td>75</td>
</tr>
<tr>
<td>Subchapter B.</td>
<td>Uniform Account Form</td>
<td>75</td>
</tr>
<tr>
<td>§ 113.051</td>
<td>Establishment of Type of Account; Applicability of Certain Law</td>
<td>75</td>
</tr>
<tr>
<td>§ 113.052</td>
<td>Form</td>
<td>76</td>
</tr>
<tr>
<td>§ 113.053</td>
<td>Required Disclosure: Use of Form</td>
<td>77</td>
</tr>
<tr>
<td>§ 113.0531</td>
<td>Use of Form and Disclosure by Credit Unions</td>
<td>77</td>
</tr>
<tr>
<td>Subchapter C.</td>
<td>Ownership and Operation of Accounts</td>
<td>77</td>
</tr>
<tr>
<td>§ 113.101</td>
<td>Effect of Certain Provisions Regarding Ownership Between Parties and Others</td>
<td>77</td>
</tr>
<tr>
<td>§ 113.102</td>
<td>Ownership of Joint Account During Parties’ Lifetimes</td>
<td>78</td>
</tr>
<tr>
<td>§ 113.103</td>
<td>Ownership of P.O.D. Account During Original Payee’s Lifetime</td>
<td>78</td>
</tr>
<tr>
<td>§ 113.104</td>
<td>Ownership of Trust Account During Trustee’s Lifetime</td>
<td>78</td>
</tr>
<tr>
<td>§ 113.105</td>
<td>Ownership of Convenience Account; Additions and Accruals</td>
<td>78</td>
</tr>
<tr>
<td>§ 113.106</td>
<td>Ownership and Operation of Other Account With Convenience Signer</td>
<td>79</td>
</tr>
<tr>
<td>Subchapter D.</td>
<td>Rights of Survivorship in Accounts</td>
<td>79</td>
</tr>
<tr>
<td>§ 113.151</td>
<td>Establishment of Right of Survivorship in Joint Account; Ownership on Death of Party</td>
<td>79</td>
</tr>
<tr>
<td>§ 113.152</td>
<td>Ownership of P.O.D. Account on Death of Party</td>
<td>80</td>
</tr>
<tr>
<td>§ 113.153</td>
<td>Ownership of Trust Account on Death of Trustee</td>
<td>80</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
TABLE OF CONTENTS

§ 113.154. Ownership of Convenience Account on Death of Party ........................................ 80
§ 113.155. Effect of Death of Party on Certain Accounts Without Rights of Survivorship .... 80
§ 113.156. Applicability of Certain Provisions on Death of Party ......................................... 80
§ 113.157. Written Notice to Financial Institutions Regarding Form of Account .............. 80
§ 113.158. Nontestamentary Nature of Certain Transfers ...................................................... 81

Subchapter E. Protection of Financial Institutions ............................................................ 81
§ 113.201. Applicability of Subchapter .................................................................................. 81
§ 113.202. Payment of Multiple-Party Account ................................................................. 81
§ 113.203. Payment of Joint Account .................................................................................. 81
§ 113.204. Payment of P.O.D. Account ............................................................................... 81
§ 113.205. Payment of Trust Account ................................................................................. 81
§ 113.206. Payment of Convenience Account .................................................................... 81
§ 113.207. Liability for Payment from Joint Account After Death ...................................... 81
§ 113.208. Liability for Payment from Convenience Account .......................................... 81
§ 113.209. Discharge from Claims ...................................................................................... 82
§ 113.210. Set-Off to Financial Institution ......................................................................... 82

Subchapter F. Rights of Creditors; Pledge of Account ................................................... 82
§ 113.251. Pledge of Account ............................................................................................. 82
§ 113.252. Rights of Creditors ............................................................................................ 82
§ 113.253. No Effect on Certain Rights and Liabilities of Financial Institutions ................. 83

Chapter 114. Transfer on Death Deed .............................................................................. 84

Subchapter A. General Provisions ................................................................................... 84
§ 114.001. Short Title ........................................................................................................ 84
§ 114.002. Definitions ........................................................................................................ 84
§ 114.003. Applicability ..................................................................................................... 84
§ 114.004. Nonexclusivity ................................................................................................. 84
§ 114.005 Uniformity of Application and Construction ................................................... 84
§ 114.006. Relation to Electronic Signatures in Global and National Commerce Act ....... 84

Subchapter B. Authorization, Execution, and Revocation of Transfer on Death Deed ......... 85
§ 114.051. Transfer on Death Deed Authorized ................................................................. 85
§ 114.052. Transfer on Death Deed Revocable ................................................................. 85
§ 114.053. Transfer on Death Deed Nontestamentary ....................................................... 85
§ 114.054. Capacity of Transferor; Use of Power of Attorney .......................................... 85
§ 114.055. Requirements ................................................................................................. 85
§ 114.056. Notice, Delivery, Acceptance, or Consideration Not Required ...................... 85
§ 114.057. Revocation by Certain Instruments; Effect of Will or Marriage Dissolution .... 85

Subchapter C. Effect of Transfer on Death Deed; Liability of Transferred Property for Creditors’ Claims ................................................................. 86
§ 114.101. Effect of Transfer on Death Deed During Transferor’s Life ................................ 86
§ 114.102. Effect of Subsequent Conveyance on Transfer on Death Deed ....................... 86
§ 114.103. Effect of Transfer on Death Deed at Transferor’s Death .................................. 86
§ 114.104. Transfer on Death Deed Property Subject to Liens and Encumbrances at Transferor’s Death; Creditors’ Claims ................................................................. 86
§ 114.105. Disclaimer ....................................................................................................... 87
# TABLE OF CONTENTS

§ 114.106. Liability for Creditor Claims; Allowances in Lieu of Exempt Property and Family Allowances.................................................................................................................. 87

**Chapter 115. Beneficiary Designation for Motor Vehicles**................................. 87

§ 115.001. Definitions ............................................................................................... 87
§ 115.002. Beneficiary Designation Authorized.......................................................... 88
§ 115.003. Joint Ownership......................................................................................... 88
§ 115.004. Effect of Beneficiary Designation During Owner’s Life............................. 88
§ 115.005. Effect of Beneficiary Designation at Owner’s or Last Surviving Owner’s Death....................................................................................................................... 88
§ 115.006. Creditor Claims; Allowances in Lieu of Exempt Property and Family Allowances.............................................................................................................. 89

**Chapter 121. Survival Requirements** ................................................................. 89

Subchapter A. General Provisions ............................................................................. 89
§ 121.001. Applicability of Chapter ............................................................................. 89

Subchapter B. Survival Requirement for Intestate Succession and Certain Other Purposes ................. 89
§ 121.051. Applicability of Subchapter ........................................................................ 89
§ 121.052. Required Period of Survival for Intestate Succession and Certain Other Purposes .................................................................................................................. 89
§ 121.053. Intestate Succession: Failure to Survive Presumed Under Certain Circumstances ............................................................................................................. 89

Subchapter C. Survival Requirements for Certain Beneficiaries ................................ 90
§ 121.101. Required Period of Survival for Devisee ....................................................... 90
§ 121.102. Required Period of Survival for Contingent Beneficiary ................................ 90

Subchapter D. Distribution of Certain Property on Person’s Failure to Survive for Required Period................................................................................................................. 90
§ 121.151. Distribution of Community Property ............................................................ 90
§ 121.152. Distribution of Property Owned by Joint Owners ............................................ 90
§ 121.153. Distribution of Certain Insurance Proceeds ................................................... 90

**Chapter 122. Disclaimers and Assignments** ..................................................... 90

Subchapter A. Disclaimer of Interest or Power............................................................ 91
§ 122.001. Definitions ................................................................................................. 91
§ 122.002. Disclaimer .................................................................................................. 91

Subchapter E. Assignment of Interest........................................................................ 91
§ 122.201. Assignment; When Assignment Ineffective or Limited.................................. 91
§ 122.202. Filing of Assignment .................................................................................. 92
§ 122.204. Failure to Comply ...................................................................................... 92
§ 122.205. Gift ........................................................................................................... 92
§ 122.206. Spendthrift Provision ................................................................................. 92

**Chapter 123. Dissolution of Marriage** ............................................................... 92

Subchapter A. Effect of Dissolution of Marriage on Will............................................ 92
§ 123.001. Will Provisions Made Before Dissolution of Marriage.................................. 93
§ 123.002. Treatment of Decedent’s Former Spouse .................................................... 93
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 151.002</td>
<td>Delivery of Document with Court Order</td>
<td>102</td>
</tr>
<tr>
<td>§ 151.003</td>
<td>Examination of Document or Safe Deposit Box Without Court Order</td>
<td>103</td>
</tr>
<tr>
<td>§ 151.004</td>
<td>Delivery of Document Without Court Order</td>
<td>103</td>
</tr>
<tr>
<td>§ 151.005</td>
<td>Restriction on Removal of Contents of Safe Deposit Box</td>
<td>103</td>
</tr>
<tr>
<td>§ 152.001</td>
<td>Application Authorized</td>
<td>104</td>
</tr>
<tr>
<td>§ 152.002</td>
<td>Contents of Application</td>
<td>104</td>
</tr>
<tr>
<td>§ 152.003</td>
<td>Additional Contents of Application: Instructions Regarding Decedent’s Funeral and Remains</td>
<td>104</td>
</tr>
<tr>
<td>§ 152.004</td>
<td>Time and Place of Filing</td>
<td>105</td>
</tr>
<tr>
<td>§ 152.051</td>
<td>Issuance of Order Regarding Funeral and Burial Expenses</td>
<td>105</td>
</tr>
<tr>
<td>§ 152.052</td>
<td>Issuance of Order Regarding Access to Certain Personal Property</td>
<td>105</td>
</tr>
<tr>
<td>§ 152.053</td>
<td>Duration of Order</td>
<td>105</td>
</tr>
<tr>
<td>§ 152.054</td>
<td>Certified Copies of Order</td>
<td>105</td>
</tr>
<tr>
<td>§ 152.055</td>
<td>Liability of Certain Persons in Connection with Order</td>
<td>105</td>
</tr>
<tr>
<td>§ 152.101</td>
<td>Application Authorized</td>
<td>106</td>
</tr>
<tr>
<td>§ 152.102</td>
<td>Hearing; Issuance of Order</td>
<td>106</td>
</tr>
<tr>
<td>§ 153.001</td>
<td>Definitions</td>
<td>106</td>
</tr>
<tr>
<td>§ 153.002</td>
<td>Inapplicability of Chapter</td>
<td>107</td>
</tr>
<tr>
<td>§ 153.003</td>
<td>Court-Ordered Access to Intestate’s Account Information</td>
<td>107</td>
</tr>
<tr>
<td>§ 201.001</td>
<td>Estate of an Intestate Not Leaving Spouse</td>
<td>111</td>
</tr>
<tr>
<td>§ 201.002</td>
<td>Separate Estate of an Intestate</td>
<td>111</td>
</tr>
<tr>
<td>§ 201.003</td>
<td>Community Estate of an Intestate</td>
<td>112</td>
</tr>
<tr>
<td>§ 201.051</td>
<td>Maternal Inheritance</td>
<td>112</td>
</tr>
<tr>
<td>§ 201.052</td>
<td>Paternal Inheritance</td>
<td>112</td>
</tr>
<tr>
<td>§ 201.053</td>
<td>Effect of Reliance on Affidavit of Heirship</td>
<td>113</td>
</tr>
<tr>
<td>§ 201.054</td>
<td>Adopted Child</td>
<td>114</td>
</tr>
<tr>
<td>§ 201.055</td>
<td>Issue of Void or Voidable Marriage</td>
<td>114</td>
</tr>
<tr>
<td>§ 201.056</td>
<td>Persons Not in Being</td>
<td>114</td>
</tr>
<tr>
<td>§ 201.057</td>
<td>Collateral Kindred of Whole and Half Blood</td>
<td>115</td>
</tr>
<tr>
<td>§ 201.058</td>
<td>Convicted Persons</td>
<td>115</td>
</tr>
<tr>
<td>§ 201.059</td>
<td>Person Who Dies by Casualty</td>
<td>116</td>
</tr>
<tr>
<td>§ 201.060</td>
<td>Alienage</td>
<td>116</td>
</tr>
<tr>
<td>§ 201.061</td>
<td>Estate of Person Who Dies by Suicide</td>
<td>116</td>
</tr>
<tr>
<td>§ 201.062</td>
<td>Treatment of Certain Parent-Child Relationships</td>
<td>116</td>
</tr>
</tbody>
</table>
# Table of Contents

Subchapter C. Distribution to Heirs ................................................................. 117
  § 201.101. Determination of Per Capita with Representation Distribution 117
  § 201.102. No Distinction Based on Property’s Source ............................ 117
  § 201.103. Treatment of Intestate’s Estate ............................................... 118

Subchapter D. Advancements ..................................................................... 118
  § 201.151. Determination of Advancement; Date of Valuation............... 119
  § 201.152. Survival of Recipient Required ............................................. 119

Chapter 202. Determination of Heirship ................................................. 120

Subchapter A. Authorization and Procedures for Commencement of Proceeding to Declare Heirship ............................................................. 120
  § 202.001. General Authorization for and Nature of Proceeding to Declare Heirship........ 120
  § 202.002. Circumstances Under Which Proceeding to Declare Heirship Is Authorized 120
  § 202.0025. Action Brought After Decedent’s Death.................................. 120
  § 202.004. Persons Who May Commence Proceeding to Declare Heirship .............. 120
  § 202.005. Application for Proceeding to Declare Heirship ............................ 120
  § 202.006. Request for Determination of Necessity for Administration .......... 120
  § 202.007. Affidavit Supporting Application Required ............................... 120
  § 202.008. Required Parties to Proceeding to Declare Heirship ...................... 120
  § 202.009. Attorney Ad Litem ................................................................. 120

Subchapter B. Notice of Proceeding to Declare Heirship ....................... 121
  § 202.051. Service of Citation by Qualified Delivery Method [Mail] When Recipient’s Name and Address are Known or Ascertainable 122
  § 202.052. Service of Citation by Publication ........................................... 122
  § 202.053. Required Posting of Citation .................................................... 122
  § 202.054. Personal Service of Citation May Be Required ......................... 122
  § 202.055. Service of Citation on Certain Persons Not Required ................. 122
  § 202.056. Waiver of Service of Citation .................................................. 122
  § 202.057. Affidavit of Service of Citation ................................................ 122

Subchapter C. Transfer of Pending Proceeding to Declare Heirship........ 123
  § 202.101. Required Transfer of Pending Proceeding to Declare Heirship Under Certain Circumstances ..................................................... 123
  § 202.102. Transfer of Records ............................................................... 123
  § 202.103. Procedures Applicable to Transferred Proceeding to Declare Heirship; Consolidation with Other Proceeding ......................... 123

Subchapter D. Evidence Relating to Determination of Heirship .............. 123
  § 202.151. Evidence in Proceeding to Declare Heirship ............................. 123

Subchapter E. Judgment in Proceeding to Declare Heirship ................. 124
  § 202.201. Required Statements in Judgment ............................................ 124
  § 202.203. Correction of Judgment at Request of Heir Not Properly Served .... 124
  § 202.204. Limitation of Liability of Certain Persons Acting in Accordance with Judgment ............................................................. 124
  § 202.206. Filing and Recording of Judgment ........................................... 124
# TABLE OF CONTENTS

## Chapter 203. Nonjudicial Evidence of Heirship ..................................................125
- § 203.001. Recorded Statement of Facts as Prima Facie Evidence of Heirship ..........125
- § 203.002. Form of Affidavit Concerning Identity of Heirs ..................................125

## Chapter 204. Genetic Testing in Proceedings to Declare Heirship .....................126

### Subchapter A. General Provisions .............................................................................126
- § 204.001. Proceedings and Records Public .................................................................126

### Subchapter B. Court Orders for Genetic Testing in Proceedings to Declare Heirship ....126
- § 204.051. Order for Genetic Testing .................................................................126
- § 204.052. Advancement of Costs ............................................................................127
- § 204.053. Order and Advancement of Costs for Subsequent Genetic Testing ..........127
- § 204.054. Submission of Genetic Material by Other Relative Under Certain Circumstances ......127
- § 204.055. Genetic Testing of Deceased Individual ..................................................127
- § 204.056. Criminal Penalty ....................................................................................127

### Subchapter C. Results of Genetic Testing .................................................................127
- § 204.101. Results of Genetic Testing; Admissibility .............................................127
- § 204.102. Presumption Regarding Results of Genetic Testing; Rebuttal .................127
- § 204.103. Contesting Results of Genetic Testing ..................................................127

### Subchapter D. Use of Results of Genetic Testing in Certain Proceedings to Declare Heirship ......................................................128
- § 204.151. Applicability of Subchapter .......................................................................128
- § 204.152. Presumption; Rebuttal ...........................................................................128
- § 204.153. Effect of Inconclusive Results of Genetic Testing ..................................128

### Subchapter E. Additional Orders Following Results of Genetic Testing ..................128
- § 204.201. Order for Change of Name ....................................................................128

## Chapter 205. Small Estate Affidavit ..................................................................128

### § 205.001. Entitlement to Estate Without Appointment of Personal Representative ......128

### § 205.002. Affidavit Requirements ........................................................................129

### § 205.003. Examination and Approval of Affidavit .............................................129

### § 205.004. Copy of Affidavit to Certain Persons ...................................................129

### § 205.005. Affidavit as Local Government Record .............................................129

### § 205.006. Title to Homestead Transferred Under Affidavit ................................129

### § 205.007. Liability of Certain Persons .................................................................129

### § 205.008. Effect of Chapter ................................................................................130

### § 205.009. Construction of Certain References ..................................................130

## SUBTITLE F. WILLS ................................................................................................130

## Chapter 251. Fundamental Requirements and Provisions Relating to Wills .................130

### Subchapter A. Will Formation ................................................................................131
- § 251.001. Who May Execute Will ........................................................................131
- § 251.002. Interests That May Pass by Will; Disinheritance .....................................131

### Subchapter B. Will Requirements ...........................................................................131
- § 251.051. Written, Signed, and Attested ............................................................132
- § 251.052. Exception for Holographic Wills .........................................................132
# TABLE OF CONTENTS

§ 251.053. Exception for Foreign and Certain Other Wills ................................................................. 132  
Subchapter C. Self-Proved Wills ........................................................................................................... 133  
§ 251.101. Self-Proved Will .................................................................................................................... 133  
§ 251.102. Probate and Treatment of Self-Proved Will ........................................................................ 133  
§ 251.103. Period for Making Attested Wills Self-Proved .................................................................. 133  
§ 251.104. Requirements for Self-Proving Affidavit .......................................................................... 133  
§ 251.1045. Simultaneous Execution, Attestation, and Self-Proving .................................................... 134  
§ 251.105. Effect of Signature on Self-Proving Affidavit .................................................................... 134  
§ 251.106. Contest, Revocation, or Amendment of Self-Proved Will ................................................. 134  
§ 251.107. Self-Proved Holographic Will ............................................................................................ 135  

Chapter 252. Safekeeping and Custody of Wills ............................................................................... 135  
Subchapter A. Deposit of Will with County Clerk ............................................................................. 135  
§ 252.001. Will Deposit; Certificate ..................................................................................................... 135  
§ 252.002. Sealed Wrapper Required .................................................................................................. 136  
§ 252.003. Numbering of Filed Wills and Corresponding Certificates .............................................. 136  
§ 252.004. Index .................................................................................................................................... 136  
Subchapter B. Will Delivery During Life of Testator ......................................................................... 136  
§ 252.051. Will Delivery ....................................................................................................................... 136  
§ 252.052. Surrender of Certificate of Deposit; Exception .................................................................. 136  
Subchapter C. Actions by County Clerk on Death of Testator .......................................................... 136  
§ 252.101. Notification by County Clerk ............................................................................................ 136  
§ 252.102. Will Delivery on Testator’s Death ..................................................................................... 136  
§ 252.103. Inspection of Will by County Clerk .................................................................................. 136  
§ 252.104. Notice and Delivery of Will to Executor .......................................................................... 137  
§ 252.105. Notice and Delivery of Will to Devisees ........................................................................ 137  
Subchapter D. Legal Effect of Will Deposit ...................................................................................... 137  
§ 252.151. Deposit Has No Legal Significance .................................................................................... 137  
§ 252.152. Prior Deposited Will in Relation to Later Will .................................................................... 137  
§ 252.153. Will Deposit Does Not Constitute Notice ......................................................................... 137  
Subchapter E. Duty and Liability of Custodian of Estate Papers ........................................................ 137  
§ 252.201. Will Delivery ....................................................................................................................... 137  
§ 252.2015. Notice and Delivery of Will to Executor or Devisees ..................................................... 137  
§ 252.203. Arrest; Confinement .......................................................................................................... 138  
§ 252.204. Damages ............................................................................................................................ 138  

Chapter 253. Change and Revocation of Wills .............................................................................. 138  
§ 253.001. Court May Not Prohibit Changing or Revoking a Will .................................................... 138  
§ 253.002. Revocation of Will ............................................................................................................ 139  

Chapter 254. Certain Provisions in, and Contracts Relating to, Wills ........................................... 139  
§ 254.001. Devises to Trustees .......................................................................................................... 139  
§ 254.002. Bequests to Certain Subscribing Witnesses ....................................................................... 140  
§ 254.003. Devises to Certain Attorneys and Other Persons .............................................................. 140  
§ 254.004. Contracts Concerning Wills or Devises; Joint or Reciprocal Wills .................................. 141  
§ 254.005. Forfeiture Clause .............................................................................................................. 141  
§ 254.006. Designation of Administrator .......................................................................................... 141  

xiii
# TABLE OF CONTENTS

**Chapter 255. Construction and Interpretation of Wills** ................................. 142

Subchapter A. Certain Personal Property Excluded from Devise or Legacy ............... 142

§ 255.001. Definitions ......................................................................................................... 143
§ 255.002. Certain Personal Property Excluded from Devise of Real Property .......... 143
§ 255.003. Contents Excluded from Legacy of Personal Property ............................... 143

Subchapter B. Succession by Pretermitted Child ........................................................ 143

§ 255.051. Definition ........................................................................................................... 144
§ 255.052. Applicability and Construction ......................................................................... 144
§ 255.053. Succession by Pretermitted Child if Testator Has Living Child at Will’s Execution ................................................................. 144
§ 255.054. Succession by Pretermitted Child if Testator Has No Living Child at Will’s Execution ................................................................. 145
§ 255.055. Ratable Recovery by Pretermitted Child from Portions Passing to Other Beneficiaries ........................................................................................................ 145
§ 255.056. Limitation on Reduction of Estate Passing to Surviving Spouse ................. 145

Subchapter C. Lifetime Gifts as Satisfaction of Devise .................................................. 145

§ 255.101. Certain Lifetime Gifts Considered Satisfaction of Devise ............................. 145
§ 255.102. Valuation of Property ....................................................................................... 145

Subchapter D. Failure of Devise; Disposition of Property to Devisee Who Predeceases Testator ................................................................. 145

§ 255.151. Applicability of Subchapter ............................................................................ 146
§ 255.152. Failure of Devise; Effect on Residuary Estate ................................................ 146
§ 255.153. Disposition of Property to Certain Devisees Who Predecease Testator ........ 146
§ 255.154. Devisee Under Class Gift ............................................................................... 147

Subchapter F. Devise of Securities ............................................................................... 147

§ 255.251. Definitions ......................................................................................................... 147
§ 255.252. Increase in Securities; Accessions .................................................................. 147
§ 255.253. Cash Distribution Not Included in Devise ..................................................... 147

Subchapter G. Exoneration of Debts Secured by Specific Devises ................................ 147

§ 255.301. No Right to Exoneration of Debts ................................................................. 147
§ 255.302. Exception ......................................................................................................... 147
§ 255.303. Rights of Certain Creditors and Other Persons ........................................... 148
§ 255.304. Applicability of Subchapter .......................................................................... 148

Subchapter H. Exercise of Power of Appointment Through Will ................................ 148

§ 255.351. Exercise of Power of Appointment Through Will ........................................ 148

Subchapter I. Class Gifts .............................................................................................. 148

§ 255.401. Posthumous Class Gift Membership ............................................................. 148

Subchapter J. Judicial Modification or Reformation of Wills ........................................ 148

§ 255.451. Circumstances Under Which Will May be Modified or Reformed ............... 149
§ 255.452. Judicial Discretion ......................................................................................... 149
§ 255.453. Retroactive Effect .......................................................................................... 149
§ 255.454. Powers Cumulative ....................................................................................... 149
§ 255.455. Duties and Liability of Personal Representative Under Subchapter ............ 150
§ 255.456. Jurisdiction and Transfer of Proceeding ....................................................... 150
**TABLE OF CONTENTS**

**Chapter 256. Probate of Wills Generally ................................................................. 151**  
Subchapter A. Effectiveness of Will; Period for Probate ................................................. 151  
§ 256.001. Will Not Effective Until Probated ................................................................. 151  
§ 256.002. Probate Before Death Void ............................................................................ 151  
§ 256.003. Period for Admitting Will to Probate; Protection for Certain Purchasers ....... 151  

Subchapter B. Application Requirements ....................................................................... 152  
§ 256.051. Eligible Applicants for Probate of Will ......................................................... 152  
§ 256.052. Contents of Application For Probate of Will ................................................. 152  
§ 256.053. Filing of Will With Application For Probate Generally Required ................. 152  
§ 256.054. Additional Application Requirements When No Will Is Produced ............... 152  

Subchapter C. Procedures for Second Application .......................................................... 153  
§ 256.101. Procedure on Filing of Second Application when Original Application Has Not Been Heard .................................................................................. 153  
§ 256.102. Procedure on Filing of Second Application for Probate After First Will Has Been Admitted .................................................................................. 153  
§ 256.103. Procedure when Application for Probate Is Filed After Letters of Administration Have Been Granted ................................................................. 153  

Subchapter D. Required Proof for Probate of Will ......................................................... 153  
§ 256.151. General Proof Requirements .......................................................................... 153  
§ 256.152. Additional Proof Required for Probate of Will ............................................. 154  
§ 256.153. Proof of Execution of Attested Will ............................................................... 154  
§ 256.154. Proof of Execution of Holographic Will ......................................................... 155  
§ 256.155. Procedures for Depositions when No Contest is Filed ................................. 155  
§ 256.156. Proof of Will Not Produced in Court .............................................................. 155  
§ 256.157. Testimony Regarding Probate to Be Committed to Writing ......................... 156  

Subchapter E. Admission of Will To, and Procedures Following, Probate ..................... 156  
§ 256.201. Admission of Will to Probate ........................................................................ 156  
§ 256.202. Custody of Probated Will .............................................................................. 156  
§ 256.203. Establishing Contents of Will Not in Court’s Custody .................................. 156  
§ 256.204. Period for Contest ......................................................................................... 156  

Subchapter D. Subsequent Estate Administration ............................................................ 157  

**Chapter 257. Probate of Will as Muniment of Title ...................................................... 157**  
Subchapter A. Authorization .......................................................................................... 157  
§ 257.001. Probate of Will as Muniment of Title Authorized ........................................ 157  

Subchapter B. Application and Proof Requirements ...................................................... 157  
§ 257.051. Contents of Application Generally ............................................................... 157  
§ 257.052. Filing of Will With Application Generally Required ..................................... 158  
§ 257.053. Additional Application Requirements When No Will Is Produced ............. 158  
§ 257.054. Proof Required ............................................................................................. 158  

Subchapter C. Order Admitting Will; Report ................................................................. 158  
§ 257.101. Declaratory Judgment Construing Will ....................................................... 158  
§ 257.102. Authority of Certain Persons Acting in Accordance with Order ................... 159  
§ 257.103. Report by Applicant After Probate ............................................................... 159  

**xv**
### TABLE OF CONTENTS

Subchapter D.  Subsequent Estate Administration ................................................................. 159

§ 257.151.  Appointment of Personal Representative and Opening of Administration  
             After Will Admitted to Probate as Muniment of Title ............................................. 159
§ 257.152.  Computation of Certain Periods ........................................................................... 159

Chapter 258.  Citations and Notices Relating to Probate of Will ............................. 160

Subchapter A.  Citations with Respect to Applications for Probate of Will............... 160
§ 258.001.   Citation on Application for Probate of Will Produced in Court ................. 160
§ 258.002.   Citation on Application for Probate of Will Not Produced in Court .......... 160
§ 258.003.   Court Action Prohibited Before Service of Citation ...................................... 160

Subchapter B.  Notices with Respect to Application to Probate Will After the Period for 
             Probate ......................................................................................................................... 160
§ 258.051.   Notice to Heirs ..................................................................................................... 160
§ 258.052.   Appointment of Attorney Ad Litem .................................................................. 161
§ 258.053.   Previously Probated Will .................................................................................... 161

Subchapter C.  Service by Publication or Other Substituted Service ............................... 161
§ 258.101.   Service by Publication or Other Substituted Service ...................................... 161

SUBTITLE G.  INITIAL APPOINTMENT OF PERSONAL 
             REPRESENTATIVE AND OPENING OF ADMINISTRATION ...... 161

Chapter 301.  Application for Letters Testamentary or of Administration ..... 161

Subchapter A.  Period for Application for Letters ................................................................. 161
§ 301.001.   Administration Before Death Void .................................................................... 161
§ 301.002.   Period for Filing Application for Letters Testamentary or of Administration .... 162

Subchapter B.  Application Requirements .............................................................................. 162
§ 301.051.   Eligible Applicants for Letters ........................................................................... 162
§ 301.052.   Contents of Application for Letters of Administration ....................................... 162

Subchapter C.  Opposition to Certain Applications ................................................................. 163
§ 301.101.   Opposition to Application for Letters of Administration ............................... 163

Subchapter D.  Required Proof for Issuance of Letters ......................................................... 163
§ 301.151.   General Proof Requirements ............................................................................. 163
§ 301.152.   Additional Proof Required for Letters Testamentary ........................................ 163
§ 301.153.   Additional Proof Required for Letters of Administration; Effect of Finding 
             No Necessity for Administration Exists .................................................................. 163
§ 301.154.   Proof Required when Letters Have Previously Been Granted ...................... 163
§ 301.155.   Authorized Methods of Proof .......................................................................... 164

Subchapter E.  Prevention of Administration ................................................................. 164
§ 301.201.   Method of Preventing Administration Requested by Creditor ....................... 164
§ 301.202.   Suit on Bond ....................................................................................................... 164
§ 301.203.   Bond Secured by Lien ...................................................................................... 164

Chapter 303.  Citations and Notices in General on Opening of 
             Administration .................................................................................................................. 164
§ 303.001.   Citation on Application for Issuance of Letters of Administration .................. 164
§ 303.002.   Court Action Prohibited Before Service of Citation ....................................... 164

xvi
Chapter 304. Persons Who May Serve as Personal Representatives .............. 165
  § 304.001. Order of Persons Qualified to Serve as Personal Representative .... 165
  § 304.002. Renouncing Right to Serve as Personal Representative .............. 165
  § 304.003. Persons Disqualified to Serve as Executor or Administrator ........ 165

Chapter 305. Qualification of Personal Representatives ............................ 166

Subchapter A. General Provisions .............................................................. 166
  § 305.001. Definitions ............................................................................. 167
  § 305.002. Manner of Qualification of Personal Representative ................. 167
  § 305.003. Period for Taking Oath or Making and Signing Declaration ........ 167
  § 305.004. Period for Giving Bond .......................................................... 167

Subchapter B. Oaths or Declarations ......................................................... 167
  § 305.051. Oath or Declaration of Executor or Administrator with Will Annexed 167
  § 305.052. Oath or Declaration of Administrator ........................................ 168
  § 305.053. Oath or Declaration of Temporary Administrator ....................... 168
  § 305.054. Administration of Oath ........................................................... 169
  § 305.055. Filing and Recording of Oath or Declaration ............................ 169

Subchapter C. General Provisions Relating to Bonds .................................. 169
  § 305.101. Bond Generally Required; Exceptions ....................................... 169
  § 305.102. Bond Required From Executor Otherwise Exempt .................... 169
  § 305.103. Bonds of Joint Personal Representatives .................................... 170
  § 305.104. Bond of Married Person .......................................................... 170
  § 305.105. Bond of Married Person Under 18 Years of Age ....................... 170
  § 305.106. General Formalities ............................................................... 170
  § 305.107. Subscription of Bond by Principals and Sureties ....................... 170
  § 305.108. Form of Bond ........................................................................ 170
  § 305.109. Filing of Bond ....................................................................... 170
  § 305.110. Failure to Give Bond ............................................................... 170
  § 305.111. Bond Not Void on First Recovery ............................................. 170

Subchapter D. Amount of Bond and Associated Deposits .......................... 170
  § 305.151. General Standard Regarding Amount of Bond ......................... 171
  § 305.152. Evidentiary Hearing on Amount of Bond ................................ 171
  § 305.153. Specific Bond Amount ............................................................ 171
  § 305.154. Agreement Regarding Deposit of Estate Assets ....................... 171
  § 305.155. Deposit of Estate Assets on Terms Prescribed by Court ............. 171
  § 305.156. Deposits of Personal Representative ....................................... 172
  § 305.157. Receipt for Deposits of Personal Representative ....................... 172
  § 305.158. Bond Required Instead of Deposits by Personal Representative .... 172
  § 305.159. Withdrawal of Deposits on Closing of Administration .............. 172
  § 305.160. Increased or Additional Bonds in Certain Circumstances ........... 173

Subchapter E. Bond Sureties .................................................................... 173
  § 305.201. Personal or Authorized Corporate Sureties ............................. 173
  § 305.202. Sureties for Certain Bonds .................................................... 173
  § 305.203. Affidavit of Personal Surety ..................................................... 173
  § 305.204. Lien on Real Property Owned by Personal Sureties ................... 173
  § 305.205. Subordination of Lien on Real Property Owned by Personal Sureties 174
  § 305.206. Release of Lien on Real Property Owned by Personal Sureties ...... 174
  § 305.207. Deposits by Personal Surety .................................................... 174
Chapter 306. Granting and Issuance of Letters ................................................................. 175
§ 306.001. Granting of Letters Testamentary ........................................................................ 176
§ 306.002. Granting of Letters of Administration ................................................................. 176
§ 306.003. Order Granting Letters ......................................................................................... 176
§ 306.004. Issuance of Original Letters .................................................................................. 176
§ 306.005. Form and Content of Letters ................................................................................. 176
§ 306.006. Replacement and Other Additional Letters ......................................................... 177
§ 306.007. Effect of Letters or Certificate .............................................................................. 177

§ 307.001. Rights of Good Faith Purchasers ....................................................................... 177
§ 307.002. Joint Executors or Administrators ...................................................................... 177

Chapter 308. Notice to Beneficiaries and Claimants ...................................................... 177
Subchapter A. Notice to Certain Beneficiaries After Probate of Will ................................. 178
§ 308.001. Definition ............................................................................................................ 178
§ 308.0015. Application ........................................................................................................ 178
§ 308.002. Required Notice to Certain Beneficiaries After Probate of Will ....................... 178
§ 308.003. Contents of Notice .............................................................................................. 179
§ 308.004. Affidavit or Certificate ......................................................................................... 179

Subchapter B. Notice to Claimants ..................................................................................... 179
§ 308.051. Required Notice Regarding Presentment of Claims in General ..................... 180
§ 308.052. Proof of Publication ............................................................................................. 180
§ 308.053. Required Notice to Secured Creditor ................................................................. 180
§ 308.054. Permissive Notice to Unsecured Creditor .......................................................... 180
§ 308.055. One Notice Sufficient ......................................................................................... 181
§ 308.056. Liability for Failure to Give Required Notice .................................................... 181

Chapter 309. Inventory, Appraisement, and List of Claims .......................................... 181
Subchapter A. Appraisers ................................................................................................... 181
§ 309.001. Appointment of Appraisers ................................................................................. 181
§ 309.002. Appraisers’ Fees ............................................................................................... 182
§ 309.003. Failure or Refusal to Act by Appraisers .............................................................. 182

Subchapter B. Requirements for Inventory, Appraisement, and List of Claims ............ 182
§ 309.051. Inventory and Appraisement .............................................................................. 182
§ 309.052. List of Claims .................................................................................................... 182
§ 309.053. Affidavit of Personal Representative ............................................................... 183
§ 309.054. Approval or Disapproval by the Court .............................................................. 183
§ 309.055. Failure of Joint Personal Representatives to File Inventory, Appraisement, and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims .............................. 183
# Table of Contents

1. **Chapter 309. Inventory, Appraisal, and List of Claims**
   - § 309.056. Affidavit in Lieu of Inventory, Appraisal, and List of Claims ........................................ 184
   - § 309.057. Penalty for Failure to Timely File Inventory, Appraisal, and List of Claims or Affidavit in Lieu of ............................................................ 184
   - § 309.0575. Penalty for Misrepresentation in Affidavit in Lieu of Inventory, Appraisal, and List of Claims ........................................................................... 184

2. **Subchapter C. Changes to Inventory, Appraisal, and List of Claims**
   - § 309.101. Discovery of Additional Property or Claims ............................................................ 185
   - § 309.102. Additional Inventory and Appraisal or List of Claims .................................................. 185
   - § 309.103. Correction of Inventory, Appraisal, or List of Claims for Erroneous or Unjust Item ........................................................................................................ 185
   - § 309.104. Reappraisal ................................................................................................................. 185

3. **Subchapter D. Use of Inventory, Appraisal, and List of Claims as Evidence**
   - § 309.151. Use of Inventory, Appraisal, and List of Claims as Evidence ....................................... 186

4. **Chapter 310. Allocation of Estate Income and Expenses**
   - § 310.001. Definition ..................................................................................................................... 186
   - § 310.002. Applicability of Other Law ........................................................................................ 186
   - § 310.003. Allocation of Expenses .............................................................................................. 186
   - § 310.004. Income Determination and Distribution ....................................................................... 186
   - § 310.005. Treatment of Income Received by Trustee .................................................................. 187
   - § 310.006. Frequency and Method of Determining Interests in Certain Estate Assets ................ 187

5. **Subtitle H. Continuation of Administration**

6. **Chapter 351. Powers and Duties of Personal Representatives in General**
   - § 351.001. Applicability of Common Law .................................................................................. 188
   - § 351.002. Appeal Bond .............................................................................................................. 188
   - § 351.003. Certain Costs Adjudged Against Personal Representative ........................................ 188

7. **Subchapter B. General Authority of Personal Representatives**
   - § 351.051. Exercise of Authority Under Court Order ............................................................... 188
   - § 351.052. Exercise of Authority Without Court Order ............................................................. 189
   - § 351.053. Authority to Serve Pending Appeal of Appointment .............................................. 189
   - § 351.054. Authority to Commence Suits .................................................................................... 189

8. **Subchapter C. Possession and Care of Estate Property**
   - § 351.101. Duty of Care .............................................................................................................. 189
   - § 351.102. Possession of Personal Property and Records ........................................................... 189
   - § 351.103. Possession of Property Held in Common Ownership .............................................. 190
   - § 351.104. Administration of Partnership Interest ........................................................................ 190
   - § 351.105. Holding of Stocks, Bonds, and Other Personal Property in Nominee’s Name ............. 190
   - § 351.106. Digital Assets .............................................................................................................. 190

9. **Subchapter D. Collection of Claims; Recovery of Property**
   - § 351.151. Ordinary Diligence Required .................................................................................... 190
   - § 351.152. Contingent Interest for Certain Attorney’s Fees; Court Approval ............................. 191
   - § 351.153. Recovery of Certain Expenses .................................................................................... 191

Electronic copy available at: https://ssrn.com/abstract=4537861
# Table of Contents

Subchapter E. Operation of Business ................................................................. 191

§ 351.201. Definition ......................................................................................... 191
§ 351.203. Powers of Personal Representative Regarding Business ..................... 191
§ 351.204. Fiduciary Duties of Personal Representative Regarding Business ............... 192
§ 351.205. Real Property of Business; Notice ..................................................... 192

Subchapter F. Authority to Engage in Certain Borrowing ..................................................... 192

§ 351.251. Mortgage or Pledge of Estate Property Authorized in Certain Circumstances ....................................................................................................... 192
§ 351.252. Application; Order ........................................................................... 193
§ 351.253. Term of Loan or Lien Extension ............................................................ 193

Subchapter G. Payment of Income of Certain Estates During Administration ......................... 193

§ 351.301. Applicability of Subchapter ..................................................................... 193
§ 351.302. Application and Order for Payment of Certain Estate Income ................. 193
§ 351.303. Treatment of Certain Amounts Received from Mineral Lease .................. 193

Subchapter H. Certain Administered Estates .................................................................. 193

§ 351.351. Applicability ......................................................................................... 193
§ 351.352. Ensuring Compliance with Law .............................................................. 194
§ 351.353. Annual Examination of Certain Estates; Bond of Personal Representative .......... 194
§ 351.354. Judge’s Liability ..................................................................................... 194
§ 351.355. Identifying Information ........................................................................... 194

**Chapter 352. Compensation and Expenses of Personal Representatives and Others** ........................................................................................................... 194

Subchapter A. Compensation of Personal Representatives ............................................ 194

§ 352.001. Definition ............................................................................................ 195
§ 352.002. Standard Compensation ........................................................................ 195
§ 352.003. Alternate Compensation ........................................................................ 195
§ 352.004. Denial of Compensation ........................................................................ 195

Subchapter B. Expenses of Personal Representatives and Others ........................................ 195

§ 352.051. Expenses; Attorney’s Fees ...................................................................... 195
§ 352.052. Allowance for Defense or Successful Contest of Will ______________________ 196
§ 352.053. Expense Charges ................................................................................... 196

**Chapter 353. Exempt Property and Family Allowance** .................................................. 196

Subchapter A. General Provisions ............................................................................ 196

§ 353.001. Treatment of Certain Children .................................................................. 196

Subchapter B. Exempt Property; Allowance in Lieu of Exempt Property ....................... 196

§ 353.051. Exempt Property to Be Set Aside ........................................................... 197
§ 353.052. Delivery of Exempt Property ................................................................... 197
§ 353.053. Allowance in Lieu of Exempt Property ..................................................... 197
§ 353.054. Payment of Allowance in Lieu of Exempt Property ................................... 198
§ 353.055. Method of Paying Allowance in Lieu of Exempt Property ......................... 198
§ 353.056. Sale of Property to Raise Funds for Allowance in Lieu of Exempt Property .......... 198

Subchapter C. Family Allowance .............................................................................. 199

§ 353.101. Family Allowance .................................................................................. 199
Table of Contents

§ 353.102. Amount and Method of Payment of Family Allowance ................................................................. 200
§ 353.103. Order Fixing Family Allowance ...................................................................................................... 200
§ 353.104. Preference of Family Allowance ..................................................................................................... 200
§ 353.105. Payment of Family Allowance ........................................................................................................ 200
§ 353.106. Surviving Spouse or Minor Children May Take Personal Property for Family Allowance ............. 200
§ 353.107. Sale of Estate Property to Raise Funds for Family Allowance ...................................................... 200

Subchapter D. Liens on and Disposition of Exempt Property and Property Taken as Allowance ..................... 201
§ 353.151. Liens ................................................................................................................................................. 201
§ 353.152. Distribution of Exempt Property of Solvent Estate ........................................................................ 201
§ 353.153. Title to Property of Insolvent Estate ............................................................................................... 201
§ 353.154. Certain Property Not Considered in Determining Solvency .......................................................... 201
§ 353.155. Exempt Property Liable for Certain Debts....................................................................................... 202

Chapter 354. Summary Proceedings for, or Withdrawal from Administration of, Certain Estates .................. 202
Subchapter A. Summary Proceedings for Certain Small Estates ....................................................................... 202
§ 354.001. Summary Proceedings for Certain Small Estates ............................................................................. 202
Subchapter B. Withdrawal from Administration of Certain Estates ................................................................. 202
§ 354.051. Required Report on Condition of Estate .......................................................................................... 202
§ 354.052. Bond Required to Withdraw Estate from Administration ............................................................. 203
§ 354.053. Order for Delivery of Estate ........................................................................................................... 203
§ 354.054. Order of Discharge ......................................................................................................................... 203
§ 354.055. Lien on Property of Estate Withdrawn from Administration ............................................................ 203
§ 354.056. Partition of Estate Withdrawn from Administration ....................................................................... 203
§ 354.057. Creditors Entitled to Sue on Bond .................................................................................................. 203
§ 354.058. Creditors May Sue Distributees ..................................................................................................... 203

Chapter 355. Presentment and Payment of Claims ......................................................................................... 204
Subchapter A. Presentment of Claims Against Estates in General ................................................................. 204
§ 355.001. Presentment of Claim to Personal Representative ......................................................................... 205
§ 355.002. Presentment of Claim to Clerk ....................................................................................................... 205
§ 355.003. Inclusion of Attorney’s Fees in Claim ............................................................................................. 205
§ 355.004. Affidavit Authenticating Claim for Money in General .................................................................... 205
§ 355.005. Affidavit Authenticating Claim of Corporation or Other Entity ...................................................... 205
§ 355.006. Lost or Destroyed Evidence Concerning Claim ............................................................................... 205
§ 355.007. Waiver of Certain Defects of Form or Claims of Insufficiency ...................................................... 205
§ 355.008. Effect on Statutes of Limitation of Presentment of or Suit on Claim ........................................... 206
Subchapter B. Action on Claims ....................................................................................................................... 206
§ 355.051. Allowance or Rejection of Claim .................................................................................................... 206
§ 355.052. Failure to Timely Allow or Reject Claim ........................................................................................ 206
§ 355.053. Claim Entered on Claim Docket .................................................................................................... 206
§ 355.054. Contest of Claim .............................................................................................................................. 206
§ 355.055. Court’s Action on Claim ................................................................................................................ 207
§ 355.056. Hearing on Certain Claims ............................................................................................................. 207
§ 355.057. Court Order Regarding Action on Claim ....................................................................................... 207
§ 355.058. Appeal of Court’s Action on Claim ............................................................................................... 207
§ 355.059. Allowance and Approval Prohibited Without Affidavit ............................................................... 207

xxi

Electronic copy available at: https://ssrn.com/abstract=4537861
### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 355.060</td>
<td>Unsecured Claims Barred Under Certain Circumstances</td>
<td>207</td>
</tr>
<tr>
<td>§ 355.061</td>
<td>Allowing Barred Claim Prohibited: Court Disapproval</td>
<td>207</td>
</tr>
<tr>
<td>§ 355.062</td>
<td>Certain Actions on Claims With Lost or Destroyed Evidence Void</td>
<td>207</td>
</tr>
<tr>
<td>§ 355.063</td>
<td>Claims Not Allowed After Order for Partition and Distribution</td>
<td>208</td>
</tr>
<tr>
<td>§ 355.064</td>
<td>Suit on Rejected Claim</td>
<td>208</td>
</tr>
<tr>
<td>§ 355.065</td>
<td>Presentment of Claim Prerequisite for Judgment</td>
<td>208</td>
</tr>
<tr>
<td>§ 355.066</td>
<td>Judgment in Suit on Rejected Claim</td>
<td>208</td>
</tr>
<tr>
<td>§ 355.067</td>
<td>Order for Sale</td>
<td>208</td>
</tr>
<tr>
<td>§ 355.068</td>
<td>Sale of Certain Personal Property Required</td>
<td>208</td>
</tr>
<tr>
<td>§ 355.069</td>
<td>Court Order Authorizing Sale</td>
<td>208</td>
</tr>
<tr>
<td>§ 355.070</td>
<td>Claims Classification; Priority of Payment</td>
<td>209</td>
</tr>
<tr>
<td>§ 355.071</td>
<td>Priority of Certain Payments</td>
<td>209</td>
</tr>
<tr>
<td>§ 355.072</td>
<td>Payment of Proceeds from Sale of Property Securing Debt</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.073</td>
<td>Claimant’s Petition for Allowance and Payment of Claim</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.074</td>
<td>Order for Payment of Claim Obtained by Personal Representative</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.075</td>
<td>Order for Payment of Claim Obtained by Creditor</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.076</td>
<td>Payment When Assets Insufficient to Pay Claims of Same Class</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.077</td>
<td>Abatement of Bequests</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.078</td>
<td>Allocation of Funeral Expenses</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.079</td>
<td>Payment of Court Costs Relating to Claim</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.080</td>
<td>Joint Obligation for Payment of Certain Debts</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.081</td>
<td>Liability for Nonpayment of Claim</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.082</td>
<td>Abatement of Bequests</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.083</td>
<td>Allocation of Funeral Expenses</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.084</td>
<td>Payment of Court Costs Relating to Claim</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.085</td>
<td>Joint Obligation for Payment of Certain Debts</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.086</td>
<td>Liability for Nonpayment of Claim</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.101</td>
<td>Approval or Establishment of Claim Required for Payment</td>
<td>209</td>
</tr>
<tr>
<td>§ 355.102</td>
<td>Claims Classification; Priority of Payment</td>
<td>209</td>
</tr>
<tr>
<td>§ 355.103</td>
<td>Priority of Certain Payments</td>
<td>209</td>
</tr>
<tr>
<td>§ 355.104</td>
<td>Payment of Proceeds from Sale of Property Securing Debt</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.105</td>
<td>Claimant’s Petition for Allowance and Payment of Claim</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.106</td>
<td>Order for Payment of Claim Obtained by Personal Representative</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.107</td>
<td>Order for Payment of Claim Obtained by Creditor</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.108</td>
<td>Payment When Assets Insufficient to Pay Claims of Same Class</td>
<td>210</td>
</tr>
<tr>
<td>§ 355.109</td>
<td>Abatement of Bequests</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.110</td>
<td>Allocation of Funeral Expenses</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.111</td>
<td>Payment of Court Costs Relating to Claim</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.112</td>
<td>Joint Obligation for Payment of Certain Debts</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.113</td>
<td>Liability for Nonpayment of Claim</td>
<td>211</td>
</tr>
<tr>
<td>§ 355.151</td>
<td>Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien</td>
<td>212</td>
</tr>
<tr>
<td>§ 355.152</td>
<td>Period for Specifying Treatment of Secured Claim</td>
<td>212</td>
</tr>
<tr>
<td>§ 355.153</td>
<td>Payment of Matured Secure Claim</td>
<td>212</td>
</tr>
<tr>
<td>§ 355.154</td>
<td>Preferred Debt and Lien</td>
<td>212</td>
</tr>
<tr>
<td>§ 355.155</td>
<td>Payment of Maturities on Preferred Debt and Lien</td>
<td>213</td>
</tr>
<tr>
<td>§ 355.1551</td>
<td>Claim Holder Duty to Possess or Sell Within Reasonable Time</td>
<td>213</td>
</tr>
<tr>
<td>§ 355.156</td>
<td>Affidavit Required for Foreclosure</td>
<td>213</td>
</tr>
<tr>
<td>§ 355.157</td>
<td>Citation on Application</td>
<td>213</td>
</tr>
<tr>
<td>§ 355.158</td>
<td>Hearing on Application</td>
<td>214</td>
</tr>
<tr>
<td>§ 355.159</td>
<td>Manner of Foreclosure; Minimum Price</td>
<td>214</td>
</tr>
<tr>
<td>§ 355.160</td>
<td>Unsuccessful Foreclosure; Subsequent Application</td>
<td>214</td>
</tr>
<tr>
<td>§ 355.201</td>
<td>Claim by Personal Representative</td>
<td>214</td>
</tr>
<tr>
<td>§ 355.202</td>
<td>Claims Against Personal Representatives</td>
<td>215</td>
</tr>
<tr>
<td>§ 355.203</td>
<td>Purchase of Claim by Personal Representative Prohibited</td>
<td>215</td>
</tr>
</tbody>
</table>

## Chapter 356. Sale of Estate Property ................................................................. 216

### Subchapter A. General Provisions ...................................................................... 216

| § 356.001 | Court Order Authorizing Sale                                              | 216  |
| § 356.002 | Sale Authorized by Will                                                  | 216  |

### Subchapter B. Certain Estate Property Required to be Sold ................................ 216

| § 356.051 | Sale of Certain Personal Property Required                                | 216  |

### Subchapter C. Sale of Personal Property .......................................................... 217

| § 356.101 | Order for Sale                                                          | 217  |
TABLE OF CONTENTS

§ 356.554. Sufficiency of Bond ................................................................. 222
§ 356.555. Increased or Additional Bond Not Required ........................................ 222
§ 356.556. Approval or Disapproval Order .......................................................... 222
§ 356.557. Deed ......................................................................................... 223
§ 356.558. Delivery of Deed ........................................................................ 223
§ 356.559. Damages; Removal ....................................................................... 223

Subchapter M. Procedure on Failure to Apply for Sale .................................................. 223
§ 356.601. Failure to Apply for Sale ..................................................................... 223
§ 356.602. Court Order .................................................................................. 223

Subchapter N. Purchase of Property by Personal Representative ...................................... 223
§ 356.651. General Prohibition on Purchase ................................................................ 223
§ 356.652. Exception: Authorization in Will .................................................................. 223
§ 356.653. Exception: Executory Contract .................................................................. 224
§ 356.654. Exception: Best Interest of Estate ......................................................... 224
§ 356.655. Purchase in Violation of Subchapter ......................................................... 224

Chapter 357. Renting Estate Property ........................................................................ 224
Subchapter A. Rental and Return of Estate Property ..................................................... 224
§ 357.001. Renting Estate Property Without Court Order ........................................ 224
§ 357.002. Renting Estate Property with Court Order ............................................... 224
§ 357.003. Estate Property Rented on Credit .......................................................... 225
§ 357.004. Condition of Returned Estate Property .................................................... 225
§ 357.005. Complaint for Failure to Rent ............................................................... 225

Subchapter B. Report on Rented Estate Property ................................................................ 225
§ 357.051. Reports Concerning Rentals ..................................................................... 225
§ 357.052. Court Action on Report .......................................................................... 225

Chapter 358. Matters Relating to Mineral Properties ................................................. 226
Subchapter A. General Provisions ........................................................................... 226
§ 358.001. Definitions ......................................................................................... 226

Subchapter B. Mineral Leases After Public Notice ...................................................... 226
§ 358.051. Authorization for Leasing of Minerals ..................................................... 226
§ 358.052. Lease Application ................................................................................ 226
§ 358.053. Scheduling of Hearing on Application; Continuance .................................. 227
§ 358.054. Notice of Hearing on Application .......................................................... 227
§ 358.055. Requirements Regarding Order and Notice Mandatory .......................... 227
§ 358.056. Hearing on Application; Order ............................................................. 227
§ 358.057. Making of Lease on Granting of Application ............................................ 228
§ 358.058. Bond Requirements ............................................................................... 228
§ 358.059. Term of Lease Binding .......................................................................... 228
§ 358.060. Amendment of Lease Regarding Effect of Shut-In Gas Well ....................... 228

Subchapter C. Mineral Leases at Private Sale .............................................................. 229
§ 358.102. Action of Court if Public Advertising Not Required .................................. 229

Subchapter D. Pooling or Unitization of Royalties or Minerals ........................................ 229
§ 358.151. Authorization for Pooling or Unitization ................................................... 229
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 358.152</td>
<td>Pooling or Unitization Application</td>
<td>229</td>
</tr>
<tr>
<td>§ 358.153</td>
<td>Notice Not Required</td>
<td>230</td>
</tr>
<tr>
<td>§ 358.154</td>
<td>Hearing on Application</td>
<td>230</td>
</tr>
<tr>
<td>§ 358.155</td>
<td>Action of Court and Contents of Order</td>
<td>230</td>
</tr>
<tr>
<td><strong>Subchapter E.</strong></td>
<td>Special Ancillary Instruments that May be Executed Without Court Order</td>
<td>230</td>
</tr>
<tr>
<td>§ 358.201</td>
<td>Authorization for Execution of Agreements</td>
<td>230</td>
</tr>
<tr>
<td><strong>Subchapter F.</strong></td>
<td>Procedure if Personal Representative of Estate Neglects to Apply for Authority</td>
<td>230</td>
</tr>
<tr>
<td>§ 358.251</td>
<td>Application to Show Cause</td>
<td>230</td>
</tr>
<tr>
<td>§ 358.252</td>
<td>Hearing on Application</td>
<td>231</td>
</tr>
<tr>
<td>§ 358.253</td>
<td>Order</td>
<td>231</td>
</tr>
<tr>
<td>§ 358.254</td>
<td>Procedure to be Followed After Entry of Order</td>
<td>231</td>
</tr>
<tr>
<td><strong>Chapter 359. Annual Account and Other Exhibits and Reports</strong></td>
<td>231</td>
<td></td>
</tr>
<tr>
<td><strong>Subchapter A.</strong></td>
<td>Annual Account and Other Exhibits</td>
<td>231</td>
</tr>
<tr>
<td>§ 359.001</td>
<td>Account of Estate Required</td>
<td>231</td>
</tr>
<tr>
<td>§ 359.002</td>
<td>Annual Account Required Until Estate Closed</td>
<td>232</td>
</tr>
<tr>
<td>§ 359.003</td>
<td>Supporting Vouchers and Other Documents Attached to Account</td>
<td>232</td>
</tr>
<tr>
<td>§ 359.004</td>
<td>Method of Proof for Securities and Other Assets</td>
<td>232</td>
</tr>
<tr>
<td>§ 359.005</td>
<td>Verification of Account</td>
<td>233</td>
</tr>
<tr>
<td>§ 359.006</td>
<td>Additional Accounts</td>
<td>233</td>
</tr>
<tr>
<td><strong>Subchapter B.</strong></td>
<td>Action on Annual Account</td>
<td>233</td>
</tr>
<tr>
<td>§ 359.051</td>
<td>Filing and Consideration of Annual Account</td>
<td>233</td>
</tr>
<tr>
<td>§ 359.052</td>
<td>Correction of Annual Account</td>
<td>233</td>
</tr>
<tr>
<td>§ 359.053</td>
<td>Order for Payment of Claims in Full</td>
<td>233</td>
</tr>
<tr>
<td>§ 359.054</td>
<td>Order for Pro Rata Payment of Claims</td>
<td>234</td>
</tr>
<tr>
<td><strong>Subchapter C.</strong></td>
<td>Penalties</td>
<td>234</td>
</tr>
<tr>
<td>§ 359.101</td>
<td>Penalty for Failure to File Annual Account</td>
<td>234</td>
</tr>
<tr>
<td>§ 359.102</td>
<td>Penalty for Failure to File Exhibit or Report</td>
<td>234</td>
</tr>
<tr>
<td><strong>Chapter 360. Partition and Distribution of Estate</strong></td>
<td>235</td>
<td></td>
</tr>
<tr>
<td><strong>Subchapter A.</strong></td>
<td>Application for Partition and Distribution</td>
<td>235</td>
</tr>
<tr>
<td>§ 360.001</td>
<td>General Application</td>
<td>235</td>
</tr>
<tr>
<td>§ 360.002</td>
<td>Application for Partial Distribution</td>
<td>235</td>
</tr>
<tr>
<td><strong>Subchapter B.</strong></td>
<td>Citation</td>
<td>235</td>
</tr>
<tr>
<td>§ 360.051</td>
<td>Citation of Interested Persons</td>
<td>235</td>
</tr>
<tr>
<td>§ 360.052</td>
<td>Citation of Executor or Administrator</td>
<td>235</td>
</tr>
<tr>
<td><strong>Subchapter C.</strong></td>
<td>Proceedings; Expenses</td>
<td>235</td>
</tr>
<tr>
<td>§ 360.101</td>
<td>Hearing on Application</td>
<td>235</td>
</tr>
<tr>
<td>§ 360.102</td>
<td>Court Decree</td>
<td>236</td>
</tr>
<tr>
<td>§ 360.103</td>
<td>Expenses of Partition</td>
<td>236</td>
</tr>
<tr>
<td><strong>Subchapter D.</strong></td>
<td>Partition and Distribution if Estate Property is Capable of Division</td>
<td>236</td>
</tr>
<tr>
<td>§ 360.151</td>
<td>Appointment of Commissioners</td>
<td>236</td>
</tr>
<tr>
<td>§ 360.152</td>
<td>Writ of Partition</td>
<td>236</td>
</tr>
<tr>
<td>§ 360.153</td>
<td>Partition by Commissioners</td>
<td>236</td>
</tr>
</tbody>
</table>

XXV
## Table of Contents

§ 360.154. Commissioners’ Report ................................................................. 237
§ 360.155. Court Action on Commissioners’ Report ................................. 237
§ 360.156. Delivery of Property ................................................................. 237
§ 360.157. Commissioners’ Fees ................................................................. 237

Subchapter E. Partition and Distribution if Estate Property Is Incapable of Division .................................................................................................................. 237
§ 360.201. Court Finding ........................................................................... 237
§ 360.203. Applicability of Provisions Relating to Sale of Real Estate ......... 237

Subchapter F. Certain Types of Estate Property ........................................ 238
§ 360.251. Estate Consisting Only of Money or Debts ............................... 238
§ 360.252. Estate Property Located in Another County ........................... 238
§ 360.253. Community Property ............................................................... 238
§ 360.254. Jointly Owned Property ............................................................ 238

Subchapter G. Enforcement ..................................................................... 238
§ 360.301. Liability for Failure to Deliver Estate Property ...................... 238

**Chapter 361. Death, Resignation, or Removal of Personal Representatives; Appointment of Successors** .......................................................... 239

Subchapter A. Resignation of Personal Representative ................................ 239
§ 361.001. Resignation Application ......................................................... 239
§ 361.002. Immediate Appointment of Successor; Discharge and Release ... 239
§ 361.003. Hearing Date; Citation ............................................................. 240
§ 361.004. Hearing .................................................................................. 240
§ 361.005. Requirements for Discharge .................................................. 240

Subchapter B. Removal and Reinstatement of Personal Representative .... 240
§ 361.051. Removal Without Notice ....................................................... 240
§ 361.052. Removal With Notice .............................................................. 241
§ 361.053. Removal Order ........................................................................ 241
§ 361.054. Removal and Reinstatement of Personal Representative Under Certain Circumstances ......................................................... 241

Subchapter C. Appointment of Successor Representative ....................... 241
§ 361.101. Requirements for Revocation of Letters .................................. 242
§ 361.102. Appointment Because of Death, Resignation, or Removal ....... 242
§ 361.103. Appointment Because of Existence of Prior Right ................ 242
§ 361.104. Appointment when Named Executor Becomes an Adult .......... 242
§ 361.105. Appointment of Formerly Sick or Absent Executor ................ 242
§ 361.106. Appointment when Will Discovered After Grant of Administration 242

Subchapter D. Procedures After Death, Resignation, or Removal of Personal Representative ................................................................. 242
§ 361.151. Payment to Estate While Office of Personal Representative Is Vacant 243
§ 361.152. Further Administration with or Without Notice or Will Annexed ... 243
§ 361.153. Rights, Powers, and Duties of Successor Representative .......... 243
§ 361.154. Successor Executor Also Succeeds to Prior Rights and Duties ...... 243
§ 361.155. Successor Representative to Return Inventory, Appraisement, and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims ......................................................... 243
TABLE OF CONTENTS

§ 403.054. Preferred Debt and Lien Claims ..............................................................252
§ 403.055. Certain Unsecured Claims; Barring of Claims ......................................252
§ 403.056. Notices Required by Creditors ..................................................................252
§ 403.057. Statute of Limitations .................................................................................253
§ 403.058. Other Claim Procedures Generally Do Not Apply ...............................253
§ 403.0585. Liability of Independent Executor for Payment of a Claim ..................253
§ 403.059. Enforcement of Claims by Suit ...............................................................253
§ 403.060. Requiring Heirs to Give Bond .................................................................253

Chapter 404. Accountings, Successors, and Other Remedies .................................254
§ 404.001. Accounting ...............................................................................................254
§ 404.002. Requiring Independent Executor to Give Bond .....................................254
§ 404.003. Removal of Independent Executor Without Notice ..............................254
§ 404.0035. Removal of Independent Executor With Notice .................................255
§ 404.0036. Removal Order ......................................................................................255
§ 404.0037. Costs and Expenses Related to Removal of Independent Executor .......255
§ 404.004. Powers of an Administrator Who Succeeds an Independent Executor ....255
§ 404.005. Court-Appointed Successor Independent Administrator ........................256

Chapter 405. Closing and Distributions .....................................................................257
§ 405.001. Accounting and Distribution ....................................................................258
§ 405.0015. Distributions Generally ..........................................................................258
§ 405.002. Receipts and Releases for Distributions by Independent Executor .........258
§ 405.003. Judicial Discharge of Independent Executor ...........................................258
§ 405.004. Closing Independent Administration by Closing Report or Notice of Closing Estate .................................................................259
§ 405.005. Closing Report .........................................................................................259
§ 405.006. Notice of Closing Estate ..........................................................................259
§ 405.007. Effect of Filing Closing Report or Notice of Closing Estate ......................259
§ 405.008. Partition and Distribution or Sale of Property Incapable of Division .......260
§ 405.009. Closing Independent Administration on Application by Distributee .....260
§ 405.010. Issuance of Letters ..................................................................................260
§ 405.011. Rights and Remedies Cumulative ............................................................260
§ 405.012. Closing Procedures Not Required ............................................................260

SUBTITLE J. ADDITIONAL MATTERS RELATING TO THE ADMINISTRATION OF CERTAIN ESTATES .................................................................260

Chapter 451. Order of No Administration .................................................................260
§ 451.001. Application for Family Allowance and Order of No Administration ....261
§ 451.002. Hearing and Order ..................................................................................261
§ 451.003. Effect of Order .........................................................................................261
§ 451.004. Proceeding to Revoke Order ...................................................................261

Chapter 452. Temporary Administration of Estates ..................................................262
Subchapter A. Appointment of Temporary Administrator Generally .....................262
§ 452.001. Duty to Appoint Temporary Administrator ...........................................262
§ 452.002. Application for Appointment .................................................................262
§ 452.003. Order of Appointment; Requirements .....................................................262
§ 452.004. Temporary Administrator’s Bond ...........................................................263
§ 452.005. Issuance of Letters of Temporary Administration .................................263
§ 452.006. Notice of Appointment ............................................................................263
§ 452.007. Hearing to Contest Appointment ............................................................263

xxviii
TABLE OF CONTENTS

§ 452.008.   Permanent Appointment ................................................................. 263

Subchapter B.  Temporary Administration Pending Contest of a Will or Administration ........ 263
§ 452.051.   Appointment of Temporary Administrator ........................................ 263
§ 452.052.   Additional Powers Regarding Claims ................................................. 264

Subchapter C.  Powers and Duties of Temporary Administrator ............................. 264
§ 452.101.   Limited Powers of Temporary Administrator ....................................... 264
§ 452.102.   Additional Bond for Extension of Rights and Powers .............................. 264

Subchapter D.  Expiration and Closing of Temporary Administration .................... 264
§ 452.151.   Accounting......................................................................................... 264
§ 452.152.   Closing Temporary Administration ..................................................... 264

Chapter 453.  Administration of Community Property .................................. 264
§ 453.001.   Effect of Chapter............................................................................... 265
§ 453.002.   Administration of Community Property Not Necessary ...................... 265
§ 453.003.   General Powers of Surviving Spouse if No Administration Is Pending .......... 265
§ 453.004.   Collection of Unpaid Wages if No Administration Is Pending ................. 265
§ 453.005.   Remarriage of Surviving Spouse ......................................................... 265
§ 453.006.   Account of [Community] Debts and Disposition of Community Property ...... 265
§ 453.007.   Delivery of Community Estate on Final Partition ..................................... 266
§ 453.008.   Liability of Surviving Spouse for Loss ................................................. 266
§ 453.009.   Distribution of Powers Between Personal Representative and Surviving Spouse During Administration ..................................................... 266

Chapter 454.  Administration of Estate of Person Presumed Dead .................... 266
Subchapter A.  Estates of Persons Presumed Dead ................................................ 266
§ 454.001.   Applicability; Determination of Death .................................................. 266
§ 454.002.   Grant of Letters on Proof of Death ....................................................... 266
§ 454.003.   Citation and Search ............................................................................. 266
§ 454.004.   Distribution of Estate ............................................................................ 267

Subchapter B.  Persons Presumed Dead but Subsequently Proved Living .................. 267
§ 454.051.   Restoration of Estate .......................................................................... 267
§ 454.052.   Liability of Personal Representative and Others Acting Under Court Order; Bonds Not Voided................................................................. 267

CHAPTER 455.  PUBLIC PROBATE ADMINISTRATOR ............................ 267
§ 455.001.   Definition............................................................................................ 267
§ 455.002.   Bond Of Public Probate Administrator ................................................. 268
§ 455.003.   Funding of Public Probate Administrator’s Office ................................... 268
§ 455.004.   Powers and Duties .............................................................................. 268
§ 455.005.   Informing Public Probate Administrator .............................................. 268
§ 455.006.   Public Probate Administrator’s Initiation of Administration .................... 268
§ 455.007.   Access to Information ......................................................................... 269
§ 455.008.   Small Estates ....................................................................................... 269
§ 455.009.   Small Estate Affidavit .......................................................................... 269
§ 455.010.   Grant of Administration ....................................................................... 270
§ 455.011.   Withdrawal of Public Probate Administrator and Appointment of Successor .... 270
§ 455.012.   Deposit of Funds in Court Registry ...................................................... 270

xxix
TABLE OF CONTENTS

Chapter 456. Disbursement and Closing of Lawyer Trust or Escrow Accounts ................................................................. 270
  § 456.001. Definition ................................................................................................................................................. 270
  § 456.002. Authority to Designate Lawyer on Certain Trust or Escrow Accounts ........................................ 270
  § 456.003. Duty of Eligible Institutions ................................................................................................................. 271
  § 456.004. Liability of Eligible Institutions ............................................................................................................ 271
  § 456.0045. Private Cause of Action ....................................................................................................................... 271
  § 456.005. Rules .......................................................................................................................................................... 271

SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND FIDUCIARIES .................................271

Chapter 501. Ancillary Probate of Foreign Will ............................................................................................................ 272
  § 501.001. Authority for Ancillary Probate of Foreign Will ..................................................................................... 272
  § 501.002. Application for Ancillary Probate of Foreign Will ................................................................................... 272
  § 501.003. Citation and Notice ............................................................................................................................... 272
  § 501.004. Recording by Clerk ............................................................................................................................... 272
  § 501.005. Effect of Filing and Recording Foreign Will .......................................................................................... 273
  § 501.006. Ancillary Letters Testamentary ............................................................................................................ 273
  § 501.007. Effect on Property ................................................................................................................................. 273
  § 501.008. Setting Aside of Certain Foreign Wills ............................................................................................... 273

Chapter 502. Original Probate of Foreign Will ........................................................................................................ 273
  § 502.001. Original Probate of Foreign Will Authorized ......................................................................................... 273
  § 502.002. Proof of Foreign Will in Original Probate Proceeding ........................................................................ 274

Chapter 503. Recording of Foreign Testamentary Instrument .................................................................................. 274
  Subchapter A. Requirements for Recording Foreign Testamentary Instrument ............................................... 274
    § 503.001. Authorization to Record Certain Foreign Testamentary Instruments in Deed Records .......................... 274
    § 503.002. Recording of Certain Foreign Testamentary Instruments In Language Other Than English .......... 274
    § 503.003. Contest of Recorded Foreign Testamentary Instrument Permitted ................................................... 275
  Subchapter B. Effects of Recorded Foreign Testamentary Instrument ............................................................... 275
    § 503.051. Recorded Foreign Testamentary Instrument as Conveyance ......................................................... 275
    § 503.052. Recorded Foreign Testamentary Instrument as Notice of Title ...................................................... 275

Chapter 504. Contest of or Other Challenge to Foreign Testamentary Instrument ................................................. 275
  Subchapter A. Contest or Setting Aside Probate of Foreign Will in this State ................................................... 275
    § 504.001. Grounds for Contesting Foreign Will Probated in Domiciliary Jurisdiction .................................. 275
    § 504.002. Grounds for Contesting Foreign Will Probated in Non-Domiciliary Jurisdiction .......................... 275
    § 504.003. Procedures and Time Limits for Contesting Foreign Will .............................................................. 276
    § 504.004. Probate of Foreign Will Set Aside for Lack of Service ................................................................. 276
  Subchapter B. Contest or Final Rejection in Foreign Jurisdiction ......................................................................... 276
    § 504.051. Notice of Will Contest in Foreign Jurisdiction .................................................................................... 276
    § 504.052. Effect of Notice .................................................................................................................................. 276
    § 504.053. Effect of Rejection of Testamentary Instrument by Foreign Jurisdiction ........................................ 276
# TABLE OF CONTENTS

**Chapter 505. Foreign Personal Representatives, Trustees, and Fiduciaries** ................................................................. 277

| Subchapter A.  Foreign Corporate Fiduciary | § 505.001.  Definition ................................................................................................. 277 |
|                                          | § 505.002.  Applicability of Other Law ...................................................................... 277 |
|                                          | § 505.003.  Authority of Foreign Corporate Fiduciary to Serve in Fiduciary Capacity ........ 277 |
|                                          | § 505.004.  Filing Requirements; Designation .......................................................... 277 |
|                                          | § 505.005.  Service of Notice or Process on Secretary of State ....................................... 277 |
|                                          | § 505.006.  Criminal Penalty; Effect of Conviction...................................................... 278 |

| Subchapter B.  Foreign Executors and Trustees | § 505.051.  Applicability of Bond Requirement .......................................................... 278 |
|                                               | § 505.052.  Power to Sell Property ........................................................................... 278 |

| Subchapter C.  Recovery of Debts by Foreign Executor or Administrator | § 505.101.  Suit to Recover Debt ............................................................................ 278 |
| |
| Subchapter A.  Payment of Certain Funds to State | § 551.001.  Payment of Certain Shares of Estate to State ................................................ 279 |
|                                               | § 551.002.  Payment of Portion that Is in Money ....................................................... 279 |
|                                               | § 551.003.  Payment of Portion that Is Not in Money .................................................. 279 |
|                                               | § 551.004.  Compensation to Executor or Administrator ............................................. 279 |
|                                               | § 551.005.  Comptroller Indispensable Party ............................................................. 279 |
|                                               | § 551.006.  Comptroller’s Receipt ............................................................................. 279 |

| Subchapter B.  Recovery of Funds Paid to State | § 551.051.  Recovery of Funds .................................................................................. 280 |
| |
| Subchapter C.  Penalties; Enforcement | § 551.101.  Liability of Court Clerk; Penalty ............................................................. 280 |
|                                               | § 551.102.  Damages for Failure to Make Payments .................................................... 280 |
|                                               | § 551.103.  Enforcement of Payment and Damages; Recovery on Bond ......................... 280 |

**SUBTITLE L. PAYMENT OF ESTATES INTO TREASURY ........................................... 278**

**Chapter 551. Payment of Certain Estates to State** ........................................... 279

| Subchapter A.  Payment of Certain Funds to State | § 551.001.  Payment of Certain Shares of Estate to State ................................................ 279 |
|                                               | § 551.002.  Payment of Portion that Is in Money ....................................................... 279 |
|                                               | § 551.003.  Payment of Portion that Is Not in Money .................................................. 279 |
|                                               | § 551.004.  Compensation to Executor or Administrator ............................................. 279 |
|                                               | § 551.005.  Comptroller Indispensable Party ............................................................. 279 |
|                                               | § 551.006.  Comptroller’s Receipt ............................................................................. 279 |

| Subchapter B.  Recovery of Funds Paid to State | § 551.051.  Recovery of Funds .................................................................................. 280 |
| |
| Subchapter C.  Penalties; Enforcement | § 551.101.  Liability of Court Clerk; Penalty ............................................................. 280 |
|                                               | § 551.102.  Damages for Failure to Make Payments .................................................... 280 |
|                                               | § 551.103.  Enforcement of Payment and Damages; Recovery on Bond ......................... 280 |

**SUBTITLE P. DURABLE POWERS OF ATTORNEY ................................................. 280**

**Chapter 751. General Provisions Regarding Durable Powers of Attorney** ....... 282

| Subchapter A.  General Provisions | § 751.001.  Short Title ............................................................................................... 282 |
|                                    | § 751.0015.  Applicability of Subtitle ....................................................................... 282 |
|                                    | § 751.002.  Definitions ............................................................................................. 282 |
|                                    | § 751.00201.  Meaning of Disabled or Incapacitated for Purposes of Durable Power of Attorney ........................................... 282 |
|                                    | § 751.0021.  Requirements of Durable Power of Attorney ............................................. 283 |
|                                    | § 751.0022.  Presumption of Genuine Signature ........................................................ 283 |
|                                    | § 751.0023.  Validity of Power of Attorney ................................................................ 283 |
|                                    | § 751.0024.  Meaning and Effect of Durable Power of Attorney ................................... 283 |
|                                    | § 751.003.  Uniformity of Application and Construction ........................................... 284 |

xxxi
TABLE OF CONTENTS

§ 751.005. Extension of Principal’s Authority to Other Persons ............................................... 284
§ 751.006. Remedies Under Other Law ..................................................................................... 284
§ 751.007. Conflict with or Effect on Other Law ........................................................................ 284

Subchapter A-1. Appointment of Agents......................................................................................... 284
§ 751.021. Co-Agents ................................................................................................................ 284
§ 751.022. Acceptance of Appointment As Agent ........................................................................ 284
§ 751.023. Successor Agents ....................................................................................................... 284
§ 751.024. Reimbursement and Compensation of Agent ........................................................... 284

Subchapter A-2. Authority of Agent Under Durable Power of Attorney ......................................... 284
§ 751.031. Grants of Authority in General and Certain Limitations ........................................... 284
§ 751.032. Gift Authority ............................................................................................................... 285
§ 751.033. Authority to Create or Change Certain Beneficiary Designations ............................ 285
§ 751.034. Incorporation of Authority ........................................................................................ 286

§ 751.051. Effect of Acts Performed by Agent ............................................................................. 286
§ 751.052. Relation of Attorney In Fact or Agent to Court-Appointed Guardian of Estate .......... 286
§ 751.054. Knowledge of Termination of Power; Good-Faith Acts ............................................. 286
§ 751.055. Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance ................................................................. 286
§ 751.057. Effect of Bankruptcy Proceeding ............................................................................... 287

Subchapter C. Duty to Inform and Account .................................................................................. 287
§ 751.101. Fiduciary Duties .......................................................................................................... 287
§ 751.102. Duty to Timely Inform Principal ................................................................................. 287
§ 751.103. Maintenance of Records ............................................................................................. 287
§ 751.104. Accounting .................................................................................................................. 287
§ 751.105. Effect of Failure to Comply; Suit ............................................................................... 287
§ 751.106. Effect of Subchapter on Principal’s Rights ................................................................. 287

Subchapter C-1. Other Duties of Agent ........................................................................................ 288
§ 751.121. Duty to Notify of Breach of Fiduciary Duty by Other Agent .................................... 288
§ 751.122. Duty to Preserve Principal’s Estate Plan .................................................................. 288

Subchapter C-2. Duration of Durable Power of Attorney and Agent’s Authority ....................... 288
§ 751.131. Termination of Durable Power of Attorney ................................................................. 288
§ 751.132. Termination of Agent’s Authority ............................................................................. 288
§ 751.133. Relation of Agent to Court-Appointed Guardian of Estate ........................................ 288
§ 751.134. Effect on Certain Persons of Termination of Durable Power of Attorney or Agent’s Authority .......................................................... 289
§ 751.135. Previous Durable Power of Attorney Continues in Effect Until Revoked .............. 289

Subchapter D. Recording Durable Power of Attorney for Certain Real Property Transactions .......... 289
§ 751.151. Recording for Real Property Transactions Requiring Execution and Delivery of Instruments .................................................................................................................. 289

Subchapter E. Acceptance of and Reliance on Durable Power of Attorney ............................... 289
§ 751.201. Acceptance of Durable Power of Attorney Required; Exceptions .......................... 289

xxxii
**Table of Contents**

§ 751.202. Other Form or Recording of Durable Power of Attorney as Condition of Acceptance Prohibited................................................................. 290
§ 751.203. Agent’s Certification ............................................................................................................. 290
§ 751.204. Opinion of Counsel .............................................................................................................. 291
§ 751.205. English Translation .............................................................................................................. 291
§ 751.206. Grounds for Refusing Acceptance ....................................................................................... 291
§ 751.207. Written Statement of Refusal of Acceptance Required ............................................................. 292
§ 751.208. Date of Acceptance .............................................................................................................. 292
§ 751.209. Good Faith Reliance on Durable Power of Attorney ............................................................ 292
§ 751.210. Reliance on Certain Requested Information ..................................................................... 293
§ 751.211. Actual Knowledge of Person When Transactions Conducted Through Employees .......... 293
§ 751.212. Cause of Action for Refusal to Accept Durable Power of Attorney ..................................... 293
§ 751.213. Liability of Principal ........................................................................................................... 293

Subchapter F. Civil Remedies ................................................................................................................................. 293
§ 751.251. Judicial Relief ......................................................................................................................... 293

**Chapter 752. Statutory Durable Power of Attorney** ................................................................. 294

Subchapter A. General Provisions Regarding Statutory Durable Power of Attorney ........................................... 294
§ 752.001. Use, Meaning, and Effect of Statutory Durable Power of Attorney ........................................... 294
§ 752.002. Validity Not Affected ............................................................................................................. 294
§ 752.003. Prescribed Form Not Exclusive ............................................................................................ 294
§ 752.004. Legal Sufficiency of Statutory Durable Power of Attorney ................................................... 294

Subchapter B. Form of Statutory Durable Power of Attorney ........................................................................ 294
§ 752.051. Form ........................................................................................................................................ 294
§ 752.052. Modifying Statutory Form to Grant Specific Authority .......................................................... 297

Subchapter C. Construction of Powers Related to Statutory Durable Power of Attorney ............................ 297
§ 752.101. Construction in General ...................................................................................................... 297
§ 752.102. Real Property Transactions ................................................................................................. 297
§ 752.103. Tangible Personal Property Transactions ............................................................................. 299
§ 752.104. Stock and Bond Transactions ............................................................................................... 299
§ 752.105. Commodity and Option Transactions .................................................................................... 299
§ 752.106. Banking and Other Financial Institution Transactions ........................................................ 299
§ 752.107. Business Operation Transactions .......................................................................................... 300
§ 752.108. Insurance and Annuity Transactions ..................................................................................... 301
§ 752.109. Estate, Trust, and Other Beneficiary Transactions ................................................................. 301
§ 752.110. Claims and Litigation ............................................................................................................ 302
§ 752.111. Personal and Family Maintenance .......................................................................................... 302
§ 752.112. Benefits from Certain Governmental Programs or Civil or Military Service ....................... 303
§ 752.113. Retirement Plan Transactions ............................................................................................... 303
§ 752.114. Tax Matters ............................................................................................................................ 303
§ 752.1145. Digital Asset Transactions .................................................................................................. 304
§ 752.115. Existing Interests; Foreign Interests ....................................................................................... 304

**Chapter 753. Removal of Attorney in Fact or Agent** ........................................................... 304
§ 753.001. Procedure for Removal ........................................................................................................... 304
§ 753.002. Notice to Third Parties .......................................................................................................... 305

xxxiii
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1022.002.</td>
<td>Original Jurisdiction for Guardianship Proceedings .......................... 310</td>
</tr>
<tr>
<td>§ 1022.003.</td>
<td>Jurisdiction of Contested Guardianship Proceeding in County With No Statutory Probate Court or County Court at Law ................................................. 310</td>
</tr>
<tr>
<td>§ 1022.004.</td>
<td>Jurisdiction of Contested Guardianship Proceeding in County With No Statutory Probate Court ............................................................... 311</td>
</tr>
<tr>
<td>§ 1022.005.</td>
<td>Exclusive Jurisdiction of Guardianship Proceeding in County With Statutory Probate Court ............................................................... 311</td>
</tr>
<tr>
<td>§ 1022.006.</td>
<td>Concurrent Jurisdiction With District Court ................................. 312</td>
</tr>
<tr>
<td>§ 1022.007.</td>
<td>Transfer of Proceeding by Statutory Probate Court ................................. 312</td>
</tr>
<tr>
<td>§ 1022.008.</td>
<td>Transfer of Contested Guardianship of the Person of a Minor .......................... 312</td>
</tr>
<tr>
<td>§ 1023.001.</td>
<td>Venue for Appointment of Guardian .................................................... 312</td>
</tr>
<tr>
<td>§ 1023.002.</td>
<td>Concurrent Venue and Transfer for Want of Venue ................................. 313</td>
</tr>
<tr>
<td>§ 1023.003.</td>
<td>Transfer of Guardianship to Another County ........................................... 313</td>
</tr>
<tr>
<td>§ 1023.004.</td>
<td>Notice ........................................... 313</td>
</tr>
<tr>
<td>§ 1023.005.</td>
<td>Court Action ........................................... 313</td>
</tr>
<tr>
<td>§ 1023.006.</td>
<td>Transfer of Record ........................................... 314</td>
</tr>
<tr>
<td>§ 1023.007.</td>
<td>Transfer Effective ........................................... 314</td>
</tr>
<tr>
<td>§ 1023.008.</td>
<td>Continuation of Guardianship ........................................... 315</td>
</tr>
<tr>
<td>§ 1023.009.</td>
<td>New Guardian Appointed on Transfer ........................................... 315</td>
</tr>
<tr>
<td>§ 1023.010.</td>
<td>Review of Transferred Guardianship ........................................... 315</td>
</tr>
<tr>
<td>§ 1023.011.</td>
<td>No Liability of Judge ........................................... 315</td>
</tr>
<tr>
<td>§ 1051.001.</td>
<td>Issuance of Notice or Process in General ........................................... 316</td>
</tr>
<tr>
<td>§ 1051.002.</td>
<td>Direction of Writ or Other Process ........................................... 316</td>
</tr>
<tr>
<td>§ 1051.003.</td>
<td>Contents of Citation or Notice ........................................... 316</td>
</tr>
<tr>
<td>§ 1051.051.</td>
<td>Personal Service ........................................... 316</td>
</tr>
<tr>
<td>§ 1051.052.</td>
<td>Service by Mail or Qualified Delivery Method ........................................... 317</td>
</tr>
<tr>
<td>§ 1051.053.</td>
<td>Service by Posting ........................................... 317</td>
</tr>
<tr>
<td>§ 1051.054.</td>
<td>Service by Publication ........................................... 317</td>
</tr>
<tr>
<td>§ 1051.055.</td>
<td>Service on Party’s Attorney of Record ........................................... 318</td>
</tr>
<tr>
<td>§ 1051.056.</td>
<td>Service on Guardian or Receiver ........................................... 318</td>
</tr>
<tr>
<td>§ 1051.101.</td>
<td>Notice Required for Application for Guardianship; Citation of Applicant not Required ........................................... 318</td>
</tr>
<tr>
<td>§ 1051.102.</td>
<td>Issuance of Citation for Application for Guardianship ........................................... 318</td>
</tr>
<tr>
<td>§ 1051.103.</td>
<td>Service of Citation for Application for Guardianship ........................................... 319</td>
</tr>
<tr>
<td>§ 1051.104.</td>
<td>Notice by Applicant for Guardianship ........................................... 319</td>
</tr>
<tr>
<td>§ 1051.105.</td>
<td>Waiver of Notice of Application for Guardianship ........................................... 319</td>
</tr>
<tr>
<td>§ 1051.106.</td>
<td>Action by Court on Application for Guardianship ........................................... 319</td>
</tr>
<tr>
<td>§ 1051.151.</td>
<td>Requirements for Return on Citation or Notice Served by Personal Service ........................................... 320</td>
</tr>
<tr>
<td>§ 1051.152.</td>
<td>Validity of Service and Return on Citation or Notice Served by Posting ........................................... 320</td>
</tr>
</tbody>
</table>

SUBTITLE C. PROCEDURAL MATTERS ...........................................................315

Chapter 1051. Notices and Process in Guardianship Proceedings in General...............................................................316

Subchapter A. Issuance and Form of Notice or Process ........................................... 316
  § 1051.001. Issuance of Notice or Process in General ........................................... 316
  § 1051.002. Direction of Writ or Other Process ........................................... 316
  § 1051.003. Contents of Citation or Notice ........................................... 316

Subchapter B. Methods of Serving Citation or Notice; Persons to be Served ........................................... 316
  § 1051.051. Personal Service ........................................... 316
  § 1051.052. Service by Mail or Qualified Delivery Method ........................................... 317
  § 1051.053. Service by Posting ........................................... 317
  § 1051.054. Service by Publication ........................................... 317
  § 1051.055. Service on Party’s Attorney of Record ........................................... 318
  § 1051.056. Service on Guardian or Receiver ........................................... 318

Subchapter C. Notice and Citation Required for Application for Guardianship ........................................... 318
  § 1051.101. Notice Required for Application for Guardianship; Citation of Applicant not Required ........................................... 318
  § 1051.102. Issuance of Citation for Application for Guardianship ........................................... 318
  § 1051.103. Service of Citation for Application for Guardianship ........................................... 319
  § 1051.104. Notice by Applicant for Guardianship ........................................... 319
  § 1051.105. Waiver of Notice of Application for Guardianship ........................................... 319
  § 1051.106. Action by Court on Application for Guardianship ........................................... 319

Subchapter D. Return and Proof of Service of Citation or Notice ........................................... 320
  § 1051.151. Requirements for Return on Citation or Notice Served by Personal Service ........................................... 320
  § 1051.152. Validity of Service and Return on Citation or Notice Served by Posting ........................................... 320

xxxv
# Table of Contents

$ 1051.153. Proof of Service ................................................................. 320
$ 1051.154. Return to Court ................................................................. 320

Subchapter E. Alternative Manner of Issuance, Service, and Return .......... 321
$ 1051.201. Court-Ordered Issuance, Service, and Return Under Certain Circumstances ......................................................... 321

Subchapter F. Additional Notice Provisions .................................................. 321
$ 1051.251. Waiver of Notice of Hearing ................................................. 321
$ 1051.252. Request for Notice of Filing of Pleading ................................. 321
$ 1051.253. Service of Notice of Intention to Take Depositions in Certain Proceedings ................................................................. 321

Chapter 1052. Filing and Recordkeeping ................................................. 321

Subchapter A. Recordkeeping Requirements ................................................ 321
$ 1052.001. Guardianship Docket .......................................................... 321
$ 1052.002. Claim Docket ........................................................................ 322
$ 1052.003. Guardianship Fee Book ......................................................... 322
$ 1052.004. Alternate Recordkeeping ....................................................... 322

Subchapter B. Files; Index ........................................................................... 322
$ 1052.051. Filing Procedures ..................................................................... 322
$ 1052.052. Case Files ................................................................................ 322
$ 1052.053. Index ...................................................................................... 323

Chapter 1053. Other Court Duties and Procedures ..................................... 323

Subchapter A. Enforcement of Orders ........................................................ 323
$ 1053.001. Enforcement of Orders .......................................................... 323

Subchapter B. Costs and Security ............................................................... 323
$ 1053.051. Applicability of Certain Laws ................................................ 323
$ 1053.052. Security for Certain Costs .................................................... 323
$ 1053.053. Exemption From Guardianship Proceeding Fees for Certain Military Servicemembers ......................................................... 324
$ 1053.054. Exemption From Guardianship Fees for Certain Law Enforcement Officers, Firefighters, and Others .............................................. 324

Subchapter C. Procedures for Guardianship Proceedings .......................... 324
$ 1053.101. Calling of Dockets .................................................................. 324
$ 1053.102. Setting of Certain Hearings by Clerk ...................................... 324
$ 1053.103. Rendering of Decisions, Orders, Decrees, and Judgments ........ 324
$ 1053.104. Confidentiality of Certain Information .................................... 324
$ 1053.105. Inapplicability of Certain Rules of Civil Procedure ................. 325

Chapter 1054. Court Officers and Court-Appointed Persons ..................... 325

Subchapter A. Attorneys Ad Litem and Interpreters .................................... 325
$ 1054.001. Appointment of Attorney Ad Litem in Proceeding for Appointment of Guardian ............................................................. 325
$ 1054.002. Term of Appointment ............................................................. 325
$ 1054.003. Access to Records ................................................................. 326
$ 1054.004. Duties .................................................................................... 326
$ 1054.005. Appointment of Interpreter .................................................... 326

xxxvi
**TABLE OF CONTENTS**

| § 1054.006. | Representation Of Ward Or Proposed Ward By Attorney | 326 |
| § 1054.007. | Attorneys Ad Litem | 327 |

**Subchapter B. Guardians Ad Litem**

| § 1054.051. | Appointment of Guardian Ad Litem in Guardianship Proceeding | 327 |
| § 1054.052. | Appointment of Guardian Ad Litem Relating to Certain Other Suits | 327 |
| § 1054.053. | Term of Certain Appointments | 327 |
| § 1054.054. | Duties | 327 |
| § 1054.055. | Compensation and Expenses | 327 |
| § 1054.056. | Immunity | 327 |

**Subchapter C. Court Visitors**

| § 1054.101. | Inapplicability of Subchapter to Certain Guardianships | 328 |
| § 1054.102. | Operation of Court Visitor Program | 328 |
| § 1054.103. | Evaluation of Ward or Proposed Ward | 328 |
| § 1054.104. | Evaluation Report | 328 |
| § 1054.105. | Compensation | 328 |

**Subchapter D. Court Investigators**

| § 1054.151. | Investigation of Guardianship Application | 328 |
| § 1054.152. | General Duties | 328 |
| § 1054.153. | Investigation Report | 329 |
| § 1054.154. | Effect of Subchapter on Other Law | 329 |
| § 1054.155. | Notice Regarding Request to Financial Institution for Customer Records | 329 |
| § 1054.156. | Appointment of Court Investigator for Certain Courts | 329 |
| § 1054.157. | Required Training | 329 |

**Subchapter E. Qualifications to Serve as Court-Appointed Attorney**

| § 1054.201. | Certification Required | 329 |
| § 1054.203. | Eligibility for Appointment on Expiration of Certificate | 330 |

**Chapter 1055. Trial and Hearing Matters**

| § 1055.001. | Standing to Commence or Contest Proceeding | 330 |
| § 1055.002. | Defect in Pleading | 330 |
| § 1055.003. | Intervention by Interested Person | 330 |

**Subchapter B. Trial and Hearing**

| § 1055.051. | Hearing by Submission | 331 |
| § 1055.052. | Trial by Jury | 331 |
| § 1055.053. | Location of Hearing | 331 |

**Subchapter C. Evidence**

| § 1055.101. | Applicability of Certain Rules Relating to Witnesses and Evidence | 331 |
| § 1055.102. | Use of Certain Records as Evidence | 331 |

**Subchapter D. Mediation**

| § 1055.151. | Mediation of Contested Guardianship Proceeding | 331 |
| § 1055.152. | Mediated Settlement Agreements | 331 |
# Table of Contents

## Chapter 1056. Execution, Attachment, and Bill of Review

- Subchapter A. Execution.......................................................... 332
  - § 1056.001. Executions In Guardianship Proceedings.......................... 332
- Subchapter B. Attachment of Estate Property........................................ 332
  - § 1056.051. Order for Issuance of Writ of Attachment.......................... 332
  - § 1056.052. Bond........................................................................ 332
- Subchapter C. Bill of Review .......................................................... 332
  - § 1056.101. Revision and Correction of Order or Judgment in Guardianship Proceeding.......................... 332
  - § 1056.102. Injunction................................................................ 333

## Chapter 1057. Change and Resignation of Resident Agent of Guardian for Service of Process

- § 1057.001. Change of Resident Agent.................................................. 333
- § 1057.002. Resignation of Resident Agent.............................................. 333

## Subtitle D. Creation of Guardianship

- § 1101.002. Contents of Application; Confidentiality of Certain Addresses.......................... 333
- § 1101.003. Affidavit Containing Contact Information............................... 333

## Chapter 1101. General Procedure to Appoint Guardian

- Subchapter A. Initiation of Proceeding for Appointment of Guardian................. 334
  - § 1101.100. Definitions........................................................................ 334
  - § 1101.001. Application for Appointment of Guardian; Contents.......................... 334
  - § 1101.1011. Limitation on Acts by Advance Practice Registered Nurse......................... 335
  - § 1101.002. Contents of Application; Confidentiality of Certain Addresses.......................... 335
  - § 1101.003. Affidavit Containing Contact Information........................................ 335
- Subchapter B. Hearing; Jury Trial.......................................................... 335
  - § 1101.051. Hearing........................................................................ 335
  - § 1101.052. Jury Trial............................................................. 336
  - § 1101.053. Provision of Records Required; Use of Records......................... 336
- Subchapter C. Determination of Necessity of Guardianship; Findings and Proof............... 336
  - § 1101.101. Findings and Proof Required.................................................. 336
  - § 1101.102. Determination of Incapacity of Certain Adults: Recurring Acts or Occurrences.......................................................... 336
  - § 1101.103. Determination of Incapacity of Certain Adults: [Physician] Health Care Provider Examination............................................ 337
  - § 1101.103. Determination of Incapacity of Certain Adults: Physician or Psychologist Examination.......................................................... 337
  - § 1101.104. Examinations and Documentation Regarding Intellectual Disability.......................... 339
  - § 1101.105. Prohibition Against Consideration of Age as Sole Factor in Appointment of Guardian for Adults............................................. 339
  - § 1101.106. Evidence of Necessity of Guardianship to Receive Governmental Funds........... 339
- Subchapter D. Court Action................................................................. 340
  - § 1101.151. Order Appointing Guardian With Full Authority......................... 340
  - § 1101.152. Order Appointing Guardian With Limited Authority........................ 340
  - § 1101.153. General Contents of Order Appointing Guardian.......................... 341
### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1101.154</td>
<td>Appointment of Guardian of Estate for Certain Minors Prohibited 341</td>
</tr>
<tr>
<td>§ 1101.155</td>
<td>Dismissal of Application 341</td>
</tr>
<tr>
<td>§ 1101.156</td>
<td>Deposit of Estate Assets 341</td>
</tr>
</tbody>
</table>

**Chapter 1102. Court-Initiated Procedure to Appoint Guardian** 341

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1102.001</td>
<td>Court-Initiated Investigation 341</td>
</tr>
<tr>
<td>§ 1102.002</td>
<td>Establishment of Probable Cause for Investigation 342</td>
</tr>
<tr>
<td>§ 1102.003</td>
<td>Information Letter 342</td>
</tr>
<tr>
<td>§ 1102.004</td>
<td>Application for Guardianship Following Investigation 343</td>
</tr>
<tr>
<td>§ 1102.005</td>
<td>Compensation of Guardian Ad Litem 343</td>
</tr>
<tr>
<td>§ 1102.006</td>
<td>Notice Regarding Request to Financial Institution for Customer Records 343</td>
</tr>
</tbody>
</table>

**Chapter 1103. Procedure to Appoint Guardian for Certain Minors** 343

Requiring Guardianships as Adults

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1103.001</td>
<td>Application for Appointment of Guardian 343</td>
</tr>
<tr>
<td>§ 1103.002</td>
<td>Appointment of Conservator as Guardian Without Hearing 343</td>
</tr>
<tr>
<td>§ 1103.003</td>
<td>Effective Date Of Guardianship 344</td>
</tr>
<tr>
<td>§ 1103.004</td>
<td>Settlement and Closing of Prior Guardianship 344</td>
</tr>
</tbody>
</table>

**Chapter 1104. Selection of and Eligibility to Serve as Guardian** 345

<table>
<thead>
<tr>
<th>Subchapter A</th>
<th>General Provisions Relating to Appointment of Guardian 345</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1104.001</td>
<td>Guardian of the Person or Estate 345</td>
</tr>
<tr>
<td>§ 1104.002</td>
<td>Preference of Incapacitated Person 345</td>
</tr>
<tr>
<td>§ 1104.003</td>
<td>Training Required 346</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter B</th>
<th>Selection of Guardian for Minor 346</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1104.051</td>
<td>Guardian of Minor Children 346</td>
</tr>
<tr>
<td>§ 1104.052</td>
<td>Guardian for Minor Orphan 346</td>
</tr>
<tr>
<td>§ 1104.053</td>
<td>Guardian Designated by Will or Written Declaration 346</td>
</tr>
<tr>
<td>§ 1104.054</td>
<td>Selection of Guardian by Minor 346</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter C</th>
<th>Selection of Guardian for Incapacitated Person Other Than Minor 347</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1104.101</td>
<td>Appointment According to Circumstances and Best Interests 347</td>
</tr>
<tr>
<td>§ 1104.102</td>
<td>Appointment Preferences 347</td>
</tr>
<tr>
<td>§ 1104.103</td>
<td>Designation of Guardian by Will or Written Declaration 347</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter D</th>
<th>Written Declaration by Certain Parents to Appoint Guardian for Their Children 347</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1104.151</td>
<td>Definitions 347</td>
</tr>
<tr>
<td>§ 1104.152</td>
<td>Requirements for Declaration 348</td>
</tr>
<tr>
<td>§ 1104.153</td>
<td>Form and Content of Declaration and Self-Proving Affidavit 348</td>
</tr>
<tr>
<td>§ 1104.154</td>
<td>Alternative to Self-Proving Affidavit 349</td>
</tr>
<tr>
<td>§ 1104.155</td>
<td>Alternate Self-Proving of Declaration 349</td>
</tr>
<tr>
<td>§ 1104.156</td>
<td>Filing of Declaration and Self-Proving Affidavit 349</td>
</tr>
<tr>
<td>§ 1104.157</td>
<td>Proof of Declaration 349</td>
</tr>
<tr>
<td>§ 1104.158</td>
<td>Prima Facie Evidence 349</td>
</tr>
<tr>
<td>§ 1104.159</td>
<td>Revocation of Declaration 349</td>
</tr>
<tr>
<td>§ 1104.160</td>
<td>Alternate or Other Court-Appointed Guardian 350</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter E</th>
<th>Written Declaration to Designate Guardian Before Need Arises 350</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1104.201</td>
<td>Definitions 350</td>
</tr>
<tr>
<td>§ 1104.202</td>
<td>Designation of Guardian for Declarant 350</td>
</tr>
<tr>
<td>§ 1104.203</td>
<td>Requirements for Declaration 350</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
TABLE OF CONTENTS

§ 1104.204. Form and Content of Declaration and Self-Proving Affidavit ........................................... 351
§ 1104.205. Alternative to Self-Proving Affidavit ................................................................................. 351
§ 1104.206. Alternate Self-Proving of Declaration ................................................................................. 352
§ 1104.207. Filing of Declaration and Self-Proving Affidavit ............................................................... 352
§ 1104.208. Proof of Declaration ........................................................................................................ 352
§ 1104.209. Prima Facie Evidence ...................................................................................................... 352
§ 1104.210. Revocation of Declaration ................................................................................................. 352
§ 1104.211. Effect of Divorce on Designation of Spouse .................................................................. 352
§ 1104.212. Alternate or Other Court-Appointed Guardian ................................................................. 353

Subchapter F. Certification Requirements for Certain Guardians ........................................................ 353
§ 1104.251. Certification Required for Certain Guardians .................................................................. 353
§ 1104.252. Effect of Provisional Certificate ...................................................................................... 353
§ 1104.253. Exception for Family Members and Friends .................................................................. 353
§ 1104.254. Exception for Certain Volunteers .................................................................................. 353
§ 1104.255. Expiration of Certification .............................................................................................. 353
§ 1104.256. Failure to Comply; Court’s Duty to Notify .................................................................. 353
§ 1104.257. Information Regarding Services Provided by Guardianship Program ...................... 353
§ 1104.258. Information Regarding Certain State Employees Providing Guardianship Services .... 354

Subchapter G. Private Professional Guardians .................................................................................... 354
§ 1104.301. Certification and Registration Required ........................................................................... 354
§ 1104.302. Annual Certificate of Registration .................................................................................. 354
§ 1104.303. Requirements of Application ............................................................................................ 354
§ 1104.304. Term of Registration; Renewal ...................................................................................... 354
§ 1104.305. Use of Registration Information ........................................................................................ 354
§ 1104.306. Use of Names and Business Addresses .......................................................................... 354

Subchapter H. Grounds for Disqualification ........................................................................................ 355
§ 1104.351. Incapacity or Inexperience ................................................................................................. 355
§ 1104.352. Unsuitability ..................................................................................................................... 355
§ 1104.353. Notoriously Bad Conduct; Presumption Concerning Best Interest ......................... 355
§ 1104.354. Conflict of Interest ........................................................................................................ 355
§ 1104.355. Disqualified in Declaration ............................................................................................... 355
§ 1104.356. Lack of Certain Required Certification ......................................................................... 355
§ 1104.357. Nonresident Without Resident Agent ......................................................................... 355
§ 1104.358. Subject to Protective Order for Family Violence ........................................................... 355
§ 1104.359. Effect of Lack of Required Registration ....................................................................... 355

Subchapter I. Access to Criminal History Records ............................................................................. 356
§ 1104.401. Definition .......................................................................................................................... 356
§ 1104.402. Court Clerk’s Duty to Obtain Criminal History Record Information; Authority to Charge Fee .................................................................................................................. 356
§ 1104.403. Submission of Criminal History Record Information by Proposed Guardian ............... 356
§ 1104.404. Exception for Information Concerning Certain Persons ............................................. 356
§ 1104.405. Information for Exclusive Use of Court ......................................................................... 356
§ 1104.406. Department’s Duty to Obtain Criminal History Record Information ............................ 357
§ 1104.407. Duty to Provide Information on Request ..................................................................... 357
§ 1104.408. Information for Exclusive Use of Court or Guardianship Certification Program of Judicial Branch Certification Commission ................................................................. 357

x1
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1104.409</td>
<td>Use of Information by Court</td>
<td>357</td>
</tr>
<tr>
<td>§ 1104.410</td>
<td>Use of Information by Guardianship Certification Program of Judicial Branch Certification Commission</td>
<td>358</td>
</tr>
<tr>
<td>§ 1104.411</td>
<td>Criminal Offense for Unauthorized Release or Disclosure</td>
<td>358</td>
</tr>
<tr>
<td>§ 1104.412</td>
<td>Effect of Subchapter on Department’s Authority to Obtain or Use Information</td>
<td>358</td>
</tr>
</tbody>
</table>

## Chapter 1105. Qualification of Guardians

### Subchapter A. General Provisions

| § 1105.001 | Definitions | 359 |
| § 1105.002 | Manner of Qualification of Guardian | 359 |
| § 1105.003 | Period For Taking Oath or Making Declaration and Giving Bond | 359 |

### Subchapter B. Oaths and Declarations

| § 1105.051 | Oath or Declaration of Guardian | 359 |
| § 1105.052 | Administration of Oath or Making of Declaration | 359 |

### Subchapter C. General Provisions Relating to Bonds

| § 1105.101 | Bond Generally Required; Exceptions | 360 |
| § 1105.102 | Bond for Certain Guardians of the Person | 360 |
| § 1105.103 | Bond Required from Guardian Otherwise Exempt | 360 |
| § 1105.104 | Bonds of Joint Guardians | 360 |
| § 1105.105 | Bond of Married Person | 360 |
| § 1105.106 | Bond of Married Person Younger Than 18 Years of Age | 361 |
| § 1105.107 | Bond of Guardianship Program | 361 |
| § 1105.108 | Subscription of Bond by Principals and Sureties | 361 |
| § 1105.109 | Form of Bond | 361 |
| § 1105.110 | Filing of Bond | 361 |
| § 1105.111 | Failure to Give Bond | 361 |
| § 1105.112 | Bond Not Void on First Recovery | 361 |

### Subchapter D. Other Provisions Relating to Bonds of Guardians of the Estate

| § 1105.151 | General Formalities | 361 |
| § 1105.152 | General Standard Regarding Amount of Bond | 361 |
| § 1105.153 | Evidentiary Hearing on Amount of Bond | 361 |
| § 1105.154 | Specific Bond Amount | 362 |
| § 1105.155 | Agreement Regarding Deposit of Estate Assets | 362 |
| § 1105.156 | Deposit of Estate Assets on Terms Prescribed by Court | 362 |
| § 1105.157 | Deposits of Guardian | 362 |
| § 1105.158 | Bond Required Instead of Deposits | 363 |
| § 1105.159 | Withdrawal of Deposits on Closing of Guardianship | 363 |
| § 1105.160 | Authorized Corporate or Personal Sureties | 363 |
| § 1105.161 | Sureties for Certain Bonds | 363 |
| § 1105.162 | Deposits by Personal Surety | 363 |
| § 1105.163 | Applicability of Subchapter to Certain Court Orders | 364 |

### Subchapter E. Provisions Relating to Personal Sureties

<p>| § 1105.201 | Affidavit of Personal Surety | 364 |
| § 1105.202 | Lien on Real Property Owned by Personal Surety | 364 |
| § 1105.203 | Subordination of Lien on Real Property Owned by Personal Surety | 364 |
| § 1105.204 | Release of Lien on Real Property Owned by Personal Sureties | 364 |</p>
<table>
<thead>
<tr>
<th>TABLE OF CONTENTS</th>
</tr>
</thead>
</table>

Subchapter F. New Bonds ................................................................. 365

§ 1105.251. Grounds for Requiring New Bond ................................. 365
§ 1105.252. Court Order or Citation on New Bond ............................ 365
§ 1105.253. Show Cause Hearing on New Bond Requirement .......... 365
§ 1105.254. Effect of Order Requiring New Bond .............................. 365
§ 1105.255. New Bond in Decreased Amount ................................. 365
§ 1105.256. Request by Surety for New Bond ................................. 366
§ 1105.257. Discharge of Former Sureties on Approval of New Bond 366

Chapter 1106. Letters of Guardianship ............................................. 366

§ 1106.001. Issuance of Certificate as Letters of Guardianship .......... 366
§ 1106.002. Expiration of Letters of Guardianship ............................ 366
§ 1106.003. Renewal of Letters of Guardianship ............................... 366
§ 1106.004. Replacement and Other Additional Letters of Guardianship 366
§ 1106.005. Effect of Letters[ or Certificate] ....................................... 366
§ 1106.006. Validation of Certain Letters of Guardianship ............... 367

Subtitle E. Administration of Guardianship .................................... 367

Subchapter B. Powers and Duties of Guardians Relating to Care of Ward .... 367

Chapter 1151. Rights, Powers, and Duties Under Guardianship .......... 367

Subchapter A. Rights, Powers, and Duties in General .......................... 367

§ 1151.001. Rights and Powers Retained by Ward .............................. 368
§ 1151.002. Rights of Good Faith Purchasers ..................................... 368
§ 1151.003. Guardian May Not Dispute Ward’s Right to Property; Exception 368
§ 1151.004. Powers and Duties of Person Serving as Guardian of Both Person and Estate ............................ 368
§ 1151.005. Legal Proceedings in Which Ward is Party or Witness ....... 368

Subchapter B. Powers and Duties of Guardians Relating to Care of Ward .... 368

§ 1151.051. General Powers and Duties of Guardians of the Person .......... 368
§ 1151.052. Care of Adult Ward ......................................................... 369
§ 1151.0525. Access and Management of Ward’s Funds by Guardian of Person ...................... 369
§ 1151.053. Commitment of Ward ..................................................... 369
§ 1151.054. Administration of Medication .......................................... 369
§ 1151.055. Application by Certain Relatives for Access to Ward; Hearing and Court Order ......................... 369
§ 1151.056. Guardian’s Duty to Inform Certain Relatives About Ward’s Health and Residence ..................... 370

Subchapter C. General Powers and Duties of Guardians of the Estate ............ 371

§ 1151.101. General Powers and Duties .............................................. 371
§ 1151.102. Exercise of Authority Under Court Order ....................... 371
§ 1151.103. Exercise of Authority Without Court Order .................... 371
§ 1151.104. Authority to Commence Suits ......................................... 371
§ 1151.105. Ordinary Diligence Required ......................................... 371

Subchapter D. Possession and Care of Ward’s Property by Guardian of the Estate 372

§ 1151.151. Duty Of Care ..................................................................... 372
§ 1151.152. Possession of Personal Property and Records .................... 372
§ 1151.153. Possession of Property Held in Common Ownership ........ 372
§ 1151.154. Administration of Partnership Interest ............................ 372

xlii
#### TABLE OF CONTENTS

$\S$ 1151.155. Operation or Rental of Farm, Ranch, Factory, or Other Business.......................... 372

Subchapter E. Authority of Guardian to Engage in Certain Borrowing........................................... 372

$\S$ 1151.201. Mortgage or Pledge of Estate Property Authorized in Certain Circumstances ... 372

$\S$ 1151.202. Application; Order ............................................................................................... 373

$\S$ 1151.203. Term of Loan or Renewal...................................................................................... 373

Subchapter F. Guardians Appointed for Ward to Receive Government Funds........................ 373

$\S$ 1151.251. Powers and Duties of Guardian Appointed as Necessary for Ward to Receive Government Funds................................................................. 373

$\S$ 1151.252. Validation of Certain Prior Acts of Guardian ...................................................... 373

Subchapter G. Notice by Guardian to Department of Veterans Affairs .................................. 374

$\S$ 1151.301. Notice of Filing Required; Hearing Date ............................................................... 374

Subchapter H. Rights of Wards ................................................................................................. 374

$\S$ 1151.351 Bill of Rights for Wards.......................................................................................... 374

Chapter 1152. Guardianship Pending Appeal of Appointment.................................375

$\S$ 1152.001. Guardian to Serve Pending Appeal of Appointment.............................................. 375

$\S$ 1152.002. Appeal Bond ...................................................................................................... 375

Chapter 1153. Notice to Claimants.......................................................................375

$\S$ 1153.001. Required Notice Regarding Presentment of Claims in General ......................... 375

$\S$ 1153.002. Proof of Publication ............................................................................................. 376

$\S$ 1153.003. Required Notice to Certain Claimants ................................................................. 376

$\S$ 1153.004. Permissive Notice to Unsecured Creditor Regarding Period for Presentment of Claim ................................................................. 376

$\S$ 1153.005. One Notice Sufficient; Liability for Failure to Give Required Notice ................... 376

Chapter 1154. Inventory, Appraisement, and List of Claims ....................377

Subchapter A. Appraisers ...................................................................................................... 377

$\S$ 1154.001. Appointment of Appraisers .................................................................................... 377

$\S$ 1154.002. Appraisers’ Fees ................................................................................................. 377

$\S$ 1154.003. Failure or Refusal to Act by Appraisers ................................................................. 377

Subchapter B. Requirements for Inventory, Appraisement, and List of Claims ..................... 377

$\S$ 1154.051. Inventory and Appraisement .................................................................................. 377

$\S$ 1154.052. List of Claims ...................................................................................................... 378

$\S$ 1154.053. Affidavit of Guardian ............................................................................................ 378

$\S$ 1154.054. Approval or Disapproval by the Court ................................................................. 378

$\S$ 1154.055. Failure of Joint Guardians to File Inventory, Appraisement, and List of Claims .................................................................................................................. 378

Subchapter C. Changes to Inventory, Appraisement, and List of Claims ......................... 378

$\S$ 1154.101. Discovery of Additional Property or Claims......................................................... 378

$\S$ 1154.102. Additional Inventory and Appraisement or List of Claims ............................... 378

$\S$ 1154.103. Correction of Inventory, Appraisement, or List of Claims for Erroneous or Unjust Item ........................................................................................................ 379

$\S$ 1154.104. Reappraisement ................................................................................................... 379
## TABLE OF CONTENTS

Subchapter D. Use of Inventory, Appraisement, and List of Claims as Evidence ........................................379
§ 1154.151. Use of Inventory, Appraisement, and List of Claims as Evidence ..................................379

### Chapter 1155. Compensation, Expenses, and Court Costs ..................................................380

#### Subchapter A. Compensation of Guardians in General ..................................................380
§ 1155.001. Definitions .............................................................................................................380
§ 1155.002. Compensation for Certain Guardians of the Person ...........................................380
§ 1155.003. Compensation for Guardian of the Estate .............................................................380
§ 1155.004. Considerations in Authorizing Compensation .......................................................380
§ 1155.005. Maximum Aggregate Compensation ......................................................................380
§ 1155.006. Modification of Unreasonably Low Compensation; Authorization for Payment of Estimated Quarterly Compensation ....................................................380
§ 1155.007. Reduction or Elimination of Estimated Quarterly Compensation ..........................381
§ 1155.008. Denial of Compensation .........................................................................................381

#### Subchapter B. Compensation for Professional Services ..................................................381
§ 1155.052. Attorney Serving as Guardian and Providing Related Legal Services .......................381
§ 1155.053. Compensation for Services to Recover Property ..................................................381
§ 1155.054. Payment Of Attorney’s Fees To Certain Attorneys ...............................................381

#### Subchapter C. Expenses ..................................................................................................382
§ 1155.101. Reimbursement of Expenses in General ................................................................382
§ 1155.102. Reimbursement of Expenses for Collection of Claim or Debt ....................................382
§ 1155.103. Expense Charges: Requirements ............................................................................382

#### Subchapter D. Costs in General .......................................................................................382
§ 1155.151. Costs in Guardianship Proceeding Generally ........................................................382
§ 1155.152. Certain Costs Adjudged Against Guardian ............................................................383

#### Subchapter E. Compensation and Costs in Guardianships for Certain Medical Assistance Recipients .................................................................384
§ 1155.201. Definitions .............................................................................................................384

### Chapter 1156. Education and Maintenance Allowances Paid from Ward’s Estate ..........................384

#### Subchapter A. Allowances for Ward ..................................................................................384
§ 1156.001. Application for Allowance .....................................................................................384
§ 1156.002. Court Determination of Allowance Amount ..........................................................384
§ 1156.003. Court Order Setting Allowance .............................................................................385
§ 1156.004. Expenditures Exceeding Allowance ........................................................................385

#### Subchapter B. Allowances for Ward’s Family .....................................................................385
§ 1156.051. Certain Allowances Prohibited When Parent is Guardian of Minor Ward .................385
§ 1156.052. Allowance for Ward’s Spouse or Dependent ..........................................................385

### Chapter 1157. Presentment and Payment of Claims .........................................................386

#### Subchapter A. Presentment of Claims Against Guardianship Estate in General ..................386
§ 1157.001. Presentment of Claim to Guardian of the Estate ......................................................386
§ 1157.002. Presentment of Claim to Clerk ...............................................................................386
§ 1157.003. Inclusion of Attorney’s Fees in Claim ....................................................................386
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1157.004</td>
<td>Affidavit Authenticating Claim for Money in General</td>
<td>387</td>
</tr>
<tr>
<td>§ 1157.005</td>
<td>Affidavit Authenticating Claim of Corporation or by Certain Other Representatives</td>
<td>387</td>
</tr>
<tr>
<td>§ 1157.006</td>
<td>Lost or Destroyed Evidence Concerning Claim</td>
<td>387</td>
</tr>
<tr>
<td>§ 1157.007</td>
<td>Waiver of Certain Defects of Form or Claims of Insufficiency</td>
<td>387</td>
</tr>
<tr>
<td>§ 1157.008</td>
<td>Effect on Statutes of Limitation of Filing of or Suit on Claim</td>
<td>387</td>
</tr>
<tr>
<td>§ 1157.051</td>
<td>Allowance or Rejection of Claim</td>
<td>387</td>
</tr>
<tr>
<td>§ 1157.052</td>
<td>Failure to Endorse or Attach Memorandum or Allow or Reject Claim</td>
<td>387</td>
</tr>
<tr>
<td>§ 1157.053</td>
<td>Claim Entered on Claim Docket</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.054</td>
<td>Contest of Claim</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.055</td>
<td>Court’s Action On Claim</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.056</td>
<td>Hearing on Certain Claims</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.057</td>
<td>Court Order Regarding Action on Claim</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.058</td>
<td>Appeal of Court’s Action on Claim</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.059</td>
<td>Allowance and Approval Prohibited Without Affidavit</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.060</td>
<td>Unsecured Claims Barred Under Certain Circumstances</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.061</td>
<td>Allowing Barred Claim Prohibited; Court Disapproval</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.062</td>
<td>Certain Actions on Claims With Lost or Destroyed Evidence Void</td>
<td>388</td>
</tr>
<tr>
<td>§ 1157.063</td>
<td>Suit on Rejected Claim</td>
<td>389</td>
</tr>
<tr>
<td>§ 1157.064</td>
<td>Presentment of Claim Prerequisite for Judgment</td>
<td>389</td>
</tr>
<tr>
<td>§ 1157.065</td>
<td>Judgment in Suit on Rejected Claim</td>
<td>389</td>
</tr>
<tr>
<td>§ 1157.101</td>
<td>Payment of Approved or Established Claim</td>
<td>389</td>
</tr>
<tr>
<td>§ 1157.102</td>
<td>Payment of Unauthenticated Claim</td>
<td>389</td>
</tr>
<tr>
<td>§ 1157.103</td>
<td>Priority of Payment of Claims</td>
<td>389</td>
</tr>
<tr>
<td>§ 1157.104</td>
<td>Payment of Proceeds from Sale of Property Securing Debt</td>
<td>389</td>
</tr>
<tr>
<td>§ 1157.105</td>
<td>Claimant’s Petition for Allowance and Payment of Claim</td>
<td>390</td>
</tr>
<tr>
<td>§ 1157.106</td>
<td>Payment When Assets Insufficient to Pay Certain Claims</td>
<td>390</td>
</tr>
<tr>
<td>§ 1157.107</td>
<td>Payment of Court Costs Relating to Claim</td>
<td>390</td>
</tr>
<tr>
<td>§ 1157.108</td>
<td>Liability for Nonpayment of Claim</td>
<td>390</td>
</tr>
<tr>
<td>§ 1157.151</td>
<td>Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien</td>
<td>390</td>
</tr>
<tr>
<td>§ 1157.152</td>
<td>Preferred Debt and Lien</td>
<td>391</td>
</tr>
<tr>
<td>§ 1157.153</td>
<td>Payment of Maturities on Preferred Debt and Lien</td>
<td>391</td>
</tr>
<tr>
<td>§ 1157.201</td>
<td>Claim by Guardian</td>
<td>391</td>
</tr>
<tr>
<td>§ 1157.202</td>
<td>Purchase of Claim by Guardian Prohibited</td>
<td>391</td>
</tr>
</tbody>
</table>

Chapter 1158. Sale or Partition of Ward’s Property

Subchapter A. General Provisions

§ 1158.001 Court Order Authorizing Sale

Subchapter B. Certain Estate Property Required to be Sold

§ 1158.051 Sale of Certain Personal Property Required
<table>
<thead>
<tr>
<th>Subchapter C.</th>
<th>Sale of Personal Property</th>
<th>393</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1158.101.</td>
<td>Order for Sale</td>
<td>393</td>
</tr>
<tr>
<td>§ 1158.102.</td>
<td>Requirements for Application and Order</td>
<td>393</td>
</tr>
<tr>
<td>§ 1158.103.</td>
<td>Sale at Public Auction</td>
<td>393</td>
</tr>
<tr>
<td>§ 1158.104.</td>
<td>Sale on Credit</td>
<td>393</td>
</tr>
<tr>
<td>§ 1158.105.</td>
<td>Report; Evidence of Title</td>
<td>393</td>
</tr>
<tr>
<td>Subchapter D.</td>
<td>Sale of Livestock</td>
<td>393</td>
</tr>
<tr>
<td>§ 1158.151.</td>
<td>Authority for Sale</td>
<td>393</td>
</tr>
<tr>
<td>§ 1158.152.</td>
<td>Contents of Application; Hearing</td>
<td>394</td>
</tr>
<tr>
<td>§ 1158.153.</td>
<td>Grant of Application</td>
<td>394</td>
</tr>
<tr>
<td>§ 1158.154.</td>
<td>Report; Passage of Title</td>
<td>394</td>
</tr>
<tr>
<td>§ 1158.155.</td>
<td>Commission Merchant Charges</td>
<td>394</td>
</tr>
<tr>
<td>Subchapter E.</td>
<td>Sale of Mortgaged Property</td>
<td>394</td>
</tr>
<tr>
<td>§ 1158.201.</td>
<td>Application for Sale of Mortgaged Property</td>
<td>394</td>
</tr>
<tr>
<td>§ 1158.202.</td>
<td>Citation</td>
<td>394</td>
</tr>
<tr>
<td>§ 1158.203.</td>
<td>Order</td>
<td>394</td>
</tr>
<tr>
<td>Subchapter F.</td>
<td>Sale of Real Property: Application and Order for Sale</td>
<td>394</td>
</tr>
<tr>
<td>§ 1158.251.</td>
<td>Application for Order of Sale</td>
<td>394</td>
</tr>
<tr>
<td>§ 1158.252.</td>
<td>Contents of Application</td>
<td>395</td>
</tr>
<tr>
<td>§ 1158.253.</td>
<td>Citation</td>
<td>395</td>
</tr>
<tr>
<td>§ 1158.254.</td>
<td>Opposition to Sale</td>
<td>395</td>
</tr>
<tr>
<td>§ 1158.255.</td>
<td>Hearing on Application and Any Opposition</td>
<td>395</td>
</tr>
<tr>
<td>§ 1158.256.</td>
<td>Order</td>
<td>395</td>
</tr>
<tr>
<td>§ 1158.257.</td>
<td>Sale for Payment of Debts</td>
<td>396</td>
</tr>
<tr>
<td>Subchapter G.</td>
<td>Sale of Real Estate: Terms of Sale</td>
<td>396</td>
</tr>
<tr>
<td>§ 1158.301.</td>
<td>Permissible Terms</td>
<td>396</td>
</tr>
<tr>
<td>§ 1158.302.</td>
<td>Sale on Credit</td>
<td>396</td>
</tr>
<tr>
<td>Subchapter H.</td>
<td>Reconveyance of Real Estate Following Foreclosure</td>
<td>396</td>
</tr>
<tr>
<td>§ 1158.351.</td>
<td>Applicability of Subchapter</td>
<td>396</td>
</tr>
<tr>
<td>§ 1158.352.</td>
<td>Application and Order for Reconveyance</td>
<td>396</td>
</tr>
<tr>
<td>§ 1158.353.</td>
<td>Exchange for Bonds</td>
<td>396</td>
</tr>
<tr>
<td>Subchapter I.</td>
<td>Sale of Real Estate: Public Auction</td>
<td>397</td>
</tr>
<tr>
<td>§ 1158.401.</td>
<td>Required Notice</td>
<td>397</td>
</tr>
<tr>
<td>§ 1158.402.</td>
<td>Completion of Auction</td>
<td>397</td>
</tr>
<tr>
<td>§ 1158.403.</td>
<td>Time and Place of Auction</td>
<td>397</td>
</tr>
<tr>
<td>§ 1158.404.</td>
<td>Continuance of Auction</td>
<td>397</td>
</tr>
<tr>
<td>§ 1158.405.</td>
<td>Failure of Bidder to Comply</td>
<td>397</td>
</tr>
<tr>
<td>Subchapter J.</td>
<td>Sale of Real Estate: Contract for Private Sale</td>
<td>397</td>
</tr>
<tr>
<td>§ 1158.451.</td>
<td>Terms of Sale</td>
<td>397</td>
</tr>
<tr>
<td>Subchapter K.</td>
<td>Sale of Easement or Right-of-Way</td>
<td>398</td>
</tr>
<tr>
<td>§ 1158.501.</td>
<td>Authorization</td>
<td>398</td>
</tr>
<tr>
<td>§ 1158.502.</td>
<td>Procedure</td>
<td>398</td>
</tr>
<tr>
<td>Subchapter L.</td>
<td>Approval of Sale of Real Property and Transfer of Title</td>
<td>398</td>
</tr>
<tr>
<td>§ 1158.551.</td>
<td>Report</td>
<td>398</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

§ 1158.552. Action of Court on Report ................................................................. 398
§ 1158.553. Approval of Sale When Bond Not Required ................................... 398
§ 1158.554. Sufficiency of Bond ........................................................................ 398
§ 1158.555. Increased or Additional Bond Not Required ..................................... 398
§ 1158.556. Approval or Disapproval Order ......................................................... 399
§ 1158.557. Deed ................................................................................................. 399
§ 1158.558. Delivery of Deed ............................................................................ 399
§ 1158.559. Damages; Removal ....................................................................... 399

Subchapter M. Procedure on Failure to Apply for Sale ....................................... 399
§ 1158.601. Failure to Apply for Sale ................................................................. 399
§ 1158.602. Court Order ................................................................................... 399

Subchapter N. Purchase of Estate Property by Guardian ..................................... 400
§ 1158.651. General Prohibition on Purchase .................................................... 400
§ 1158.652. Exception: Executory Contract ....................................................... 400
§ 1158.653. Exception: Best Interest of Estate .................................................. 400
§ 1158.654. Purchase in Violation of Subchapter .............................................. 400

Subchapter O. Partition of Ward’s Interest in Real Estate .................................... 400
§ 1158.701. Partition by Agreement ................................................................. 400
§ 1158.702. Application for Approval of Partition Agreement .......................... 400
§ 1158.703. Hearing ......................................................................................... 400
§ 1158.704. Order ............................................................................................. 400
§ 1158.705. Partition Without Court Approval; Ratification of Partition Agreement 401
§ 1158.706. Partition by Suit ............................................................................. 401

Chapter 1159. Renting Estate Property .............................................................. 401

Subchapter A. Rental and Return of Estate Property .......................................... 401
§ 1159.001. Renting Estate Property Without Court Order ............................... 401
§ 1159.002. Renting Estate Property With Court Order .................................... 401
§ 1159.003. Estate Property Rented on Credit .................................................. 401
§ 1159.004. Condition of Returned Estate Property ......................................... 402
§ 1159.005. Complaint for Failure to Rent ....................................................... 402

Subchapter B. Report on Rented Estate Property .............................................. 402
§ 1159.051. Reports Concerning Rentals .......................................................... 402
§ 1159.052. Court Action on Report ................................................................. 402

Chapter 1160. Matters Relating to Mineral Properties ........................................ 403

Subchapter A. General Provisions ................................................................. 403
§ 1160.001. Definitions ..................................................................................... 403

Subchapter B. Mineral Leases After Public Notice ........................................... 403
§ 1160.051. Authorization for Leasing of Minerals ............................................ 403
§ 1160.052. Lease Application ................................................................. 403
§ 1160.053. Scheduling of Hearing on Application; Continuance .................... 403
§ 1160.054. Notice of Hearing on Application ................................................. 404
§ 1160.055. Requirements Regarding Order and Notice Mandatory .............. 404
§ 1160.056. Hearing on Application; Order ....................................................... 404
§ 1160.057. Making of Lease on Granting of Application ............................... 405
§ 1160.058. Bond Requirements ................................................................. 405
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1160.059</td>
<td>Term of Lease Binding</td>
<td>405</td>
</tr>
<tr>
<td>§ 1160.060</td>
<td>Amendment of Lease Regarding Effect of Shut-In Gas Well</td>
<td>405</td>
</tr>
</tbody>
</table>

## Subchapter C. Mineral Leases at Private Sale

| § 1160.101 | Authorization for Leasing of Minerals at Private Sale               | 405  |
| § 1160.102 | Action of Court if Public Advertising Not Required                 | 405  |

## Subchapter D. Pooling or Unitization of Royalties or Minerals

| § 1160.151 | Authorization for Pooling or Unitization                           | 406  |
| § 1160.152 | Pooling or Unitization Application                                 | 406  |
| § 1160.153 | Notice Not Required                                                | 406  |
| § 1160.154 | Hearing on Application                                             | 406  |
| § 1160.155 | Action of Court and Contents of Order                              | 407  |

## Subchapter E. Special Ancillary Instruments That May be Executed Without Court Order

| § 1160.201 | Authorization for Execution of Certain Instruments                | 407  |

## Subchapter F. Procedure if Guardian of Estate Neglects to Apply for Authority

| § 1160.251 | Application to Show Cause                                         | 407  |
| § 1160.252 | Hearing on Application                                            | 407  |
| § 1160.253 | Order                                                          | 407  |
| § 1160.254 | Procedure to be Followed After Entry of Order                    | 407  |

## Chapter 1161. Investments and Loans of Estates of Wards

### Subchapter A. General Provisions

| § 1161.001 | Guardian’s Duty to Keep Estate Invested                          | 408  |
| § 1161.002 | Standard for Management and Investment of Estate                | 408  |
| § 1161.003 | Investments That Meet Standard for Investment                   | 409  |
| § 1161.004 | Restrictions on Investment in Certain Bonds                     | 409  |
| § 1161.005 | Modification or Elimination of Duty or Standard                 | 409  |
| § 1161.006 | Retention of Certain Assets                                      | 409  |
| § 1161.007 | Hearing to Protect Estate                                       | 409  |
| § 1161.008 | Liability of Guardian and Guardian’s Surety                     | 410  |

### Subchapter B. Procedure for Making Investments or Loans or Retaining Estate Assets

| § 1161.051 | Procedure in General                                            | 410  |
| § 1161.052 | Court Action                                                    | 410  |
| § 1161.053 | Applicability of Procedure to Certain Assets                    | 410  |
| § 1161.054 | Inapplicability of Procedure to Certain Assets                  | 410  |

### Subchapter C. Investments in Certain Insurance or Annuities

| § 1161.101 | Definition                                                      | 411  |
| § 1161.102 | Authority to Invest in Certain Insurance or Annuities           | 411  |
| § 1161.103 | Investment Requirements                                         | 411  |
| § 1161.104 | Procedure for Investing in Insurance or Annuities               | 411  |
| § 1161.105 | Continuation of Preexisting Policies or Annuities               | 411  |
| § 1161.106 | Control and Ownership of Policies or Annuities                  | 412  |

### Subchapter D. Investments in Real Estate

| § 1161.151 | Authority to Invest in Real Estate; Procedure and Requirements | 412  |
| § 1161.152 | Court Authorization to Make Investments                        | 412  |
| § 1161.153 | Court Approval of Contracts Required                           | 412  |
TABLE OF CONTENTS

Subchapter E. Loans and Security for Loans ................................................................. 412
§ 1161.201. Inapplicability of Subchapter ................................................................. 412
§ 1161.202. Authority to Make Loans ................................................................. 412
§ 1161.203. Loan Requirements ........................................................................ 413
§ 1161.204. Guardian’s Duty to Report Loan to Court ........................................ 413
§ 1161.205. Guardian’s Liability ...................................................................... 413

Chapter 1162. Tax-Motivated, Charitable, Nonprofit, and Other Gifts .......... 413

Subchapter A. Certain Gifts and Transfers ............................................................... 413
§ 1162.001. Authority To Establish Estate or Other Transfer Plan ................. 413
§ 1162.002. Estate or Other Transfer Plan: Contents and Modification .... 414
§ 1162.003. Notice of Application for Establishment of Estate or Other Transfer Plan 414
§ 1162.004. Authority to Make Periodic Gifts .................................................. 414
§ 1162.005. Application for Inspection of Certain Documents ....................... 414
§ 1162.006. Notice of Application for Inspection ............................................. 414
§ 1162.007. Hearing on Application for Inspection; Inspection ................. 415
§ 1162.008. Guardian Ad Litem ........................................................................ 415

Subchapter B. Charitable and Nonprofit Gifts ....................................................... 415
§ 1162.051. Application to Make Gift ............................................................... 415
§ 1162.052. Hearing on Application to Make Gift ............................................ 415
§ 1162.053. Order Authorizing Gift .................................................................. 415

Chapter 1163. Annual Account and Other Exhibits and Reports ................. 416

Subchapter A. Annual Account and Other Exhibits by Guardian of the Estate ................................................................. 416
§ 1163.001. Initial Annual Account of Estate ..................................................... 416
§ 1163.002. Annual Account Required Until Estate Closed ......................... 416
§ 1163.003. Supporting Vouchers and Other Documents Attached to Account 417
§ 1163.004. Method of Proof for Securities and Other Assets ...................... 417
§ 1163.005. Verification of Account and Statement Regarding Taxes and Status as Guardian ................................................................. 417
§ 1163.006. Waiver of Account Filing .................................................................. 418

Subchapter B. Action on Annual Account .............................................................. 418
§ 1163.051. Filing and Consideration of Annual Account .................................. 418
§ 1163.052. Correction and Approval of Annual Account ............................. 418
§ 1163.053. Order for Payment of Claims in Full ........................................... 418
§ 1163.054. Order for Pro Rata Payment of Claims ....................................... 418

Subchapter C. Annual Report by Guardian of the Person ................................... 418
§ 1163.101. Annual Report Required ............................................................... 418
§ 1163.101. Use of Unsworn Declaration in Lieu of Sworn Declaration or Affidavit for Filing Annual Report ................................................................. 420
§ 1163.102. Reporting Period ....................................................................... 420
§ 1163.103. Report in Case of Deceased Ward .............................................. 420
§ 1163.104. Approval of Report ..................................................................... 420
§ 1163.105. Attorney Not Required ............................................................... 420

Subchapter D. Penalties ...................................................................................... 420
§ 1163.151. Penalty for Failure to File Required Account, Exhibit, or Report .... 420
TABLE OF CONTENTS

Chapter 1164. Liability of Guardian or Guardianship Program ......................420
§ 1164.001. Liability of Guardian .................................................................421
§ 1164.002. Immunity of Guardianship Program ........................................421

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION
OF GUARDIANSHIP .................................................................................421

Chapter 1201. Evaluation of Guardianship .................................................421
Subchapter A. Review of Guardianship .......................................................421
§ 1201.001. Determining Guardian’s Performance of Duties ......................421
§ 1201.002. Annual Examination of Guardianship; Bond of Guardian ..........421
§ 1201.003. Judge’s Liability .................................................................421
§ 1201.004. Identifying Information ..........................................................421
Subchapter B. Annual Determination to Continue, Modify, or Terminate Guardianship .........................................................421
§ 1201.051. Applicability .................................................................421
§ 1201.052. Annual Determination; Hearing ............................................422
§ 1201.053. Method of Determination .......................................................422
§ 1201.054. Form of Determination ..........................................................422

Chapter 1202. Modification or Termination of Guardianship .....................423
Subchapter A. Termination and Settlement of Guardianship .........................423
§ 1202.001. Term of Guardian or Guardianship ............................................423
§ 1202.002. Termination of Guardianship if Parent Is No Longer Incapacitated ..........................................................423
§ 1202.003. Termination of Guardianship of Estate on Establishment of ABLE
 Account by Certain Persons .................................................................423
Subchapter B. Application for Complete Restoration of Ward’s Capacity or Modification
 of Guardianship ..................................................................................424
§ 1202.051. Application Authorized ..........................................................424
§ 1202.052. Contents of Application ..........................................................424
§ 1202.053. Citation Required .................................................................424
§ 1202.054. Informal Request for Order by Ward; Investigation and Report ........424
§ 1202.055. Restriction on Subsequent Application Regarding Capacity or
 Modification ......................................................................................425
Subchapter C. Representation of Ward in Proceeding for Complete Restoration of Ward’s
 Capacity or Modification of Guardianship ...............................................425
§ 1202.101. Appointment of Attorney Ad Litem ............................................425
§ 1202.102. Compensation for Attorney Ad Litem and Guardian Ad Litem ........425
§ 1202.103. Retention and Compensation of Attorney for Ward ...................425
Subchapter D. Hearing, Evidence, and Orders in Proceeding for Complete Restoration of
 Ward’s Capacity or Modification of Guardianship .......................................426
§ 1202.151. Evidence and Burden of Proof at Hearing .................................426
§ 1202.152. Health Care Provider’s [Physician’s] Letter or Certificate Required ..........................................................426
§ 1202.152. [Physician’s] Letter or Certificate Required ................................426
§ 1202.1521. Physician’s Letter or Certificate: Requirement if Alleged Incapacity
 Based on Intellectual Disability ..........................................................427
§ 1202.1521. Letter or Certificate: Requirements if Alleged Incapacity Based on
 Intellectual Disability ........................................................................428
§ 1202.153. Findings Required ..................................................................428
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1202.154. General Requirements for Order</td>
<td>428</td>
</tr>
<tr>
<td>§ 1202.155. Additional Requirements for Order Restoring Ward’s Capacity</td>
<td>428</td>
</tr>
<tr>
<td>§ 1202.156. Additional Requirements for Order Modifying Guardianship</td>
<td>429</td>
</tr>
<tr>
<td>§ 1202.157. Additional Requirements for Order Dismissing Application</td>
<td>429</td>
</tr>
<tr>
<td>Subchapter E. Restoration of Rights on Termination of Guardianship</td>
<td>429</td>
</tr>
<tr>
<td>§ 1202.201. Removal of Firearm Disability on Complete Restoration of Ward’s Capacity</td>
<td>429</td>
</tr>
</tbody>
</table>

### Chapter 1203. Resignation, Removal, or Death of Guardian; Appointment of Successor

<table>
<thead>
<tr>
<th>Subchapter A. Resignation of Guardian</th>
<th>430</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1203.001. Resignation Application</td>
<td>430</td>
</tr>
<tr>
<td>§ 1203.002. Immediate Acceptance of Resignation; Discharge and Release</td>
<td>430</td>
</tr>
<tr>
<td>§ 1203.003. Delivery of Estate Property to Successor Guardian Following Resignation</td>
<td>430</td>
</tr>
<tr>
<td>§ 1203.004. Hearing Date; Citation</td>
<td>430</td>
</tr>
<tr>
<td>§ 1203.005. Hearing</td>
<td>430</td>
</tr>
<tr>
<td>§ 1203.006. Requirements for Discharge</td>
<td>431</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter B. Removal and Reinstatement of Guardian</th>
<th>431</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1203.051. Removal Without Notice; Appointment of Guardian ad Litem and Attorney ad Litem</td>
<td>431</td>
</tr>
<tr>
<td>§ 1203.052. Removal With Notice</td>
<td>431</td>
</tr>
<tr>
<td>§ 1203.053. Removal Order</td>
<td>432</td>
</tr>
<tr>
<td>§ 1203.0531. Notice of Removal Order</td>
<td>432</td>
</tr>
<tr>
<td>§ 1203.054. Discharge and Release Following Removal</td>
<td>433</td>
</tr>
<tr>
<td>§ 1203.055. Delivery of Estate Property to Successor Guardian Following Removal</td>
<td>433</td>
</tr>
<tr>
<td>§ 1203.056. Removal and Reinstatement of Guardian Under Certain Circumstances</td>
<td>433</td>
</tr>
<tr>
<td>§ 1203.057. Removal of Joint Guardian</td>
<td>433</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter C. Appointment of Successor Guardian; Revocation of Letters</th>
<th>433</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1203.101. Requirements for Revocation of Letters</td>
<td>433</td>
</tr>
<tr>
<td>§ 1203.102. Appointment Because of Resignation, Removal, or Death; Hearing to Set Aside Immediate Appointment</td>
<td>433</td>
</tr>
<tr>
<td>§ 1203.103. Appointment Because of Existence of Prior Right</td>
<td>434</td>
</tr>
<tr>
<td>§ 1203.104. Appointment When Guardian Named in Will Becomes an Adult</td>
<td>434</td>
</tr>
<tr>
<td>§ 1203.105. Appointment of Formerly Ill or Absent Guardian Named in Will</td>
<td>434</td>
</tr>
<tr>
<td>§ 1203.106. Appointment When Will Discovered After Grant of Letters</td>
<td>434</td>
</tr>
<tr>
<td>§ 1203.107. Appointment on Removal of Litigation Conflict</td>
<td>434</td>
</tr>
<tr>
<td>§ 1203.108. Appointment of Department of Aging and Disability Services as Successor Guardian</td>
<td>434</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter D. Successor Guardians for Wards of Guardianship Programs or Governmental Entities</th>
<th>435</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1203.151. Notice of Availability of Successor Guardian</td>
<td>435</td>
</tr>
<tr>
<td>§ 1203.152. Determination of Proposed Successor Guardian’s Qualification to Serve</td>
<td>435</td>
</tr>
<tr>
<td>§ 1203.153. Application to Appoint Successor Guardian</td>
<td>435</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subchapter E. Procedures After Resignation, Removal, or Death of Guardian</th>
<th>435</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1203.201. Payment to Ward While Office of Guardian Is Vacant</td>
<td>435</td>
</tr>
<tr>
<td>§ 1203.202. Rights, Powers, and Duties of Successor Guardian</td>
<td>435</td>
</tr>
</tbody>
</table>
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1203.203</td>
<td>Successor Guardian to Return Inventory, Appraisement, and List of Claims</td>
<td>436</td>
</tr>
</tbody>
</table>

### Chapter 1204. Final Settlement, Accounting, and Discharge ........................................................................436

#### Subchapter A. Time for Settlement of Guardianship ..............................................................................436

- § 1204.001 Settlement of Guardianship .................................................................436
- § 1204.002 Appointment of Attorney Ad Litem to Represent Ward in Final Settlement Under Certain Circumstances ........................................................................437

#### Subchapter B. Payment of Certain Expenses and Debts ........................................................................437

- § 1204.051 Funeral Arrangements and Other Debts; Account for Final Settlement on Complaint of Personal Representative ........................................................................437
- § 1204.052 Taxes and Expenses of Administration; Sale of Estate Property ........................................................................437
- § 1204.053 Inheritance Taxes; Limitation on Closing Estate ........................................................................437

#### Subchapter C. Account for Final Settlement ....................................................................................437

- § 1204.101 Verified Account Required ................................................................................437
- § 1204.102 Contents of Account .......................................................................................437
- § 1204.103 Certain Debts Excluded from Settlement Computation ...........................................438
- § 1204.104 Guardian to Account for Ward’s Labor or Services ..............................................438
- § 1204.105 Citation and Notice on Presentation of Account .................................................438
- § 1204.106 Examination of and Hearing on Account ..................................................................438
- § 1204.107 Assets Becoming Due Pending Final Settlement; Receipt and Discharge ..........439
- § 1204.108 Delivery of Ward’s Property in Possession of Guardian of the Person on Settlement of Guardianship of the Estate ........................................................................439
- § 1204.109 Delivery of Remaining Estate Property ..................................................................439

#### Subchapter D. Closing of Guardianship and Discharge of Guardian .....................................................439

- § 1204.151 Discharge of Guardian When No Estate Property Remains ......................................439
- § 1204.152 Discharge of Guardian When Estate Fully Administered .......................................439

#### Subchapter E. Failure of Guardian to Act ......................................................................................439

- § 1204.201 Failure to Present Final Account or Report .........................................................439
- § 1204.202 Liability for Failure to Deliver Estate Property ..................................................440

### SUBTITLE G. SPECIAL TYPES OF GUARDIANSHIPS .................................................................440

#### Chapter 1251. Temporary Guardianships ......................................................................................440

#### Subchapter A. Appointment of Temporary Guardian Generally ..................................................440

- § 1251.001 Appointment of Temporary Guardian .........................................................440
- § 1251.002 No Presumption of Incapacity ........................................................................441
- § 1251.003 Application ..................................................................................................441
- § 1251.004 Appointment of Attorney ...............................................................................441
- § 1251.005 Citation and Notice of Application ..............................................................441
- § 1251.006 Scheduling of Hearing ..................................................................................441
- § 1251.007 Motion for Dismissal of Application ..................................................................441
- § 1251.008 Rights of Proposed Ward at Hearing .............................................................441
- § 1251.009 Appearance by Proposed Temporary Guardian in Certain Circumstances ......442
- § 1251.010 Order Appointing Temporary Guardian ..........................................................442
- § 1251.011 Certain Agency as Temporary Guardian ..........................................................442
- § 1251.012 Temporary Guardian’s Bond ..........................................................................442
- § 1251.013 Court Costs ..................................................................................................442
## Table of Contents

**Subchapter B. Temporary Guardianship Pending Challenge or Contest of Certain Guardianship Applications**

- § 1251.051. Authority to Appoint Temporary Guardian or Grant Restraining Order ........................................ 442
- § 1251.052. Qualification and Duration of Certain Temporary Guardianships .......................................................... 442

**Subchapter C. Powers and Duties of Temporary Guardians**

- § 1251.101. Authority of Temporary Guardian ........................................................................................................... 443
- § 1251.102. Applicability of Guardianship Provisions .................................................................................................... 443

**Subchapter D. Expiration and Closing of Temporary Guardianship**

- § 1251.151. Duration of Temporary Guardianship ........................................................................................................ 443
- § 1251.152. Accounting ....................................................................................................................................................... 443
- § 1251.153. Delivery of Estate, Filing of Final Report, and Discharge of Temporary Guardian ........................................................ 443

**Chapter 1252. Guardianships for Nonresident Wards**

**Subchapter A. Resident Guardian of Nonresident Ward’s Estate**

- § 1252.001. Granting of Guardianship of Estate for Nonresident ................................................................................ 444
- § 1252.002. Court Actions and Orders Concerning Estate ................................................................................................. 444
- § 1252.003. Closing Resident Guardianship ....................................................................................................................... 444

**Subchapter B. Nonresident Guardian of Nonresident Ward’s Estate**

- § 1252.051. Appointment and Qualification of Nonresident Guardian ........................................................................... 444
- § 1252.052. Appointment; Issuance of Letters of Guardianship .......................................................................................... 444
- § 1252.053. Inventory and Appraisement; Administration of Estate ..................................................................................... 444
- § 1252.054. Delivery of Estate to Certain Guardians ........................................................................................................ 445
- § 1252.055. Removal of Ward’s Property from State by Nonresident Guardian ............................................................... 445

**Chapter 1253. Interstate Guardianships**

**Subchapter A. Transfer of Guardianship to Foreign Jurisdiction**

- § 1253.001. Application to Transfer Guardianship to Foreign Jurisdiction ..................................................................... 445
- § 1253.002. Notice of Application ........................................................................................................................................ 445
- § 1253.003. Determination Regarding Transfer of Guardianship ....................................................................................... 445

**Subchapter B. Receipt and Acceptance of Foreign Guardianship**

- § 1253.051. Application for Receipt and Acceptance of Foreign Guardianship .......................................................... 446
- § 1253.0515. Certification or Training of Guardian ............................................................................................................. 446
- § 1253.052. Notice of Application ........................................................................................................................................ 446
- § 1253.053. Determination Regarding Receipt and Acceptance of Foreign Guardianship .................................................. 446
- § 1253.055. Guardianship Transfer Proceedings Filed in Two or More Courts .................................................................. 446
- § 1253.056. Construction With Other Law ........................................................................................................................ 446

**Subchapter C. Guardianship Proceedings Filed in This State and in Foreign Jurisdiction**

- § 1253.101. Delay of Certain Guardianship Proceedings .................................................................................................. 446
- § 1253.102. Determination of Venue; Action Following Determination ......................................................................... 447
- § 1253.103. Necessary Orders ................................................................................................................................................. 447

**Subchapter D. Determination of Most Appropriate Forum for Certain Guardianship Proceedings**

- § 1253.151. Determination of Acquisition of Jurisdiction in This State Due to Unjustifiable Conduct ........................................ 447
TABLE OF CONTENTS

§ 1253.152. Assessment of Expenses Against Party.................................................................447

SUBTITLE H. COURT-AUTHORIZED TRUSTS AND ACCOUNTS ..........447

Chapter 1301. Management Trusts..............................................................448

Subchapter A. General Provisions .................................................................448
§ 1301.001. Definition..................................................................................448
§ 1301.002. Applicability of Texas Trust Code..............................................448

Subchapter B. Creation of Management Trusts .............................................448
§ 1301.051. Eligibility to Apply for Creation of Trust ........................................448
§ 1301.0511. Notice Required for Application for Creation of Trust; Citation of Applicant Not Required..........................................................448
§ 1301.052. Venue for Proceeding Involving Trust for an Alleged Incapacitated Person......448
§ 1301.053. Creation of Trust........................................................................449
§ 1301.054. Creation of Trust for Incapacitated Person Without Guardian..............449
§ 1301.055. Authority of Court to Appoint Guardian Instead of Creating Trust..........449
§ 1301.056. Contents of Order Creating Trust..................................................449
§ 1301.057. Appointment of Trustee ................................................................449
§ 1301.058. Bond Requirements for Trustees....................................................450

Subchapter C. Terms of Management Trust ..................................................450
§ 1301.101. Required Terms ........................................................................450
§ 1301.102. Optional Terms ..........................................................................451
§ 1301.103. Enforceability of Certain Terms ....................................................451

Subchapter D. Administration of Management Trusts......................................451
§ 1301.151. Jurisdiction Over Trust Matters.....................................................451
§ 1301.152. Court’s Authority to Discharge Guardian of Estate........................451
§ 1301.153. Investment in Texas Tomorrow Fund............................................451
§ 1301.1535. Initial Accounting by Certain Trustees Required........................451
§ 1301.154. Annual Accounting......................................................................451
§ 1301.155. Appointment of Successor Trustee................................................452
§ 1301.156. Liability of Certain Persons for Conduct of Trustee.........................452

Subchapter E. Modification, Revocation, or Termination of Management Trusts........452
§ 1301.201. Modification or Revocation of Trust..............................................452
§ 1301.202. Transfer to Pooled Trust Subaccount............................................452
§ 1301.203. Termination of Trust.................................................................452
§ 1301.204. Distribution of Trust Property.....................................................453

Chapter 1302. Pooled Trust Subaccounts.......................................................453
§ 1302.001. Definitions..................................................................................453
§ 1302.002. Application to Establish Subaccount..............................................453
§ 1302.003. Appointment of Attorney Ad Litem.............................................453
§ 1302.004. Establishment of Subaccount.......................................................453
§ 1302.005. Terms of Subaccount .................................................................453
§ 1302.006. Fees and Reporting ..................................................................454
§ 1302.007. Jurisdiction Exclusive .................................................................454
## Table of Contents

### Subtitle I. Other Special Proceedings and Substitutes for Guardianship

#### Chapter 1351. Sale of Property of Certain Incapacitated Persons

- **Subchapter A. Sale of Minor’s Interest in Property Without Guardianship**
  - § 1351.001. Authority to Sell Minor’s Interest in Property Without Guardianship
  - § 1351.002. Application; Venue
  - § 1351.003. Hearing; Requirements for Sale
  - § 1351.004. Payment of Sale Proceeds into Court Registry
  - § 1351.005. Withdrawal of Sale Proceeds from Registry Not Prohibited
  - § 1351.006. Disaffirmation of Sale Prohibited

- **Subchapter B. Sale of Ward’s Property Without Guardianship of the Estate**
  - § 1351.051. Applicability of Subchapter
  - § 1351.052. Authority to Sell Ward’s Interest in Property Without Appointment as Guardian of the Estate in This State
  - § 1351.053. Application; Venue
  - § 1351.054. Hearing
  - § 1351.055. Payment of Sale Proceeds into Court Registry
  - § 1351.056. Withdrawal of Sale Proceeds from Registry Not Prohibited
  - § 1351.057. Disaffirmation of Sale Prohibited

#### Chapter 1352. Mortgage of Minor’s Interest in Residence Homestead

- **Subchapter A. General Provisions**
  - § 1352.001. Definitions

- **Subchapter B. Mortgage of Minor’s Interest Without Guardianship**
  - § 1352.051. Applicability of Subchapter
  - § 1352.052. Authority to Mortgage Minor’s Interest Without Guardianship
  - § 1352.053. Application; Venue
  - § 1352.054. Hearing; Requirements to Mortgage Minor’s Interest
  - § 1352.055. Surety Bond; Discharge of Sureties
  - § 1352.056. Use Of Proceeds
  - § 1352.057. Annual Report
  - § 1352.058. Sworn Report of Expenditures
  - § 1352.059. Disaffirmation of Home Equity Loan Prohibited

- **Subchapter C. Mortgage of Minor Ward’s Interest Without Guardianship of the Estate**
  - § 1352.101. Applicability of Subchapter
  - § 1352.102. Authority to Mortgage Minor Ward’s Interest Without Guardianship of the Estate
  - § 1352.103. Application; Venue
  - § 1352.104. Hearing; Requirements to Mortgage Minor Ward’s Interest
  - § 1352.105. Surety Bond; Discharge of Sureties
  - § 1352.106. Use Of Proceeds
  - § 1352.107. Annual Accounting
  - § 1352.108. Disaffirmation of Home Equity Loan Prohibited
# Table of Contents

## Chapter 1353. Management and Control of Incapacitated Spouse’s Property

Subchapter A. Appointment of Community Administrator or Guardian of the Estate

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1353.001</td>
<td>Effect of Subchapter</td>
</tr>
<tr>
<td>§ 1353.002</td>
<td>Spouse as Community Administrator</td>
</tr>
<tr>
<td>§ 1353.003</td>
<td>Appointment of Guardian of the Estate to Administer Separate Property</td>
</tr>
<tr>
<td>§ 1353.004</td>
<td>Appointment of Guardian of the Estate Under Certain Circumstances</td>
</tr>
<tr>
<td>§ 1353.005</td>
<td>Administration of Certain Property by Non-Incapacitated Spouse</td>
</tr>
<tr>
<td>§ 1353.006</td>
<td>Effect of Court Order on Creditors’ Claims</td>
</tr>
</tbody>
</table>

Subchapter B. Duties of Community Administrators and Guardians of the Estate

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1353.051</td>
<td>Inventory and Appraisement by Community Administrator</td>
</tr>
<tr>
<td>§ 1353.052</td>
<td>Account by Community Administrator</td>
</tr>
<tr>
<td>§ 1353.053</td>
<td>Disclosure of Certain Lawsuits to the Court by Community Administrator</td>
</tr>
<tr>
<td>§ 1353.054</td>
<td>Delivery of Community Property by Guardian of the Estate to Community Administrator</td>
</tr>
</tbody>
</table>

Subchapter C. Removal or Termination of Powers of Community Administrator

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1353.101</td>
<td>Grounds for Removal of Community Administrator</td>
</tr>
<tr>
<td>§ 1353.102</td>
<td>Procedure for Removal of Community Administrator</td>
</tr>
<tr>
<td>§ 1353.103</td>
<td>Termination of Community Administrator’s Powers on Recovery of Capacity</td>
</tr>
</tbody>
</table>

Subchapter D. Appointment of Attorney Ad Litem

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1353.151</td>
<td>Appointment of Attorney Ad Litem for Incapacitated Spouse</td>
</tr>
</tbody>
</table>

## Chapter 1354. Receivership for Estates of Certain Incapacitated Persons

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1354.001</td>
<td>Appointment of Receiver</td>
</tr>
<tr>
<td>§ 1354.002</td>
<td>Bond</td>
</tr>
<tr>
<td>§ 1354.003</td>
<td>Powers and Duties of Receiver</td>
</tr>
<tr>
<td>§ 1354.004</td>
<td>Expenditures by Receiver</td>
</tr>
<tr>
<td>§ 1354.005</td>
<td>Use of Excess Estate Assets</td>
</tr>
<tr>
<td>§ 1354.006</td>
<td>Receiver’s Expenses, Account, and Compensation</td>
</tr>
<tr>
<td>§ 1354.007</td>
<td>Closing Receivership; Notice</td>
</tr>
<tr>
<td>§ 1354.008</td>
<td>Discharge of Receiver</td>
</tr>
<tr>
<td>§ 1354.009</td>
<td>Record</td>
</tr>
</tbody>
</table>

## Chapter 1355. Payment of Certain Claims Without Guardianship

Subchapter A. Payment of Claims to Certain Incapacitated Persons and Former Wards

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1355.001</td>
<td>Payment of Claims to Resident Creditor</td>
</tr>
<tr>
<td>§ 1355.002</td>
<td>Payment of Claims to Nonresident Creditor</td>
</tr>
</tbody>
</table>

Subchapter B. Administration of Money

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1355.051</td>
<td>Investment of Money by Clerk</td>
</tr>
<tr>
<td>§ 1355.052</td>
<td>Annual Report</td>
</tr>
</tbody>
</table>

Subchapter C. Withdrawal of Money

<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1355.101</td>
<td>Applicability of Subchapter</td>
</tr>
<tr>
<td>§ 1355.102</td>
<td>Custodian of Resident Creditor</td>
</tr>
<tr>
<td>§ 1355.103</td>
<td>Withdrawal of Money by Custodian; Bond</td>
</tr>
<tr>
<td>§ 1355.104</td>
<td>Custodian’s Report</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1355.105</td>
<td>Withdrawal of Money by Creditor or Creditor’s Heir, Representative, or Guardian</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Subchapter D</td>
<td>Use of Money by Eleemosynary Institution for Benefit of Resident</td>
</tr>
<tr>
<td>§ 1355.151</td>
<td>Applicability of Subchapter</td>
</tr>
<tr>
<td>§ 1355.152</td>
<td>Payment of Money to Institution</td>
</tr>
<tr>
<td>§ 1355.153</td>
<td>Deposit of Money in Trust</td>
</tr>
<tr>
<td>§ 1355.154</td>
<td>Death of Resident or Depletion of Money</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Chapter 1356</td>
<td>Court Approval of Certain Arts and Entertainment, Advertisement, and Sports Contracts</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Subchapter A</td>
<td>General Provisions</td>
</tr>
<tr>
<td>§ 1356.001</td>
<td>Definitions</td>
</tr>
<tr>
<td>§ 1356.002</td>
<td>Duration of Contract of a Minor</td>
</tr>
<tr>
<td>Subchapter B</td>
<td>Court Action Regarding Certain Contracts</td>
</tr>
<tr>
<td>§ 1356.051</td>
<td>Approval of Certain Contracts of a Minor</td>
</tr>
<tr>
<td>§ 1356.052</td>
<td>Notice Required</td>
</tr>
<tr>
<td>§ 1356.053</td>
<td>Necessary Parties to Proceeding</td>
</tr>
<tr>
<td>§ 1356.054</td>
<td>Set-Aside and Preservation of Portion Of Net Earnings</td>
</tr>
<tr>
<td>§ 1356.055</td>
<td>Valid Contract Not Voidable</td>
</tr>
<tr>
<td>§ 1356.056</td>
<td>Guardian Ad Litem</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Chapter 1357</td>
<td>Supported Decision-Making Agreement Act</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Subchapter A</td>
<td>General Provisions</td>
</tr>
<tr>
<td>§ 1357.001</td>
<td>Short Title</td>
</tr>
<tr>
<td>§ 1357.002</td>
<td>Definitions</td>
</tr>
<tr>
<td>§ 1357.003</td>
<td>Purpose</td>
</tr>
<tr>
<td>Subchapter B</td>
<td>Scope of Agreement and Agreement Requirements</td>
</tr>
<tr>
<td>§ 1357.051</td>
<td>Scope of Supported Decision-Making Agreement</td>
</tr>
<tr>
<td>§ 1357.052</td>
<td>Authority of Supporter; Nature of Relationship</td>
</tr>
<tr>
<td>§ 1357.0525</td>
<td>Designation of Alternate Supporter in Certain Circumstances</td>
</tr>
<tr>
<td>§ 1357.053</td>
<td>Term of Agreement</td>
</tr>
<tr>
<td>§ 1357.054</td>
<td>Access to Personal Information</td>
</tr>
<tr>
<td>§ 1357.055</td>
<td>Authorizing and Witnessing of Supported Decision-Making Agreement</td>
</tr>
<tr>
<td>§ 1357.056</td>
<td>Form of Supported Decision-Making Agreement</td>
</tr>
<tr>
<td>Subchapter C</td>
<td>Duty of Certain Persons With Respect to Agreement</td>
</tr>
<tr>
<td>§ 1357.101</td>
<td>Reliance on Agreement; Limitation of Liability</td>
</tr>
<tr>
<td>§ 1357.102</td>
<td>Reporting of Suspected Abuse, Neglect, or Exploitation</td>
</tr>
<tr>
<td>TITLE 4</td>
<td>Digital Assets</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Chapter 2001</td>
<td>Texas Revised Uniform Fiduciary Access to Digital Assets Act</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Subchapter A</td>
<td>General Provisions</td>
</tr>
<tr>
<td>§ 2001.001</td>
<td>Short Title</td>
</tr>
<tr>
<td>§ 2001.002</td>
<td>Definitions</td>
</tr>
<tr>
<td>§ 2001.003</td>
<td>Applicability</td>
</tr>
<tr>
<td>§ 2001.004</td>
<td>Uniformity of Application and Construction</td>
</tr>
<tr>
<td>§ 2001.005</td>
<td>Relation to Electronic Signatures in Global and National Commerce Act</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Table of Contents

Subchapter B. General Procedures for Access to Digital Assets


§ 2001.052. Terms-of-Service Agreement


Subchapter C. Procedures for Disclosure of Digital Assets of Deceased User


Subchapter D. Procedures for Disclosure of Digital Assets of Principal

§ 2001.131. Disclosure of Content of Electronic Communications of Principal

§ 2001.132. Disclosure of Other Digital Assets of Principal

Subchapter E. Disclosure of Digital Assets Held in Trust


§ 2001.152. Disclosure of Content of Electronic Communications Held in Trust When Trustee is Not Original User


Subchapter F. Disclosure of Digital Assets to Guardian


Subchapter G. Duty and Authority of Fiduciary and Others Regarding Digital Assets

§ 2001.201. Fiduciary Duty and Authority


Subchapter H. Custodian Compliance and Immunity Regarding Digital Assets

§ 2001.231. Custodian Compliance and Immunity

§ 2001.232. Immunity from Liability

Texas Property Code

Title 2. Conveyances

Chapter 5. Conveyances

Subchapter A. General Provisions

§ 5.001. Fee Simple

§ 5.002. Failing as a Conveyance

§ 5.003. Partial Conveyance

§ 5.004. Conveyance by Authorized Officer

§ 5.005. Aliens

§ 5.009. Duties of Life Tenant

Subchapter C. Future Estates

§ 5.041. Future Estates

§ 5.042. Abolition of Common-Law Rules

§ 5.043. Reformation of Interests Violating Rule Against Perpetuities

Title 4. Actions and Remedies

Chapter 23A. Uniform Partition of Heirs’ Property Act

§ 23A.001. Short Title

Page iviii
TABLE OF CONTENTS

§ 23A.002. Definitions ................................................................. 481
§ 23A.003. Applicability; Relation to Other Law.............................. 481
§ 23A.004. Service; Notice by Posting ........................................ 481
§ 23A.005. Commissioners .......................................................... 481
§ 23A.006. Determination of Value .............................................. 481
§ 23A.007. Cotenant Buyout ....................................................... 482
§ 23A.008. Partition Alternatives ................................................ 483
§ 23A.009. Considerations for Partition in Kind .............................. 483
§ 23A.010. Open-Market Sale, Sealed Bids, or Auction .................. 483
§ 23A.012. Uniformity of Application and Construction ............... 484
§ 23A.013. Relation to Electronic Signatures in Global and National Commerce Act ....... 484

Chapter 26. Use of a Deceased Individual’s Name, Voice, Signature, Photograph, or Likeness........................................ 484
§ 26.001. Definitions ................................................................. 484
§ 26.002. Property Right Established ........................................... 484
§ 26.003. Applicability ............................................................... 484
§ 26.004. Transferability ............................................................ 485
§ 26.005. Ownership After Death of Individual ............................. 485
§ 26.006. Registration of Claim .................................................. 485
§ 26.007. Effect of Registration .................................................. 485
§ 26.008. Exercise of Ownership for First Year Following Death of Individual .................. 485
§ 26.009. Exercise of Ownership After First Year Following Death of Individual ............... 485
§ 26.010. Termination ................................................................. 485
§ 26.011. Unauthorized Uses ...................................................... 486
§ 26.012. Permitted Uses ............................................................ 486
§ 26.013. Liability for Unauthorized Use ...................................... 486
§ 26.014. Other Rights Not Affected .......................................... 486
§ 26.015. Defenses to Liability .................................................. 486

Title 5. Exempt Property and Liens.................................................. 486
Subtitle A. Property Exempt from Creditors’ Claims ....................... 486

Chapter 41. Interests in Land ......................................................... 486
Subchapter A. Exemptions in Land Defined..................................... 486
§ 41.001. Interests in Land Exempt from Seizure ........................... 487
§ 41.002. Definition of Homestead .............................................. 487
§ 41.0021. Homestead in Qualifying Trust .................................. 488
§ 41.003. Temporary Renting of a Homestead ............................... 488
§ 41.004. Abandonment of a Homestead .................................... 488
§ 41.005. Voluntary Designation of Homestead ......................... 488
§ 41.0051. Disclaimer and Disclosure Required ......................... 489
§ 41.006. Certain Sales of Homestead ........................................ 489
§ 41.007. Home Improvement Contract ..................................... 489
§ 41.008. Conflict With Federal Law ........................................... 490

Subchapter B. Designation of a Homestead in Aid of Enforcement of a Judgment Debt .......... 490
§ 41.021. Notice to Designate .................................................... 490
§ 41.022. Designation by Homestead Claimant .............................. 490
§ 41.023. Designation by Commissioner ..................................... 490
§ 41.024. Sale of Excess ............................................................ 490
Chapter 42. Personal Property ................................................................. 490
§ 42.001. Personal Property Exemption ................................................. 491
§ 42.002. Personal Property ................................................................. 491
§ 42.0021. Additional Exemption for Certain Savings Plans .................. 491
§ 42.003. Designation of Exempt Property ........................................... 492
§ 42.004. Transfer of Nonexempt Property ........................................... 492
§ 42.005. Child Support Liens ............................................................... 493

Title 6. Unclaimed Property ................................................................. 493

Chapter 71. Escheat of Property ........................................................... 493

Subchapter A. General Provisions ....................................................... 493
§ 71.001. Escheat ................................................................................ 493
§ 71.002. Presumption of Death ......................................................... 493
§ 71.003. Presumption of Intestacy ..................................................... 493
§ 71.004. Presumption of Death Without Heirs .................................... 493
§ 71.005. Act of Ownership ............................................................... 493
§ 71.006. Review of Probate Decree .................................................. 494
§ 71.007. Identification of Real Property Subject to Escheat ................. 494

Subchapter B. Escheat Proceedings ...................................................... 494
§ 71.101. Petition for Escheat ............................................................. 494
§ 71.102. Citation ................................................................................. 494
§ 71.103. Party to Proceeding ............................................................. 494
§ 71.104. Appearance of Claimants ..................................................... 494
§ 71.105. Trial ..................................................................................... 495
§ 71.106. Default Judgment ............................................................... 495
§ 71.107. Judgment for State ............................................................. 495
§ 71.108. Costs Paid by State ............................................................. 495
§ 71.109. Appeal; Writ of Error .......................................................... 495

Subchapter C. Disposition of Escheated Property ................................ 495
§ 71.201. Seizure and Sale of Personal Property ................................... 495
§ 71.202. Disposition of Real Property ............................................... 495
§ 71.203. Account of Escheated Property .......................................... 496

Subchapter D. Recovery of Escheated Property ................................... 496
§ 71.301. Suit for Escheated Personal Property .................................... 496
§ 71.302. Recovery of Personal Property ........................................... 496
§ 71.303. Suit for Escheated Real Property ........................................ 496
§ 71.304. State as Party in Suit for Assets ........................................... 496

Chapter 72. Abandonment of Personal Property ................................. 496

Subchapter A. General Provisions ....................................................... 496
§ 72.001. Application of Chapter ....................................................... 496

Subchapter B. Presumption of Abandonment .................................... 497
§ 72.101. Personal Property Presumed Abandoned ............................... 497
§ 72.102. Traveler’s Check and Money Order ...................................... 498
§ 72.103. Preservation of Property .................................................... 498
TABLE OF CONTENTS

Chapter 73.  Property Held by Financial Institutions ............................................498

Subchapter A.  General Provisions .................................................................498
§ 73.001.  Definitions and Application of Chapter ..........................................498
§ 73.002.  Depository .........................................................................................499
§ 73.003.  Preservation of Inactive Account or Safe Deposit Box .......................499

Subchapter B.  Presumption of Abandonment ....................................................499
§ 73.101.  Inactive Account or Safe Deposit Box Presumed Abandoned ...............499
§ 73.102.  Checks .................................................................................................499

Title 8.  Landlord and Tenant .............................................................................500

Chapter 92.  Residential Tenancies .................................................................500

Subchapter A.  General Provisions .................................................................500
§ 92.0162.  Right to Vacate and Avoid Liability Following Tenant’s Death ..........500

Title 9.  Trusts .................................................................................................500

Subtitle A.  Provisions Generally Applicable to Trusts .......................................500

Chapter 101.  Provisions Generally Applicable to Trusts ................................500
§ 101.001.  Conveyance by Person Designated as Trustee .................................501
§ 101.002.  Liability of Trust Property .................................................................501

Subtitle B.  Texas Trust Code: Creation, Operation, and Termination of
Trusts .............................................................................................................501

Chapter 111.  General Provisions .................................................................503
§ 111.001.  Short Title .........................................................................................503
§ 111.002.  Construction of Subtitle .................................................................504
§ 111.003.  Trusts Subject to this Subtitle ...........................................................504
§ 111.0035.  Default and Mandatory Rules; Conflict Between Terms and Statute .504
§ 111.004.  Definitions .........................................................................................505
§ 111.005.  Reenactment of Common Law ...........................................................506
§ 111.006.  Application .........................................................................................506

Chapter 112.  Creation, Validity, Modification, and Termination of
Trusts .............................................................................................................507

Subchapter A.  Creation ....................................................................................507
§ 112.001.  Methods of Creating Trust ...............................................................507
§ 112.002.  Intention to Create Trust .................................................................507
§ 112.003.  Consideration ....................................................................................508
§ 112.004.  Statute of Frauds .............................................................................508
§ 112.005.  Trust Property ....................................................................................508
§ 112.006.  Additions to Trust Property ...............................................................509
§ 112.007.  Capacity of Settlor ..........................................................................509
§ 112.008.  Capacity of Trustee ...........................................................................509
§ 112.009.  Acceptance by Trustee .....................................................................509
§ 112.010.  Presumed Acceptance by Beneficiary; Disclaimer ............................510
§ 112.011.  Posthumous Class Gifts Membership .............................................510

Subchapter B.  Validity ......................................................................................510
§ 112.031.  Trust Purposes .................................................................................510


Ixi
| § 112.032. | Active and Passive Trusts; Statute of Uses .................................................. 511 |
| § 112.033. | Reservation of Interests and Powers by Settlor ............................................... 511 |
| § 112.034. | Merger ............................................................................................................. 512 |
| § 112.035. | Spendthrift Trusts .......................................................................................... 512 |
| § 112.0335. | Construction of Certain Trusts ........................................................................ 514 |
| § 112.036. | Rule Against Perpetuities ................................................................................ 514 |
| § 112.037. | Trust For Care of Animal .................................................................................. 515 |
| § 112.038. | Forfeiture Clause .............................................................................................. 516 |
| § 112.059. | Termination of Uneconomic Trust .................................................................... 520 |
| § 112.058. | Conversion of Community Trust to Nonprofit Corporation .............................. 519 |
| § 112.056. | Permissive Amendment by Trustee of Charitable Trust .................................... 518 |
| § 112.057. | Division and Combination of Trusts .................................................................. 518 |
| § 112.051. | Revocation, Modification, or Amendment by Settlor ........................................ 516 |
| § 112.052. | Termination ....................................................................................................... 516 |
| § 112.053. | Disposition of Trust Property on Failure of Trust ............................................. 517 |
| § 112.054. | Judicial Modification, Reformation, or Termination of Trusts ............................ 517 |
| § 112.055. | Amendment of Charitable Trusts by Operation of Law ..................................... 518 |
| § 112.0715. | Creation of Second Trust .................................................................................... 522 |
| § 112.071. | Definitions ........................................................................................................... 521 |
| § 112.071. | Definitions ........................................................................................................... 521 |
| § 112.0715. | Creation of Second Trust .................................................................................... 522 |
| § 112.072. | Distribution to Second Trust: Trustee With Full Discretion ................................. 522 |
| § 112.073. | Distribution to Second Trust: Trustee With Limited Discretion .......................... 522 |
| § 112.074. | Notice Required .................................................................................................. 522 |
| § 112.075. | Written Instrument Required ............................................................................. 523 |
| § 112.076. | Reference to Trust Terms ................................................................................... 523 |
| § 112.077. | Settlor of Second Trust ....................................................................................... 523 |
| § 112.078. | Court-Ordered Distribution .............................................................................. 523 |
| § 112.079. | Divided Discretion ............................................................................................. 524 |
| § 112.080. | Later Discovered Assets ..................................................................................... 524 |
| § 112.081. | Other Authority to Distribute in Further Trust Not Limited ................................ 524 |
| § 112.082. | Need for Distribution Not Required .................................................................. 524 |
| § 112.083. | Duties Not Covered ............................................................................................ 524 |
| § 112.084. | Certain Distributions Prohibited ...................................................................... 524 |
| § 112.085. | Exceptions to Power of Distribution ................................................................... 524 |
| § 112.086. | Tax-Related Limitations ..................................................................................... 525 |
| § 112.087. | Compensation of Trustee .................................................................................... 525 |
| § 112.101. | Definitions ........................................................................................................... 526 |
| § 112.102. | Revocation of Certain Nontestamentary Transfers; Treatment of Former Spouse or Former Spouse’s Relative as Beneficiary Under Certain Policies or Plans ................................................................. 526 |
| § 112.103. | Effect of Revocation .......................................................................................... 526 |
| § 112.104. | Liability of Certain Purchasers or Recipients of Certain Payments, Benefits, or Property .......................................................................................................................... 526 |
| § 112.105. | Liability of Former Spouse or Former Spouse’s Relative for Certain Payments, Benefits, or Property .......................................................................................................................... 527 |
| § 112.106. | Certain Trusts with Divorced Individuals as Joint Settlors .................................. 527 |
TABLE OF CONTENTS

Subchapter F. Noncharitable Trust Without Ascertainable Beneficiary .............................................. 527
§ 112.121. Validity of Trust; Applicability .................................................................................. 527
§ 112.122. Enforcement of Trust ............................................................................................. 527
§ 112.123. Application Or Distribution of Trust Property ......................................................... 528

Chapter 113. Administration ........................................................................................................ 528

Subchapter A. Powers of Trustee ............................................................................................... 528
§ 113.001. Limitation of Powers ............................................................................................... 528
§ 113.002. General Powers ....................................................................................................... 528
§ 113.003. Options .................................................................................................................. 528
§ 113.004. Additions to Trust Assets ......................................................................................... 528
§ 113.005. Acquisition of Undivided Interests ......................................................................... 528
§ 113.006. General Authority to Manage and Invest Trust Property ......................................... 528
§ 113.007. Temporary Deposits of Funds .................................................................................. 529
§ 113.008. Business Entities .................................................................................................... 529
§ 113.009. Real Property Management ...................................................................................... 529
§ 113.010. Sale of Property ...................................................................................................... 529
§ 113.011. Leases .................................................................................................................... 529
§ 113.012. Minerals ................................................................................................................ 529
§ 113.013. Insurance .............................................................................................................. 530
§ 113.014. Payment of Taxes ................................................................................................... 530
§ 113.015. Authority to Borrow ............................................................................................... 530
§ 113.016. Management of Securities ....................................................................................... 530
§ 113.017. Corporate Stock or Other Securities Held in Name of Nominee................................. 530
§ 113.018. Employment and Appointment of Agents ................................................................ 531
§ 113.019. Claims ................................................................................................................... 532
§ 113.020. Burdensome or Worthless Property ......................................................................... 532
§ 113.021. Distribution to Minor or Incapacitated Beneficiary .................................................. 532
§ 113.0211. Adjustment of Charitable Trust ........................................................................... 532
§ 113.022. Power to Provide Residence and Pay Funeral Expenses ........................................ 533
§ 113.023. Ancillary Trustee ..................................................................................................... 533
§ 113.024. Implied Powers ....................................................................................................... 533
§ 113.025. Powers of Trustee Regarding Environmental Laws.................................................. 533
§ 113.026. Authority to Designate New Charitable Beneficiary ............................................... 534
§ 113.027. Distributions Generally .......................................................................................... 534
§ 113.029. Discretionary Powers; Tax Savings ......................................................................... 535
§ 113.030. Relocation of Administration of Charitable Trust .................................................... 536
§ 113.031. Digital Assets .......................................................................................................... 537

Subchapter B. Duties of Trustee .................................................................................................... 537
§ 113.051. General Duty ........................................................................................................... 537
§ 113.052. Loan of Trust Funds to Trustee ................................................................................ 537
§ 113.053. Purchase or Sale of Trust Property by Trustee .......................................................... 538
§ 113.054. Sales from One Trust to Another .............................................................................. 539
§ 113.055. Purchase of Trustee’s Securities .............................................................................. 539
§ 113.056. Authorization to Make Certain Investments .............................................................. 539
§ 113.057. Deposits by Corporate Trustee with Itself ................................................................ 540
§ 113.058. Bond ...................................................................................................................... 540
§ 113.060. Informing Beneficiaries ............................................................................................ 541
Subchapter C. Resignation or Removal of Trustee, and Authority of Multiple and Successor Trustees

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 113.081</td>
<td>Resignation of Trustee</td>
<td>541</td>
</tr>
<tr>
<td>§ 113.082</td>
<td>Removal of Trustee</td>
<td>541</td>
</tr>
<tr>
<td>§ 113.083</td>
<td>Appointment of Successor Trustee</td>
<td>542</td>
</tr>
<tr>
<td>§ 113.084</td>
<td>Powers of Successor Trustee</td>
<td>542</td>
</tr>
<tr>
<td>§ 113.085</td>
<td>Exercise of Powers by Multiple Trustees</td>
<td>542</td>
</tr>
</tbody>
</table>

Subchapter E. Accounting by Trustee

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 113.151</td>
<td>Demand for Accounting</td>
<td>543</td>
</tr>
<tr>
<td>§ 113.152</td>
<td>Contents of Accounting</td>
<td>543</td>
</tr>
</tbody>
</table>

Subchapter F. Common Trust Funds

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 113.171</td>
<td>Common Trust Funds</td>
<td>544</td>
</tr>
<tr>
<td>§ 113.172</td>
<td>Affiliated Institutions</td>
<td>544</td>
</tr>
</tbody>
</table>

Chapter 114. Liabilities, Rights, and Remedies of Trustees, Beneficiaries, and Third Persons

Subchapter A. Liability of Trustee

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 114.001</td>
<td>Liability of Trustee to Beneficiary</td>
<td>544</td>
</tr>
<tr>
<td>§ 114.002</td>
<td>Liability of Successor Trustee for Breach of Trust by Predecessor</td>
<td>545</td>
</tr>
<tr>
<td>§ 114.003</td>
<td>Powers to Direct: Charitable Trusts</td>
<td>545</td>
</tr>
<tr>
<td>§ 114.0031</td>
<td>Directed Trusts; Advisors</td>
<td>546</td>
</tr>
<tr>
<td>§ 114.004</td>
<td>Actions Taken Prior to Knowledge or Notice of Facts</td>
<td>547</td>
</tr>
<tr>
<td>§ 114.005</td>
<td>Release of Liability by Beneficiary</td>
<td>547</td>
</tr>
<tr>
<td>§ 114.006</td>
<td>Liability of Cotrustees for Acts of Other</td>
<td>547</td>
</tr>
</tbody>
</table>

Subchapter B. Liability of Beneficiary

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 114.007</td>
<td>Exculpation of Trustee</td>
<td>548</td>
</tr>
<tr>
<td>§ 114.008</td>
<td>Remedies for Breach of Trust</td>
<td>548</td>
</tr>
<tr>
<td>§ 114.031</td>
<td>Liability of Beneficiary to Trustee</td>
<td>548</td>
</tr>
<tr>
<td>§ 114.032</td>
<td>Liability for Written Agreements</td>
<td>549</td>
</tr>
</tbody>
</table>

Subchapter C. Rights of Trustee

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 114.061</td>
<td>Compensation</td>
<td>549</td>
</tr>
<tr>
<td>§ 114.062</td>
<td>Exoneration or Reimbursement for Tort</td>
<td>549</td>
</tr>
<tr>
<td>§ 114.063</td>
<td>General Right to Reimbursement</td>
<td>550</td>
</tr>
<tr>
<td>§ 114.064</td>
<td>Costs</td>
<td>550</td>
</tr>
</tbody>
</table>

Subchapter D. Third Persons

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 114.081</td>
<td>Protection of Person Dealing with Trustee</td>
<td>550</td>
</tr>
<tr>
<td>§ 114.082</td>
<td>Conveyance by Trustee</td>
<td>551</td>
</tr>
<tr>
<td>§ 114.0821</td>
<td>Liability of Trust Property</td>
<td>551</td>
</tr>
<tr>
<td>§ 114.083</td>
<td>Rights and Liabilities for Committing Torts</td>
<td>551</td>
</tr>
<tr>
<td>§ 114.084</td>
<td>Contracts of Trustee</td>
<td>552</td>
</tr>
<tr>
<td>§ 114.085</td>
<td>Partnerships</td>
<td>552</td>
</tr>
<tr>
<td>§ 114.086</td>
<td>Certification of Trust</td>
<td>552</td>
</tr>
<tr>
<td>§ 114.087</td>
<td>Instrument Naming Trust as Party</td>
<td>553</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

Chapter 115.  **Jurisdiction, Venue, and Proceedings** .................................................553

Subchapter A.  Jurisdiction and Venue ..................................................................................553
  § 115.001.  Jurisdiction ...........................................................................................................553
  § 115.002.  Venue ....................................................................................................................554

Subchapter B.  Parties, Procedure, and Judgments .................................................................555
  § 115.011.  Parties ...................................................................................................................555
  § 115.012.  Rules of Procedure ...............................................................................................555
  § 115.013.  Pleadings and Judgments ......................................................................................556
  § 115.014.  Guardian or Attorney Ad Litem ..........................................................................556
  § 115.015.  Notice to Beneficiaries of Tort or Contract Proceeding .......................................557
  § 115.016.  Notice ....................................................................................................................557
  § 115.017.  Waiver of Notice ...................................................................................................557

Chapter 116.  **Uniform Principal and Income Act** ..............................................................557

Subchapter A.  Definitions, Fiduciary Duties, and Other Miscellaneous Provisions ...............558
  § 116.001.  Short Title .............................................................................................................558
  § 116.002.  Definitions .............................................................................................................558
  § 116.003.  Uniformity of Application and Construction .........................................................558
  § 116.004.  Fiduciary Duties; General Principles ....................................................................558
  § 116.005.  Trustee’s Power to Adjust ......................................................................................559
  § 116.006.  Judicial Control of Discretionary Power ...............................................................560
  § 116.007.  Provisions Regarding Noncharitable Unitrusts ....................................................561

Subchapter B.  Decedent’s Estate or Terminating Income Interest ..........................................562
  § 116.051.  Determination and Distribution of Net Income .....................................................562
  § 116.052.  Distribution to Residuary and Remainder Beneficiaries .......................................563

Subchapter C.  Apportionment at Beginning and End of Income Interest .................................563
  § 116.101.  When Right to Income Begins and Ends ...............................................................563
  § 116.102.  Apportionment of Receipts and Disbursements when Decedent Dies or Income Interest Begins ........................................................................................................563
  § 116.103.  Apportionment When Income Interest Ends .........................................................564

Subchapter D.  Allocation of Receipts During Administration of Trust .......................................564

Part 1.  Receipts from Entities ..................................................................................................564
  § 116.151.  Character of Receipts ............................................................................................564
  § 116.152.  Distribution from Trust or Estate ..........................................................................565
  § 116.153.  Business and Other Activities Conducted by Trustee .........................................565

Part 2.  Receipts Not Normally Apportioned ...........................................................................565
  § 116.161.  Principal Receipts ................................................................................................565
  § 116.162.  Rental Property ....................................................................................................565
  § 116.163.  Obligation to Pay Money ......................................................................................566
  § 116.164.  Insurance Policies and Similar Contracts .............................................................566

Part 3.  Receipts Normally Apportioned ...................................................................................566
  § 116.171.  Insubstantial Allocations Not Required .................................................................566
  § 116.172.  Deferred Compensation, Annuities, and Similar Payments ...............................566
  § 116.173.  Liquidating Asset ................................................................................................568
  § 116.174.  Minerals, Water, and Other Natural Resources ....................................................568
# Table of Contents

**Chapter 143. Pooled Trust Subaccounts**

- § 143.001. Definitions ................................................................. 591
- § 143.002. Application to Establish Subaccount ................................... 591
- § 143.003. Appointment of Attorney ad Litem ..................................... 591
- § 143.004. Establishment of Subaccount ............................................ 591
- § 143.005. Terms of Subaccount ..................................................... 591
- § 143.006. Fees and Reporting ........................................................ 592
- § 143.007. Jurisdiction Exclusive .................................................... 592

**Subtitle B. Fiduciaries**

- Chapter 163. Management, Investment, and Expenditure of Institutional Funds .......................................................... 592

- § 163.001. Short Title ................................................................. 592
- § 163.002. Legislative Findings and Purpose ...................................... 592
- § 163.003. Definitions ................................................................. 592
- § 163.004. Standard of Conduct in Managing and Investing Institutional Fund ......................................................... 593
- § 163.005. Appropriation for Expenditure or Accumulation of Endowment Fund; Rules of Construction ........................................... 594
- § 163.006. Delegation of Management and Investment Functions ................. 594
- § 163.007. Release or Modification of Restrictions on Management, Investment, or Purpose ................................................ 595
- § 163.008. Reviewing Compliance .................................................. 595
- § 163.009. Relation to Electronic Signatures in Global and National Commerce Act ......................................................... 595
- § 163.010. Uniformity of Application and Construction ......................... 595
- § 163.011. Applicability of Other Parts of Code ................................... 596

**Subtitle C. Powers of Appointment**

- Chapter 181. Powers of Appointment .................................................. 596

  - Subchapter A. General Provisions ................................................ 596
    - § 181.001. Definitions ............................................................. 596
    - § 181.002. Application ............................................................. 597
    - § 181.003. Chapter Not Exclusive ............................................. 597
    - § 181.004. Construction ........................................................... 597
  
  - Subchapter B. Release of Powers of Appointment ................................ 597
    - § 181.051. Authority of Donee to Release Power ............................. 597
    - § 181.052. Requisites of Release .............................................. 597
    - § 181.053. Release by Guardian ................................................ 597
    - § 181.054. Effect of Release on Multiple Donees ............................. 597
    - § 181.055. Notice of Release ................................................... 597
    - § 181.056. Recording .............................................................. 597
    - § 181.057. Effect of Failure to Deliver or File ................................. 598
    - § 181.058. Restraints on Alienation or Anticipation ......................... 598
  
  - Subchapter C. Exercise of Powers of Appointment ................................ 598
    - § 181.081. Extent of Power ....................................................... 598
    - § 181.082. General Exercise ..................................................... 598
    - § 181.083. Creating Additional Powers ........................................ 598
### TABLE OF CONTENTS

**Title 13. Disclaimer of Property Interests** ................................................................. 598

**Chapter 240. Texas Uniform Disclaimer of Property Interests Act** ................. 598

**Subchapter A. General Provisions** ........................................................................... 599

- § 240.001. Short Title .............................................................. 599
- § 240.002. Definitions .............................................................. 599
- § 240.003. Applicability of Chapter ........................................... 600
- § 240.004. Chapter Supplemented by Other Law .......................... 600
- § 240.005. Uniformity of Application and Construction ................. 600
- § 240.006. Power to Disclaim by Person Other Than Fiduciary .......... 600
- § 240.007. Power to Disclaim Power Held in Fiduciary Capacity by Person Designated to Serve as or Serving as Fiduciary ........................................... 600
- § 240.008. Power to Disclaim by Fiduciary Acting in Fiduciary Capacity ... 601
- § 240.0081. Notice Required by Trustee Disclaiming Certain Interests in Property; Effect of Notice ........................................... 601
- § 240.009. Power to Disclaim; General Requirements; When Irrevocable ...... 602

**Subchapter B. Type and Effect of Disclaimer** ......................................................... 602

- § 240.0501. Definition .............................................................. 602
- § 240.051. Disclaimer of Interest in Property .................................. 602
- § 240.0511. Disposition of Interest Passing Because of Decedent’s Death and Disclaimed by Individual ........................................... 603
- § 240.0512. Disposition of Interest Passing Because of Event Other Than Decedent’s Death and Disclaimed by Individual ........................................... 603
- § 240.052. Disclaimer of Rights in Survivorship Property ..................... 603
- § 240.053. Disclaimer of Interest by Trustee .................................... 604
- § 240.054. Disclaimer of Power of Appointment or Other Power Not Held in Fiduciary Capacity ........................................... 604
- § 240.055. Disclaimer by Appointee of, or Object or Taker in Default of Exercise of, Power of Appointment ........................................... 604
- § 240.056. Disclaimer of Power Held in Fiduciary Capacity .................. 604
- § 240.057. Tax Qualified Disclaimer ............................................. 604
- § 240.058. Partial Disclaimer by Spouse ........................................ 605

**Subchapter C. Delivery or Filing** ................................................................. 605

- § 240.101. Delivery or Filing Generally .......................................... 605
- § 240.102. Disclaimer of Interest Created Under Intestate Succession or Will 605
- § 240.103. Disclaimer of Interest in Testamentary Trust ..................... 605
- § 240.104. Disclaimer of Interest in Inter Vivos Trust .......................... 605
- § 240.105. Disclaimer of Interest Created by Beneficiary Designation ........ 605
- § 240.106. Disclaimer by Surviving Holder of Survivorship Property .......... 605
- § 240.107. Disclaimer by Object or Taker in Default of Exercise of Power of Appointment ........................................... 606
- § 240.108. Disclaimer by Certain Appointees ........................................ 606
- § 240.109. Disclaimer by Certain Fiduciaries ....................................... 606
- § 240.110. Disclaimer of Power by Agent .......................................... 606
- § 240.111. Recording of Disclaimer ................................................ 606

**Subchapter D. Disclaimer Barred or Limited** ......................................................... 606

- § 240.151. When Disclaimer Barred or Limited ...................................... 606
Table of Contents

Table of Cases ................................................................................................................................. 608
**CONVERSION CHART**

**PROBATE CODE TO ESTATES CODE**

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>2(a) (part)</td>
<td>21.006</td>
</tr>
<tr>
<td>2(c)</td>
<td>21.004</td>
</tr>
<tr>
<td>3 (part)</td>
<td>22.001</td>
</tr>
<tr>
<td>3(a)</td>
<td>22.002</td>
</tr>
<tr>
<td>3(b)</td>
<td>22.004</td>
</tr>
<tr>
<td>3(c)</td>
<td>22.005</td>
</tr>
<tr>
<td>3(d)</td>
<td>22.006</td>
</tr>
<tr>
<td>3(e)</td>
<td>22.007</td>
</tr>
<tr>
<td>3(f)</td>
<td>22.019</td>
</tr>
<tr>
<td>3(g)</td>
<td>22.007</td>
</tr>
<tr>
<td>3(h)</td>
<td>22.008</td>
</tr>
<tr>
<td>3(i)</td>
<td>22.009</td>
</tr>
<tr>
<td>3(j)</td>
<td>22.010</td>
</tr>
<tr>
<td>3(k)</td>
<td>22.011</td>
</tr>
<tr>
<td>3(l)</td>
<td>22.012</td>
</tr>
<tr>
<td>3(m)</td>
<td>22.013</td>
</tr>
<tr>
<td>3(o)</td>
<td>22.015</td>
</tr>
<tr>
<td>3(p)</td>
<td>22.016</td>
</tr>
<tr>
<td>3(q)</td>
<td>22.017</td>
</tr>
<tr>
<td>3(r)</td>
<td>22.018</td>
</tr>
<tr>
<td>3(s)</td>
<td>22.020, 22.021</td>
</tr>
<tr>
<td>3(t)</td>
<td>22.022</td>
</tr>
<tr>
<td>3(u)</td>
<td>22.023</td>
</tr>
<tr>
<td>3(v)</td>
<td>22.024</td>
</tr>
<tr>
<td>3(w)</td>
<td>22.025</td>
</tr>
<tr>
<td>3(x)</td>
<td>22.027</td>
</tr>
<tr>
<td>3(z)</td>
<td>22.028</td>
</tr>
<tr>
<td>3(aa)</td>
<td>22.031</td>
</tr>
<tr>
<td>3(bb)</td>
<td>22.029, 31.001</td>
</tr>
<tr>
<td>3(dd)</td>
<td>22.030</td>
</tr>
<tr>
<td>3(ee)</td>
<td>22.032</td>
</tr>
<tr>
<td>3(ff)</td>
<td>22.034</td>
</tr>
<tr>
<td>3(iii)</td>
<td>22.007</td>
</tr>
<tr>
<td>3(jj)</td>
<td>22.026</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>3(kk)</td>
<td>22.003</td>
</tr>
<tr>
<td>3(ll)</td>
<td>22.004</td>
</tr>
<tr>
<td>3(mm)</td>
<td>22.005</td>
</tr>
<tr>
<td>4A</td>
<td>32.001</td>
</tr>
<tr>
<td>4B</td>
<td>31.002</td>
</tr>
<tr>
<td>4C</td>
<td>32.002</td>
</tr>
<tr>
<td>4D</td>
<td>32.003</td>
</tr>
<tr>
<td>4E</td>
<td>32.004</td>
</tr>
<tr>
<td>4F</td>
<td>32.005</td>
</tr>
<tr>
<td>4G</td>
<td>32.006</td>
</tr>
<tr>
<td>4H</td>
<td>32.007</td>
</tr>
<tr>
<td>5B</td>
<td>34.001</td>
</tr>
<tr>
<td>5C</td>
<td>34.002</td>
</tr>
<tr>
<td>6</td>
<td>33.001</td>
</tr>
<tr>
<td>6A</td>
<td>33.002</td>
</tr>
<tr>
<td>6B</td>
<td>33.003</td>
</tr>
<tr>
<td>6C</td>
<td>33.004</td>
</tr>
<tr>
<td>6D</td>
<td>33.005</td>
</tr>
<tr>
<td>8(a)</td>
<td>33.051, 33.052, 33.055</td>
</tr>
<tr>
<td>8(b)</td>
<td>33.053, 33.101</td>
</tr>
<tr>
<td>8(c)(1)</td>
<td>33.101, 33.102</td>
</tr>
<tr>
<td>8(c)(2)</td>
<td>33.103</td>
</tr>
<tr>
<td>8(d)</td>
<td>33.104</td>
</tr>
<tr>
<td>8(e)</td>
<td>33.054</td>
</tr>
<tr>
<td>8A(a)</td>
<td>33.101, 33.102</td>
</tr>
<tr>
<td>8A(b)</td>
<td>33.103</td>
</tr>
<tr>
<td>8B</td>
<td>33.104</td>
</tr>
<tr>
<td>9</td>
<td>54.002</td>
</tr>
<tr>
<td>10</td>
<td>55.001</td>
</tr>
<tr>
<td>10A(a)</td>
<td>55.051, 55.052</td>
</tr>
<tr>
<td>10A(b)</td>
<td>55.053</td>
</tr>
<tr>
<td>10B</td>
<td>55.101, 55.102</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>10C</td>
<td>54.001</td>
</tr>
<tr>
<td>11</td>
<td>52.051</td>
</tr>
<tr>
<td>11A</td>
<td>53.053</td>
</tr>
<tr>
<td>11B</td>
<td>53.054</td>
</tr>
<tr>
<td>12(a)</td>
<td>53.051</td>
</tr>
<tr>
<td>12(b)</td>
<td>53.052</td>
</tr>
<tr>
<td>12(c)</td>
<td>53.052</td>
</tr>
<tr>
<td>13</td>
<td>52.001</td>
</tr>
<tr>
<td>13(e)</td>
<td>52.051</td>
</tr>
<tr>
<td>14</td>
<td>52.002</td>
</tr>
<tr>
<td>15</td>
<td>52.052</td>
</tr>
<tr>
<td>16</td>
<td>52.003</td>
</tr>
<tr>
<td>17</td>
<td>52.004</td>
</tr>
<tr>
<td>17A</td>
<td>52.053</td>
</tr>
<tr>
<td>18</td>
<td>54.052</td>
</tr>
<tr>
<td>19</td>
<td>53.101</td>
</tr>
<tr>
<td>20</td>
<td>53.102</td>
</tr>
<tr>
<td>21</td>
<td>55.002</td>
</tr>
<tr>
<td>22</td>
<td>51.203, 54.051</td>
</tr>
<tr>
<td>23</td>
<td>53.105</td>
</tr>
<tr>
<td>24</td>
<td>53.001</td>
</tr>
<tr>
<td>25</td>
<td>53.106</td>
</tr>
<tr>
<td>26</td>
<td>55.151, 55.152</td>
</tr>
<tr>
<td>27</td>
<td>55.201, 55.202, 55.203</td>
</tr>
<tr>
<td>28</td>
<td>351.053</td>
</tr>
<tr>
<td>29</td>
<td>351.002</td>
</tr>
<tr>
<td>30</td>
<td>55.251, 55.252</td>
</tr>
<tr>
<td>31</td>
<td>351.001</td>
</tr>
<tr>
<td>33(a)</td>
<td>51.001</td>
</tr>
<tr>
<td>33(b)</td>
<td>51.001</td>
</tr>
<tr>
<td>33(c)</td>
<td>51.002, 51.003</td>
</tr>
<tr>
<td>33(d)</td>
<td>51.151</td>
</tr>
</tbody>
</table>
## Conversion Chart – Probate Code to Estates Code

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>33(e)</td>
<td>51.056</td>
</tr>
<tr>
<td>33(f)(1)</td>
<td>51.101, 51.051</td>
</tr>
<tr>
<td>33(f)(2)</td>
<td>51.053</td>
</tr>
<tr>
<td>33(f)(3)</td>
<td>51.054</td>
</tr>
<tr>
<td>33(g)</td>
<td>51.104</td>
</tr>
<tr>
<td>33(h)</td>
<td>51.102</td>
</tr>
<tr>
<td>33(j)</td>
<td>51.103</td>
</tr>
<tr>
<td>33(j)</td>
<td>51.202</td>
</tr>
<tr>
<td>34</td>
<td>51.055</td>
</tr>
<tr>
<td>34A</td>
<td>53.104</td>
</tr>
<tr>
<td>35</td>
<td>51.201</td>
</tr>
<tr>
<td>36(a)</td>
<td>351.352, 351.353, 351.354</td>
</tr>
<tr>
<td>36(b)</td>
<td>351.355</td>
</tr>
<tr>
<td>36B</td>
<td>151.001</td>
</tr>
<tr>
<td>36C</td>
<td>151.002</td>
</tr>
<tr>
<td>36D</td>
<td>151.003</td>
</tr>
<tr>
<td>36E</td>
<td>151.004</td>
</tr>
<tr>
<td>36F</td>
<td>151.005</td>
</tr>
<tr>
<td>37</td>
<td>101.001, 101.003, 101.051</td>
</tr>
<tr>
<td>37A(a)</td>
<td>122.002</td>
</tr>
<tr>
<td>37A(b)</td>
<td>122.003</td>
</tr>
<tr>
<td>37A(c)</td>
<td>122.101</td>
</tr>
<tr>
<td>37A(d)</td>
<td>122.102</td>
</tr>
<tr>
<td>37A(e)</td>
<td>122.001</td>
</tr>
<tr>
<td>37A(f)</td>
<td>122.103</td>
</tr>
<tr>
<td>37A(g)</td>
<td>122.051</td>
</tr>
<tr>
<td>37A(h)</td>
<td>122.052-122.055</td>
</tr>
<tr>
<td>37A(i)</td>
<td>122.056</td>
</tr>
<tr>
<td>37A(j)</td>
<td>122.005</td>
</tr>
<tr>
<td>37A(k)</td>
<td>122.004</td>
</tr>
<tr>
<td>37A(l)</td>
<td>122.151, 122.152</td>
</tr>
<tr>
<td>37A(m)</td>
<td>122.153</td>
</tr>
<tr>
<td>37A(n)</td>
<td>122.104</td>
</tr>
<tr>
<td>37A(o)</td>
<td>122.105, 122.106</td>
</tr>
<tr>
<td>37A(p)</td>
<td>122.057</td>
</tr>
<tr>
<td>37B(a)</td>
<td>122.201</td>
</tr>
<tr>
<td>37B(b)</td>
<td>122.202, 122.203</td>
</tr>
<tr>
<td>37B(c)</td>
<td>122.204</td>
</tr>
<tr>
<td>37B(d)</td>
<td>122.205</td>
</tr>
<tr>
<td>37B(e)</td>
<td>122.206</td>
</tr>
<tr>
<td>37C(a)</td>
<td>255.101</td>
</tr>
<tr>
<td>37C(b)</td>
<td>255.102</td>
</tr>
<tr>
<td>38(a)</td>
<td>201.001</td>
</tr>
<tr>
<td>38(b)</td>
<td>201.002</td>
</tr>
<tr>
<td>39</td>
<td>201.102, 201.103</td>
</tr>
<tr>
<td>40</td>
<td>201.054</td>
</tr>
<tr>
<td>41(a)</td>
<td>201.056</td>
</tr>
<tr>
<td>41(b)</td>
<td>201.057</td>
</tr>
<tr>
<td>41(c)</td>
<td>201.060</td>
</tr>
<tr>
<td>41(d)</td>
<td>201.058, 201.059, 201.061</td>
</tr>
<tr>
<td>41(e)</td>
<td>201.062</td>
</tr>
<tr>
<td>41(f)</td>
<td>201.062</td>
</tr>
<tr>
<td>42(a)</td>
<td>201.051</td>
</tr>
<tr>
<td>42(b)(1)</td>
<td>201.052</td>
</tr>
<tr>
<td>42(b)(2)</td>
<td>201.053</td>
</tr>
<tr>
<td>42(c)</td>
<td>102.001, 353.001</td>
</tr>
<tr>
<td>42(d)</td>
<td>201.055</td>
</tr>
<tr>
<td>43</td>
<td>201.101</td>
</tr>
<tr>
<td>44(a)</td>
<td>201.151</td>
</tr>
<tr>
<td>44(b)</td>
<td>201.151</td>
</tr>
<tr>
<td>44(c)</td>
<td>201.152</td>
</tr>
<tr>
<td>45</td>
<td>201.003</td>
</tr>
<tr>
<td>46(a)</td>
<td>101.002, 111.001</td>
</tr>
<tr>
<td>46(b)</td>
<td>111.002</td>
</tr>
<tr>
<td>47(a)</td>
<td>121.051-121.053</td>
</tr>
<tr>
<td>47(b)</td>
<td>121.151</td>
</tr>
<tr>
<td>47(c)</td>
<td>121.101, 121.102</td>
</tr>
<tr>
<td>47(d)</td>
<td>121.152</td>
</tr>
<tr>
<td>47(e)</td>
<td>121.153</td>
</tr>
<tr>
<td>47(f)</td>
<td>121.001</td>
</tr>
<tr>
<td>47A(a)</td>
<td>123.101</td>
</tr>
<tr>
<td>47A(b)</td>
<td>123.102</td>
</tr>
<tr>
<td>47A(c)</td>
<td>123.102</td>
</tr>
<tr>
<td>47A(d)</td>
<td>123.103</td>
</tr>
<tr>
<td>47A(e)</td>
<td>123.103</td>
</tr>
<tr>
<td>47A(f)</td>
<td>123.104</td>
</tr>
<tr>
<td>48(a)</td>
<td>202.001, 202.002, 202.003 repealed</td>
</tr>
<tr>
<td>48(b)</td>
<td>202.006</td>
</tr>
<tr>
<td>48(c)</td>
<td>202.003 repealed</td>
</tr>
<tr>
<td>49(a)</td>
<td>202.004, 202.005</td>
</tr>
<tr>
<td>49(b)</td>
<td>202.007, 202.008</td>
</tr>
<tr>
<td>50(a)</td>
<td>202.051, 202.054</td>
</tr>
<tr>
<td>50(b)</td>
<td>202.052</td>
</tr>
<tr>
<td>50(c)</td>
<td>202.053</td>
</tr>
<tr>
<td>50(d)</td>
<td>202.055</td>
</tr>
<tr>
<td>50(e)</td>
<td>202.056</td>
</tr>
<tr>
<td>51</td>
<td>202.101-202.103</td>
</tr>
<tr>
<td>52</td>
<td>203.001</td>
</tr>
<tr>
<td>52A</td>
<td>203.002</td>
</tr>
<tr>
<td>53(a)</td>
<td>202.151</td>
</tr>
<tr>
<td>53(b)</td>
<td>202.009</td>
</tr>
<tr>
<td>53(c)</td>
<td>202.009</td>
</tr>
<tr>
<td>53A(a)</td>
<td>204.051</td>
</tr>
<tr>
<td>53A(b)</td>
<td>204.052</td>
</tr>
<tr>
<td>53A(c)</td>
<td>204.053</td>
</tr>
<tr>
<td>53A(d)</td>
<td>204.053</td>
</tr>
<tr>
<td>53A(e)</td>
<td>204.054</td>
</tr>
<tr>
<td>53A(f)</td>
<td>204.055</td>
</tr>
<tr>
<td>53A(g)</td>
<td>204.056</td>
</tr>
<tr>
<td>53B(a)</td>
<td>204.101</td>
</tr>
<tr>
<td>53B(b)</td>
<td>204.102</td>
</tr>
<tr>
<td>53B(c)</td>
<td>204.103</td>
</tr>
<tr>
<td>53C(a)</td>
<td>204.151</td>
</tr>
<tr>
<td>53C(b)</td>
<td>204.152</td>
</tr>
<tr>
<td>53C(c)</td>
<td>204.152</td>
</tr>
<tr>
<td>Probate Code</td>
<td>Estates Code</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>53C(d)</td>
<td>204.153</td>
</tr>
<tr>
<td>53D</td>
<td>204.201</td>
</tr>
<tr>
<td>53E</td>
<td>204.001</td>
</tr>
<tr>
<td>54</td>
<td>202.201</td>
</tr>
<tr>
<td>55(a)</td>
<td>202.202,</td>
</tr>
<tr>
<td></td>
<td>202.203</td>
</tr>
<tr>
<td>55(b)</td>
<td>202.204</td>
</tr>
<tr>
<td>55(c)</td>
<td>202.205</td>
</tr>
<tr>
<td>56</td>
<td>202.206</td>
</tr>
<tr>
<td>57</td>
<td>251.001</td>
</tr>
<tr>
<td>58(a)</td>
<td>251.002</td>
</tr>
<tr>
<td>58(b)</td>
<td>251.002</td>
</tr>
<tr>
<td>58(c)</td>
<td>255.002,</td>
</tr>
<tr>
<td></td>
<td>255.003</td>
</tr>
<tr>
<td>58(d)</td>
<td>255.001</td>
</tr>
<tr>
<td>58a</td>
<td>254.001</td>
</tr>
<tr>
<td>58b</td>
<td>254.003</td>
</tr>
<tr>
<td>58c</td>
<td>255.351</td>
</tr>
<tr>
<td>59(a)</td>
<td>251.051,</td>
</tr>
<tr>
<td></td>
<td>251.052,</td>
</tr>
<tr>
<td></td>
<td>251.102,</td>
</tr>
<tr>
<td></td>
<td>251.103,</td>
</tr>
<tr>
<td></td>
<td>251.104</td>
</tr>
<tr>
<td>59(a-1)</td>
<td>251.1045</td>
</tr>
<tr>
<td>59(b)</td>
<td>251.101,</td>
</tr>
<tr>
<td></td>
<td>251.104,</td>
</tr>
<tr>
<td></td>
<td>251.105</td>
</tr>
<tr>
<td>59(c)</td>
<td>251.102,</td>
</tr>
<tr>
<td></td>
<td>251.106</td>
</tr>
<tr>
<td>59A</td>
<td>254.004</td>
</tr>
<tr>
<td>60</td>
<td>251.052,</td>
</tr>
<tr>
<td></td>
<td>251.107</td>
</tr>
<tr>
<td>61</td>
<td>254.002</td>
</tr>
<tr>
<td>62</td>
<td>254.002</td>
</tr>
<tr>
<td>63</td>
<td>253.002</td>
</tr>
<tr>
<td>64</td>
<td>254.005</td>
</tr>
<tr>
<td>67(a)</td>
<td>255.052</td>
</tr>
<tr>
<td>67(a)(1)</td>
<td>255.053</td>
</tr>
<tr>
<td>67(a)(2)</td>
<td>255.054</td>
</tr>
<tr>
<td>67(b)</td>
<td>255.055</td>
</tr>
<tr>
<td>67(c)</td>
<td>255.051</td>
</tr>
<tr>
<td>67(d)</td>
<td>255.052</td>
</tr>
<tr>
<td>67(e)</td>
<td>255.056</td>
</tr>
<tr>
<td>68(a)</td>
<td>255.153,</td>
</tr>
<tr>
<td></td>
<td>255.154</td>
</tr>
<tr>
<td>68(b)</td>
<td>255.152</td>
</tr>
<tr>
<td>68(c)</td>
<td>255.152</td>
</tr>
<tr>
<td>68(d)</td>
<td>255.152</td>
</tr>
<tr>
<td>68(e)</td>
<td>255.151</td>
</tr>
<tr>
<td>69(a)</td>
<td>123.001</td>
</tr>
<tr>
<td>69(b)</td>
<td>123.001</td>
</tr>
<tr>
<td>69(c)</td>
<td>123.002</td>
</tr>
<tr>
<td>69A</td>
<td>253.001</td>
</tr>
<tr>
<td>70</td>
<td>255.201</td>
</tr>
<tr>
<td></td>
<td>repealed</td>
</tr>
<tr>
<td>70(a)</td>
<td>255.252</td>
</tr>
<tr>
<td>70(b)</td>
<td>255.253</td>
</tr>
<tr>
<td>70(c)</td>
<td>255.251</td>
</tr>
<tr>
<td>71(a)</td>
<td>252.001,</td>
</tr>
<tr>
<td></td>
<td>252.003</td>
</tr>
<tr>
<td>71(b)</td>
<td>252.002</td>
</tr>
<tr>
<td>71(c)</td>
<td>252.004</td>
</tr>
<tr>
<td>71(d)</td>
<td>252.051,</td>
</tr>
<tr>
<td></td>
<td>252.052</td>
</tr>
<tr>
<td>71(e)</td>
<td>252.101-</td>
</tr>
<tr>
<td></td>
<td>252.105</td>
</tr>
<tr>
<td>71(f)</td>
<td>252.151,</td>
</tr>
<tr>
<td></td>
<td>252.152</td>
</tr>
<tr>
<td>71(g)</td>
<td>252.153</td>
</tr>
<tr>
<td>71A(a)</td>
<td>255.301</td>
</tr>
<tr>
<td>71A(b)</td>
<td>255.302</td>
</tr>
<tr>
<td>71A(c)</td>
<td>255.303</td>
</tr>
<tr>
<td>72(a)</td>
<td>256.002,</td>
</tr>
<tr>
<td></td>
<td>301.001,</td>
</tr>
<tr>
<td></td>
<td>454.001,</td>
</tr>
<tr>
<td></td>
<td>454.002,</td>
</tr>
<tr>
<td></td>
<td>454.004,</td>
</tr>
<tr>
<td></td>
<td>454.051,</td>
</tr>
<tr>
<td></td>
<td>454.052</td>
</tr>
<tr>
<td>72(b)</td>
<td>454.003</td>
</tr>
<tr>
<td>73</td>
<td>256.003</td>
</tr>
<tr>
<td>74</td>
<td>301.002</td>
</tr>
<tr>
<td>75</td>
<td>252.201-</td>
</tr>
<tr>
<td></td>
<td>252.204</td>
</tr>
<tr>
<td>76</td>
<td>256.051,</td>
</tr>
<tr>
<td></td>
<td>301.051</td>
</tr>
<tr>
<td>77</td>
<td>304.001</td>
</tr>
<tr>
<td>78</td>
<td>304.003</td>
</tr>
<tr>
<td>79</td>
<td>304.002</td>
</tr>
<tr>
<td>80(a)</td>
<td>301.201</td>
</tr>
<tr>
<td>80(b)</td>
<td>303.201,</td>
</tr>
<tr>
<td></td>
<td>301.202</td>
</tr>
<tr>
<td>80(c)</td>
<td>301.203</td>
</tr>
<tr>
<td>81(a)</td>
<td>256.052,</td>
</tr>
<tr>
<td></td>
<td>256.053</td>
</tr>
<tr>
<td>81(b)</td>
<td>256.054</td>
</tr>
<tr>
<td>82</td>
<td>301.052</td>
</tr>
<tr>
<td>83(a)</td>
<td>256.101</td>
</tr>
<tr>
<td>83(b)</td>
<td>256.102</td>
</tr>
<tr>
<td>83(c)</td>
<td>256.103</td>
</tr>
<tr>
<td>84(a)</td>
<td>256.152</td>
</tr>
<tr>
<td>84(b)</td>
<td>256.153</td>
</tr>
<tr>
<td>84(c)</td>
<td>256.154</td>
</tr>
<tr>
<td>84(d)</td>
<td>256.155</td>
</tr>
<tr>
<td>85</td>
<td>256.156</td>
</tr>
<tr>
<td>87</td>
<td>256.157</td>
</tr>
<tr>
<td>88(a)</td>
<td>256.151,</td>
</tr>
<tr>
<td></td>
<td>301.151</td>
</tr>
<tr>
<td>88(b)</td>
<td>256.152</td>
</tr>
<tr>
<td>88(c)</td>
<td>301.152</td>
</tr>
<tr>
<td>88(d)</td>
<td>301.153</td>
</tr>
<tr>
<td>88(e)</td>
<td>301.154</td>
</tr>
<tr>
<td>89</td>
<td>256.201</td>
</tr>
<tr>
<td>89A(a)</td>
<td>257.051,</td>
</tr>
<tr>
<td></td>
<td>257.052</td>
</tr>
<tr>
<td>89A(b)</td>
<td>257.053</td>
</tr>
<tr>
<td>89A(c)</td>
<td>257.001</td>
</tr>
<tr>
<td>89B</td>
<td>257.054</td>
</tr>
<tr>
<td>89C(a)</td>
<td>257.101</td>
</tr>
<tr>
<td>89C(b)</td>
<td>257.102</td>
</tr>
<tr>
<td>89C(c)</td>
<td>257.103</td>
</tr>
<tr>
<td>89C(d)</td>
<td>257.104</td>
</tr>
<tr>
<td>90</td>
<td>256.202</td>
</tr>
<tr>
<td>91</td>
<td>256.203</td>
</tr>
<tr>
<td>92</td>
<td>362.002</td>
</tr>
<tr>
<td>93</td>
<td>256.204</td>
</tr>
<tr>
<td>94</td>
<td>256.001</td>
</tr>
<tr>
<td>95(a)</td>
<td>501.001</td>
</tr>
<tr>
<td>95(b)</td>
<td>501.002,</td>
</tr>
<tr>
<td></td>
<td>501.003</td>
</tr>
<tr>
<td>95(c)</td>
<td>501.003,</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>95(d)</td>
<td>503.002, 505.052</td>
<td>113(c)</td>
<td>152.054</td>
<td>132(b)</td>
<td>452.052</td>
</tr>
<tr>
<td>95(e)</td>
<td>504.003, 501.004, 501.005</td>
<td>113(d)</td>
<td>152.055</td>
<td>133</td>
<td>452.101, 452.102</td>
</tr>
<tr>
<td>95(f)</td>
<td>501.007</td>
<td>114(a)</td>
<td>152.053</td>
<td>134</td>
<td>452.151</td>
</tr>
<tr>
<td>96</td>
<td>503.001, 503.003</td>
<td>114(b)</td>
<td>152.055</td>
<td>135</td>
<td>452.152</td>
</tr>
<tr>
<td>97</td>
<td>503.001</td>
<td>115(a)</td>
<td>152.101</td>
<td>137(a)</td>
<td>205.001-205.004</td>
</tr>
<tr>
<td>98</td>
<td>503.051</td>
<td>115(b)</td>
<td>152.101</td>
<td>137(b)</td>
<td>205.008</td>
</tr>
<tr>
<td>99</td>
<td>503.052</td>
<td>115(c)</td>
<td>152.102</td>
<td>137(c)</td>
<td>205.006</td>
</tr>
<tr>
<td>100(a)</td>
<td>504.001</td>
<td>115(d)</td>
<td>152.102</td>
<td>137(d)</td>
<td>205.005</td>
</tr>
<tr>
<td>100(b)</td>
<td>504.002, 504.004</td>
<td>128(a)</td>
<td>258.001, 303.001</td>
<td>138</td>
<td>205.007</td>
</tr>
<tr>
<td>100(c)</td>
<td>504.003</td>
<td>128(b)</td>
<td>258.002</td>
<td>139</td>
<td>451.001</td>
</tr>
<tr>
<td>101</td>
<td>504.051, 504.052</td>
<td>128(c)</td>
<td>258.003, 303.002</td>
<td>140</td>
<td>451.002</td>
</tr>
<tr>
<td>102</td>
<td>504.053</td>
<td>128A(a)</td>
<td>308.001</td>
<td>141</td>
<td>451.003</td>
</tr>
<tr>
<td>103</td>
<td>502.001</td>
<td>128A(a-1)</td>
<td>308.0015</td>
<td>142</td>
<td>451.004</td>
</tr>
<tr>
<td>104</td>
<td>502.002</td>
<td>128A(b)</td>
<td>308.002</td>
<td>143</td>
<td>354.001</td>
</tr>
<tr>
<td>105</td>
<td>501.006</td>
<td>128A(c)</td>
<td>308.002</td>
<td>145(a)</td>
<td>none</td>
</tr>
<tr>
<td>105A(a)</td>
<td>505.001, 505.003</td>
<td>128A(d)</td>
<td>308.002</td>
<td>145(b)</td>
<td>401.001</td>
</tr>
<tr>
<td>105A(b)</td>
<td>505.004, 505.005</td>
<td>128A(e)</td>
<td>308.003</td>
<td>145(c)</td>
<td>401.002</td>
</tr>
<tr>
<td>105A(c)</td>
<td>505.002</td>
<td>128A(f)</td>
<td>308.002</td>
<td>145(d)</td>
<td>401.002</td>
</tr>
<tr>
<td>105A(d)</td>
<td>505.002</td>
<td>128A(g)</td>
<td>308.004</td>
<td>145(e)</td>
<td>401.003</td>
</tr>
<tr>
<td>105A(e)</td>
<td>505.006</td>
<td>128A(h)</td>
<td>308.004</td>
<td>145(f)</td>
<td>401.004</td>
</tr>
<tr>
<td>106</td>
<td>505.051</td>
<td>128B(a)</td>
<td>258.051</td>
<td>145(g)</td>
<td>401.003</td>
</tr>
<tr>
<td>107</td>
<td>505.052</td>
<td>128B(b)</td>
<td>258.051</td>
<td>145(h)</td>
<td>402.001</td>
</tr>
<tr>
<td>107A(a)</td>
<td>505.101</td>
<td>128B(c)</td>
<td>258.051</td>
<td>145(i)</td>
<td>401.004</td>
</tr>
<tr>
<td>107A(b)</td>
<td>505.101</td>
<td>128B(d)</td>
<td>258.052</td>
<td>145(j)</td>
<td>401.004</td>
</tr>
<tr>
<td>107A(c)</td>
<td>505.102</td>
<td>128B(e)</td>
<td>258.053</td>
<td>145(k)</td>
<td>401.004</td>
</tr>
<tr>
<td>107A(d)</td>
<td>505.103</td>
<td>129A</td>
<td>258.101, 303.003</td>
<td>145(l)</td>
<td>401.004</td>
</tr>
<tr>
<td>108</td>
<td>152.001, 152.004</td>
<td>131A(a)</td>
<td>452.001, 452.003</td>
<td>145(m)</td>
<td>401.004</td>
</tr>
<tr>
<td>109</td>
<td>152.001</td>
<td>131A(b)</td>
<td>452.002</td>
<td>145(n)</td>
<td>401.004</td>
</tr>
<tr>
<td>110</td>
<td>152.001</td>
<td>131A(c)</td>
<td>452.003</td>
<td>145(o)</td>
<td>401.001</td>
</tr>
<tr>
<td>111(a)</td>
<td>152.002</td>
<td>131A(d)</td>
<td>452.004</td>
<td>145(p)</td>
<td>401.005</td>
</tr>
<tr>
<td>111(b)</td>
<td>152.003</td>
<td>131A(e)</td>
<td>452.005</td>
<td>145(q)</td>
<td>351.351, 401.007</td>
</tr>
<tr>
<td>112</td>
<td>152.002</td>
<td>131A(f)</td>
<td>452.006</td>
<td>145(r)</td>
<td>401.008</td>
</tr>
<tr>
<td>113(a)</td>
<td>152.051</td>
<td>131A(g)</td>
<td>452.006</td>
<td>145A</td>
<td>401.006</td>
</tr>
<tr>
<td>113(b)</td>
<td>152.052</td>
<td>131A(h)</td>
<td>452.006</td>
<td>145B</td>
<td>402.002</td>
</tr>
<tr>
<td></td>
<td></td>
<td>131A(i)</td>
<td>452.007</td>
<td>145C(a)</td>
<td>402.051</td>
</tr>
<tr>
<td></td>
<td></td>
<td>131A(j)</td>
<td>452.008</td>
<td>145C(b)</td>
<td>402.052</td>
</tr>
<tr>
<td></td>
<td></td>
<td>132(a)</td>
<td>452.051</td>
<td>145C(c)</td>
<td>402.053</td>
</tr>
<tr>
<td></td>
<td></td>
<td>137A</td>
<td>none</td>
<td>145C(d)</td>
<td>402.054</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
## Conversion Chart – Probate Code to Estates Code

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>146(a)(1)</td>
<td>403.051</td>
</tr>
<tr>
<td>146(a)(2)</td>
<td>403.051</td>
</tr>
<tr>
<td>146(a)(3)</td>
<td>403.051</td>
</tr>
<tr>
<td>146(a)(4)</td>
<td>403.001</td>
</tr>
<tr>
<td>146(a-1)</td>
<td>403.051</td>
</tr>
<tr>
<td>146(b)</td>
<td>403.052</td>
</tr>
<tr>
<td>146(b-1)</td>
<td>403.053</td>
</tr>
<tr>
<td>146(b-2)</td>
<td>403.054</td>
</tr>
<tr>
<td>146(b-3)</td>
<td>403.055</td>
</tr>
<tr>
<td>146(b-4)</td>
<td>403.056</td>
</tr>
<tr>
<td>146(b-5)</td>
<td>403.056</td>
</tr>
<tr>
<td>146(b-6)</td>
<td>403.057</td>
</tr>
<tr>
<td>146(b-7)</td>
<td>403.058</td>
</tr>
<tr>
<td>146(c)</td>
<td>403.0585</td>
</tr>
<tr>
<td>147</td>
<td>403.059</td>
</tr>
<tr>
<td>148</td>
<td>403.060</td>
</tr>
<tr>
<td>149</td>
<td>404.002</td>
</tr>
<tr>
<td>149A</td>
<td>404.001</td>
</tr>
<tr>
<td>149B</td>
<td>405.001</td>
</tr>
<tr>
<td>149C</td>
<td>404.0035, 404.0036, 404.0037</td>
</tr>
<tr>
<td>149D</td>
<td>405.003</td>
</tr>
<tr>
<td>149E</td>
<td>405.003</td>
</tr>
<tr>
<td>149F</td>
<td>405.003</td>
</tr>
<tr>
<td>149G</td>
<td>405.011</td>
</tr>
<tr>
<td>150</td>
<td>405.008</td>
</tr>
<tr>
<td>151(a)</td>
<td>405.004</td>
</tr>
<tr>
<td>151(a-1)</td>
<td>405.005</td>
</tr>
<tr>
<td>151(b)</td>
<td>405.006</td>
</tr>
<tr>
<td>151(c)</td>
<td>405.007</td>
</tr>
<tr>
<td>151(d)</td>
<td>405.007</td>
</tr>
<tr>
<td>151(e)</td>
<td>405.002</td>
</tr>
<tr>
<td>152</td>
<td>405.009</td>
</tr>
<tr>
<td>153</td>
<td>405.010</td>
</tr>
<tr>
<td>154</td>
<td>404.004</td>
</tr>
<tr>
<td>154A</td>
<td>404.005</td>
</tr>
<tr>
<td>154A(l)</td>
<td>351.351</td>
</tr>
<tr>
<td>155</td>
<td>101.052, 453.001, 453.002</td>
</tr>
<tr>
<td>156</td>
<td>101.052, 453.006</td>
</tr>
<tr>
<td>160(a)</td>
<td>453.003</td>
</tr>
<tr>
<td>160(b)</td>
<td>453.003, 453.004</td>
</tr>
<tr>
<td>160(c)</td>
<td>453.003, 453.004</td>
</tr>
<tr>
<td>168</td>
<td>453.006-453.008</td>
</tr>
<tr>
<td>176</td>
<td>453.005</td>
</tr>
<tr>
<td>177</td>
<td>453.009</td>
</tr>
<tr>
<td>178(a)</td>
<td>306.001</td>
</tr>
<tr>
<td>178(b)</td>
<td>306.002</td>
</tr>
<tr>
<td>178(c)</td>
<td>306.001</td>
</tr>
<tr>
<td>179</td>
<td>301.101</td>
</tr>
<tr>
<td>180</td>
<td>301.153</td>
</tr>
<tr>
<td>181</td>
<td>306.003</td>
</tr>
<tr>
<td>182</td>
<td>306.004</td>
</tr>
<tr>
<td>183</td>
<td>306.005</td>
</tr>
<tr>
<td>186</td>
<td>306.007</td>
</tr>
<tr>
<td>187</td>
<td>306.006</td>
</tr>
<tr>
<td>188</td>
<td>307.001</td>
</tr>
<tr>
<td>189</td>
<td>305.002</td>
</tr>
<tr>
<td>190(a)</td>
<td>305.051</td>
</tr>
<tr>
<td>190(b)</td>
<td>305.052</td>
</tr>
<tr>
<td>190(c)</td>
<td>305.053</td>
</tr>
<tr>
<td>190(d)</td>
<td>305.054, 305.055</td>
</tr>
<tr>
<td>192</td>
<td>305.003, 305.054</td>
</tr>
<tr>
<td>194</td>
<td>303.101, 305.106</td>
</tr>
<tr>
<td>194(1)</td>
<td>305.151</td>
</tr>
<tr>
<td>194(2)</td>
<td>305.151</td>
</tr>
<tr>
<td>194(3)</td>
<td>305.152</td>
</tr>
<tr>
<td>194(5)</td>
<td>305.154</td>
</tr>
<tr>
<td>194(6)</td>
<td>305.155</td>
</tr>
<tr>
<td>194(7)</td>
<td>305.156</td>
</tr>
<tr>
<td>194(8)(a)</td>
<td>305.157</td>
</tr>
<tr>
<td>194(8)(b)</td>
<td>305.156</td>
</tr>
<tr>
<td>194(8)(c)</td>
<td>305.156</td>
</tr>
<tr>
<td>194(8)(d)</td>
<td>305.156</td>
</tr>
<tr>
<td>194(8)(e)</td>
<td>305.158</td>
</tr>
<tr>
<td>194(9)</td>
<td>305.159</td>
</tr>
<tr>
<td>194(10)</td>
<td>305.201</td>
</tr>
<tr>
<td>194(11)</td>
<td>305.202</td>
</tr>
<tr>
<td>194(12)</td>
<td>305.201, 305.207</td>
</tr>
<tr>
<td>194(13)</td>
<td>305.153</td>
</tr>
<tr>
<td>194(14)</td>
<td>305.160</td>
</tr>
<tr>
<td>195</td>
<td>305.101</td>
</tr>
<tr>
<td>196</td>
<td>305.108</td>
</tr>
<tr>
<td>197</td>
<td>305.107, 305.109</td>
</tr>
<tr>
<td>198</td>
<td>305.103</td>
</tr>
<tr>
<td>199</td>
<td>305.104</td>
</tr>
<tr>
<td>200</td>
<td>305.105</td>
</tr>
<tr>
<td>201(a)</td>
<td>305.203</td>
</tr>
<tr>
<td>201(b)</td>
<td>305.204</td>
</tr>
<tr>
<td>201(c)</td>
<td>305.205</td>
</tr>
<tr>
<td>202</td>
<td>305.204</td>
</tr>
<tr>
<td>203</td>
<td>305.251</td>
</tr>
<tr>
<td>204</td>
<td>305.251</td>
</tr>
<tr>
<td>205</td>
<td>305.252</td>
</tr>
<tr>
<td>206(a)</td>
<td>305.252</td>
</tr>
<tr>
<td>206(b)</td>
<td>305.253</td>
</tr>
<tr>
<td>207</td>
<td>305.254</td>
</tr>
<tr>
<td>208</td>
<td>305.255</td>
</tr>
<tr>
<td>209</td>
<td>305.257</td>
</tr>
<tr>
<td>210</td>
<td>305.256</td>
</tr>
<tr>
<td>211</td>
<td>305.206</td>
</tr>
<tr>
<td>212</td>
<td>305.206</td>
</tr>
<tr>
<td>213</td>
<td>305.110</td>
</tr>
<tr>
<td>214</td>
<td>305.102</td>
</tr>
<tr>
<td>215</td>
<td>305.102</td>
</tr>
<tr>
<td>216</td>
<td>305.102</td>
</tr>
<tr>
<td>217</td>
<td>305.102</td>
</tr>
<tr>
<td>218</td>
<td>305.111</td>
</tr>
<tr>
<td>220(a)</td>
<td>361.102</td>
</tr>
<tr>
<td>220(b)</td>
<td>361.103</td>
</tr>
<tr>
<td>220(c)</td>
<td>361.104</td>
</tr>
<tr>
<td>220(d)</td>
<td>361.105</td>
</tr>
<tr>
<td>220(e)</td>
<td>361.106</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>220(f)</td>
<td>361.101</td>
</tr>
<tr>
<td>220(g)</td>
<td>361.151</td>
</tr>
<tr>
<td>221(a)</td>
<td>361.001</td>
</tr>
<tr>
<td>221(b)</td>
<td>361.002</td>
</tr>
<tr>
<td>221(c)</td>
<td>361.003</td>
</tr>
<tr>
<td>221(d)</td>
<td>361.004</td>
</tr>
<tr>
<td>221(e)</td>
<td>361.005</td>
</tr>
<tr>
<td>221(f)</td>
<td>361.005</td>
</tr>
<tr>
<td>221A</td>
<td>56.001</td>
</tr>
<tr>
<td>221B</td>
<td>56.002</td>
</tr>
<tr>
<td>222(a)(1)</td>
<td>361.051</td>
</tr>
<tr>
<td>222(a)(2)</td>
<td>361.054</td>
</tr>
<tr>
<td>222(b)</td>
<td>361.052</td>
</tr>
<tr>
<td>222(c)</td>
<td>361.053</td>
</tr>
<tr>
<td>222A</td>
<td>361.054</td>
</tr>
<tr>
<td>223</td>
<td>361.152</td>
</tr>
<tr>
<td>224</td>
<td>361.153</td>
</tr>
<tr>
<td>225</td>
<td>361.153</td>
</tr>
<tr>
<td>226</td>
<td>361.154</td>
</tr>
<tr>
<td>227</td>
<td>361.155</td>
</tr>
<tr>
<td>230</td>
<td>351.101</td>
</tr>
<tr>
<td>232</td>
<td>351.102</td>
</tr>
<tr>
<td>233(a)</td>
<td>351.151</td>
</tr>
<tr>
<td>233(b)</td>
<td>351.152</td>
</tr>
<tr>
<td>233(c)</td>
<td>351.152</td>
</tr>
<tr>
<td>233(d)</td>
<td>351.152</td>
</tr>
<tr>
<td>233(e)</td>
<td>351.153</td>
</tr>
<tr>
<td>233A</td>
<td>351.054</td>
</tr>
<tr>
<td>234(a)</td>
<td>351.051</td>
</tr>
<tr>
<td>234(b)</td>
<td>351.052</td>
</tr>
<tr>
<td>235</td>
<td>351.103</td>
</tr>
<tr>
<td>238(a)</td>
<td>351.201</td>
</tr>
<tr>
<td>238(b)</td>
<td>351.202</td>
</tr>
<tr>
<td>238(c)</td>
<td>351.203</td>
</tr>
<tr>
<td>238(d)</td>
<td>351.203</td>
</tr>
<tr>
<td>238(e)</td>
<td>351.203</td>
</tr>
<tr>
<td>238(f)</td>
<td>351.202</td>
</tr>
<tr>
<td>238(g)</td>
<td>351.204</td>
</tr>
<tr>
<td>238(h)</td>
<td>351.205</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>306(f)</td>
<td>355.156</td>
</tr>
<tr>
<td>306(g)</td>
<td>355.157</td>
</tr>
<tr>
<td>306(h)</td>
<td>355.158</td>
</tr>
<tr>
<td>306(i)</td>
<td>355.158, 355.159</td>
</tr>
<tr>
<td>306(j)</td>
<td>355.158</td>
</tr>
<tr>
<td>306(k)</td>
<td>355.160</td>
</tr>
<tr>
<td>307</td>
<td>355.003</td>
</tr>
<tr>
<td>308</td>
<td>355.002</td>
</tr>
<tr>
<td>309</td>
<td>355.051</td>
</tr>
<tr>
<td>310</td>
<td>355.052</td>
</tr>
<tr>
<td>311</td>
<td>355.053</td>
</tr>
<tr>
<td>312(a)</td>
<td>355.054</td>
</tr>
<tr>
<td>312(b)</td>
<td>355.055</td>
</tr>
<tr>
<td>312(c)</td>
<td>355.056</td>
</tr>
<tr>
<td>312(d)</td>
<td>355.057</td>
</tr>
<tr>
<td>312(e)</td>
<td>355.058</td>
</tr>
<tr>
<td>313</td>
<td>355.064, 355.066</td>
</tr>
<tr>
<td>314</td>
<td>355.065</td>
</tr>
<tr>
<td>315</td>
<td>355.066</td>
</tr>
<tr>
<td>316</td>
<td>355.111</td>
</tr>
<tr>
<td>317</td>
<td>355.202</td>
</tr>
<tr>
<td>318</td>
<td>355.201</td>
</tr>
<tr>
<td>319</td>
<td>355.063</td>
</tr>
<tr>
<td>320(a)</td>
<td>355.101</td>
</tr>
<tr>
<td>320(b)</td>
<td>355.104</td>
</tr>
<tr>
<td>320(c)</td>
<td>355.105</td>
</tr>
<tr>
<td>320(d)</td>
<td>355.106</td>
</tr>
<tr>
<td>320A</td>
<td>355.110</td>
</tr>
<tr>
<td>321</td>
<td>355.108</td>
</tr>
<tr>
<td>322</td>
<td>355.102</td>
</tr>
<tr>
<td>322A(a)</td>
<td>124.001</td>
</tr>
<tr>
<td>322A(b)</td>
<td>124.005</td>
</tr>
<tr>
<td>322A(c)</td>
<td>124.006</td>
</tr>
<tr>
<td>322A(d)</td>
<td>124.006</td>
</tr>
<tr>
<td>322A(e)</td>
<td>124.006</td>
</tr>
<tr>
<td>322A(f)</td>
<td>124.006</td>
</tr>
<tr>
<td>322A(g)</td>
<td>124.007</td>
</tr>
<tr>
<td>322A(h)</td>
<td>124.008</td>
</tr>
<tr>
<td>322A(i)</td>
<td>124.009</td>
</tr>
<tr>
<td>322A(k)</td>
<td>124.010</td>
</tr>
<tr>
<td>322A(l)</td>
<td>124.003</td>
</tr>
<tr>
<td>322A(m)</td>
<td>124.010</td>
</tr>
<tr>
<td>322A(n)</td>
<td>124.014</td>
</tr>
<tr>
<td>322A(o)</td>
<td>124.015</td>
</tr>
<tr>
<td>322A(p)</td>
<td>124.004</td>
</tr>
<tr>
<td>322A(q)</td>
<td>124.011</td>
</tr>
<tr>
<td>322A(r)</td>
<td>124.012</td>
</tr>
<tr>
<td>322A(s)</td>
<td>124.001</td>
</tr>
<tr>
<td>322A(t)</td>
<td>124.013</td>
</tr>
<tr>
<td>322A(u)</td>
<td>124.015</td>
</tr>
<tr>
<td>322A(v)</td>
<td>124.016</td>
</tr>
<tr>
<td>322A(w)</td>
<td>124.017</td>
</tr>
<tr>
<td>322A(x)</td>
<td>124.002</td>
</tr>
<tr>
<td>322A(y)</td>
<td>124.018</td>
</tr>
<tr>
<td>322B</td>
<td>355.109</td>
</tr>
<tr>
<td>323</td>
<td>355.112</td>
</tr>
<tr>
<td>324</td>
<td>355.203</td>
</tr>
<tr>
<td>326</td>
<td>355.107</td>
</tr>
<tr>
<td>328</td>
<td>355.113</td>
</tr>
<tr>
<td>329(a)</td>
<td>351.251</td>
</tr>
<tr>
<td>329(b)</td>
<td>351.252</td>
</tr>
<tr>
<td>329(c)</td>
<td>351.252, 351.253</td>
</tr>
<tr>
<td>331</td>
<td>356.001</td>
</tr>
<tr>
<td>332</td>
<td>356.002</td>
</tr>
<tr>
<td>333</td>
<td>356.051</td>
</tr>
<tr>
<td>334</td>
<td>356.101, 356.102</td>
</tr>
<tr>
<td>335</td>
<td>356.151-356.155</td>
</tr>
<tr>
<td>336</td>
<td>356.103</td>
</tr>
<tr>
<td>337</td>
<td>356.104</td>
</tr>
<tr>
<td>338</td>
<td>356.201-356.203</td>
</tr>
<tr>
<td>339</td>
<td>356.105</td>
</tr>
<tr>
<td>340</td>
<td>356.257</td>
</tr>
<tr>
<td>341</td>
<td>356.251</td>
</tr>
<tr>
<td>342</td>
<td>356.252</td>
</tr>
<tr>
<td>344</td>
<td>356.253</td>
</tr>
<tr>
<td>345</td>
<td>356.254</td>
</tr>
<tr>
<td>345A</td>
<td>356.255</td>
</tr>
<tr>
<td>346</td>
<td>356.256</td>
</tr>
<tr>
<td>347</td>
<td>356.601, 356.602</td>
</tr>
<tr>
<td>348(a)</td>
<td>356.301, 356.302</td>
</tr>
<tr>
<td>348(b)</td>
<td>356.351-356.353</td>
</tr>
<tr>
<td>349(a)</td>
<td>356.401</td>
</tr>
<tr>
<td>349(b)</td>
<td>356.402</td>
</tr>
<tr>
<td>349(c)</td>
<td>356.403</td>
</tr>
<tr>
<td>349(d)</td>
<td>356.404</td>
</tr>
<tr>
<td>349(e)</td>
<td>356.405</td>
</tr>
<tr>
<td>350</td>
<td>356.451</td>
</tr>
<tr>
<td>351</td>
<td>356.501, 356.502</td>
</tr>
<tr>
<td>352(a)</td>
<td>356.651</td>
</tr>
<tr>
<td>352(b)</td>
<td>356.652</td>
</tr>
<tr>
<td>352(c)</td>
<td>356.653</td>
</tr>
<tr>
<td>352(d)</td>
<td>356.654</td>
</tr>
<tr>
<td>352(e)</td>
<td>356.655</td>
</tr>
<tr>
<td>353</td>
<td>356.551</td>
</tr>
<tr>
<td>354</td>
<td>356.553-356.555</td>
</tr>
<tr>
<td>355</td>
<td>356.552, 356.556</td>
</tr>
<tr>
<td>356</td>
<td>356.557</td>
</tr>
<tr>
<td>357</td>
<td>356.558</td>
</tr>
<tr>
<td>358</td>
<td>356.559</td>
</tr>
<tr>
<td>359</td>
<td>357.001</td>
</tr>
<tr>
<td>360</td>
<td>357.001</td>
</tr>
<tr>
<td>361</td>
<td>357.002</td>
</tr>
<tr>
<td>362</td>
<td>357.005</td>
</tr>
<tr>
<td>363</td>
<td>357.003</td>
</tr>
<tr>
<td>364</td>
<td>357.004</td>
</tr>
<tr>
<td>365</td>
<td>357.051</td>
</tr>
<tr>
<td>366</td>
<td>357.052</td>
</tr>
<tr>
<td>367(a)</td>
<td>358.001</td>
</tr>
<tr>
<td>367(b)</td>
<td>358.051</td>
</tr>
<tr>
<td>367(c)</td>
<td>358.051-358.060</td>
</tr>
<tr>
<td>368(a)</td>
<td>358.101</td>
</tr>
<tr>
<td>Probate Code</td>
<td>Estates Code</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td>368(b)</td>
<td>358.102</td>
</tr>
<tr>
<td>369(a)</td>
<td>358.151</td>
</tr>
<tr>
<td>369(b)</td>
<td>358.151-358.155</td>
</tr>
<tr>
<td>370</td>
<td>358.201</td>
</tr>
<tr>
<td>371</td>
<td>358.251-358.254</td>
</tr>
<tr>
<td>373(a)</td>
<td>360.001</td>
</tr>
<tr>
<td>373(b)</td>
<td>360.001</td>
</tr>
<tr>
<td>373(c)</td>
<td>360.002</td>
</tr>
<tr>
<td>374</td>
<td>360.051</td>
</tr>
<tr>
<td>375</td>
<td>360.052</td>
</tr>
<tr>
<td>377</td>
<td>360.101</td>
</tr>
<tr>
<td>378</td>
<td>360.102</td>
</tr>
<tr>
<td>378A(a)</td>
<td>124.052</td>
</tr>
<tr>
<td>378A(b)</td>
<td>124.051</td>
</tr>
<tr>
<td>378B(a)</td>
<td>310.003</td>
</tr>
<tr>
<td>378B(b)</td>
<td>310.004</td>
</tr>
<tr>
<td>378B(c)</td>
<td>310.004</td>
</tr>
<tr>
<td>378B(d)</td>
<td>310.004</td>
</tr>
<tr>
<td>378B(g)</td>
<td>310.005</td>
</tr>
<tr>
<td>378B(h)</td>
<td>310.001, 310.006</td>
</tr>
<tr>
<td>378B(i)</td>
<td>310.002</td>
</tr>
<tr>
<td>379</td>
<td>360.251</td>
</tr>
<tr>
<td>380(a)</td>
<td>360.151</td>
</tr>
<tr>
<td>380(b)</td>
<td>360.152</td>
</tr>
<tr>
<td>380(c)</td>
<td>360.153</td>
</tr>
<tr>
<td>380(d)</td>
<td>360.154</td>
</tr>
<tr>
<td>380(e)</td>
<td>360.155</td>
</tr>
<tr>
<td>380(f)</td>
<td>360.156</td>
</tr>
<tr>
<td>380(g)</td>
<td>360.157</td>
</tr>
<tr>
<td>381(a)</td>
<td>360.201</td>
</tr>
<tr>
<td>381(b)</td>
<td>360.202</td>
</tr>
<tr>
<td>381(c)</td>
<td>360.202</td>
</tr>
<tr>
<td>381(d)</td>
<td>360.203</td>
</tr>
<tr>
<td>382</td>
<td>360.252</td>
</tr>
<tr>
<td>384</td>
<td>360.301</td>
</tr>
<tr>
<td>385</td>
<td>360.253</td>
</tr>
<tr>
<td>386</td>
<td>360.254</td>
</tr>
<tr>
<td>387</td>
<td>360.103</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>398A</td>
<td>351.105</td>
</tr>
<tr>
<td>399(a)</td>
<td>359.001</td>
</tr>
<tr>
<td>399(b)</td>
<td>359.002</td>
</tr>
<tr>
<td>399(c)</td>
<td>359.003, 359.004</td>
</tr>
<tr>
<td>399(d)</td>
<td>359.005</td>
</tr>
<tr>
<td>400</td>
<td>359.101</td>
</tr>
<tr>
<td>401</td>
<td>359.051-359.054</td>
</tr>
<tr>
<td>402</td>
<td>359.006</td>
</tr>
<tr>
<td>403</td>
<td>359.102</td>
</tr>
<tr>
<td>404</td>
<td>362.001</td>
</tr>
<tr>
<td>405</td>
<td>362.003, 362.004</td>
</tr>
<tr>
<td>405A</td>
<td>362.007</td>
</tr>
<tr>
<td>406</td>
<td>362.051</td>
</tr>
<tr>
<td>407</td>
<td>362.005</td>
</tr>
<tr>
<td>408(a)</td>
<td>362.006</td>
</tr>
<tr>
<td>408(b)</td>
<td>362.011</td>
</tr>
<tr>
<td>408(c)</td>
<td>362.012</td>
</tr>
<tr>
<td>408(d)</td>
<td>362.013</td>
</tr>
<tr>
<td>409</td>
<td>362.009</td>
</tr>
<tr>
<td>410</td>
<td>362.010</td>
</tr>
<tr>
<td>412</td>
<td>362.008</td>
</tr>
<tr>
<td>414</td>
<td>362.052</td>
</tr>
<tr>
<td>427</td>
<td>551.001-551.004</td>
</tr>
<tr>
<td>428</td>
<td>551.005</td>
</tr>
<tr>
<td>429</td>
<td>551.101</td>
</tr>
<tr>
<td>430</td>
<td>551.006</td>
</tr>
<tr>
<td>431</td>
<td>551.102</td>
</tr>
<tr>
<td>432</td>
<td>551.103</td>
</tr>
<tr>
<td>433(a)</td>
<td>551.051, 551.052</td>
</tr>
<tr>
<td>433(b)</td>
<td>551.052, 551.055</td>
</tr>
<tr>
<td>433(c)</td>
<td>551.052, 551.053</td>
</tr>
<tr>
<td>433(d)</td>
<td>551.054</td>
</tr>
<tr>
<td>436(1)</td>
<td>113.001</td>
</tr>
<tr>
<td>436(2)</td>
<td>113.001</td>
</tr>
<tr>
<td>436(3)</td>
<td>113.001</td>
</tr>
<tr>
<td>436(4)</td>
<td>113.004</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>436(5)</td>
<td>113.004</td>
</tr>
<tr>
<td>436(6)</td>
<td>113.003</td>
</tr>
<tr>
<td>436(7)</td>
<td>113.002</td>
</tr>
<tr>
<td>436(8)</td>
<td>113.001</td>
</tr>
<tr>
<td>436(9)</td>
<td>113.001</td>
</tr>
<tr>
<td>436(10)</td>
<td>113.004</td>
</tr>
<tr>
<td>436(11)</td>
<td>113.001</td>
</tr>
<tr>
<td>436(12)</td>
<td>113.001</td>
</tr>
<tr>
<td>436(13)</td>
<td>113.001</td>
</tr>
<tr>
<td>436(14)</td>
<td>113.004</td>
</tr>
<tr>
<td>436(15)</td>
<td>113.001</td>
</tr>
<tr>
<td>437</td>
<td>113.101</td>
</tr>
<tr>
<td>438(a)</td>
<td>113.102</td>
</tr>
<tr>
<td>438(b)</td>
<td>113.103</td>
</tr>
<tr>
<td>438(c)</td>
<td>113.104</td>
</tr>
<tr>
<td>438A(a)</td>
<td>113.004</td>
</tr>
<tr>
<td>438A(b)</td>
<td>113.105</td>
</tr>
<tr>
<td>438A(c)</td>
<td>113.105</td>
</tr>
<tr>
<td>438A(d)</td>
<td>113.154</td>
</tr>
<tr>
<td>438A(e)</td>
<td>113.105</td>
</tr>
<tr>
<td>438A(f)</td>
<td>113.206, 113.208</td>
</tr>
<tr>
<td>438A(g)</td>
<td>113.208</td>
</tr>
<tr>
<td>438h</td>
<td>113.106, 113.154</td>
</tr>
<tr>
<td>439(a)</td>
<td>113.151</td>
</tr>
<tr>
<td>439(b)</td>
<td>113.152</td>
</tr>
<tr>
<td>439(c)</td>
<td>113.153</td>
</tr>
<tr>
<td>439(d)</td>
<td>113.155</td>
</tr>
<tr>
<td>439A(a)</td>
<td>113.051</td>
</tr>
<tr>
<td>439A(b)</td>
<td>113.052</td>
</tr>
<tr>
<td>439A(c)</td>
<td>113.053</td>
</tr>
<tr>
<td>439A(d)</td>
<td>113.053</td>
</tr>
<tr>
<td>439A(e)</td>
<td>113.053</td>
</tr>
<tr>
<td>440</td>
<td>113.156, 113.157</td>
</tr>
<tr>
<td>441</td>
<td>113.158</td>
</tr>
<tr>
<td>442</td>
<td>113.251-113.252</td>
</tr>
<tr>
<td>443</td>
<td>113.201</td>
</tr>
<tr>
<td>444</td>
<td>113.003, 113.005, 113.202</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>445</td>
<td>113.203, 113.207</td>
</tr>
<tr>
<td>446</td>
<td>113.204</td>
</tr>
<tr>
<td>447</td>
<td>113.205</td>
</tr>
<tr>
<td>448</td>
<td>113.209</td>
</tr>
<tr>
<td>449</td>
<td>113.210</td>
</tr>
<tr>
<td>450(a)</td>
<td>111.051, 111.052</td>
</tr>
<tr>
<td>450(b)</td>
<td>111.053</td>
</tr>
<tr>
<td>450(c)</td>
<td>111.051</td>
</tr>
<tr>
<td>451</td>
<td>112.051</td>
</tr>
<tr>
<td>452</td>
<td>112.052</td>
</tr>
<tr>
<td>453</td>
<td>112.151</td>
</tr>
<tr>
<td>454</td>
<td>112.152</td>
</tr>
<tr>
<td>455</td>
<td>112.054</td>
</tr>
<tr>
<td>456(a)</td>
<td>112.035, 112.101</td>
</tr>
<tr>
<td>456(b)</td>
<td>112.102</td>
</tr>
<tr>
<td>456(c)</td>
<td>112.103</td>
</tr>
<tr>
<td>456(d)</td>
<td>112.101</td>
</tr>
<tr>
<td>457</td>
<td>112.104</td>
</tr>
<tr>
<td>458</td>
<td>112.053, 112.105</td>
</tr>
<tr>
<td>459</td>
<td>112.106</td>
</tr>
<tr>
<td>460(a)</td>
<td>112.203</td>
</tr>
<tr>
<td>460(b)</td>
<td>112.204</td>
</tr>
<tr>
<td>460(c)</td>
<td>112.206</td>
</tr>
<tr>
<td>460(d)</td>
<td>112.205</td>
</tr>
<tr>
<td>460(e)</td>
<td>112.207</td>
</tr>
<tr>
<td>460(f)</td>
<td>112.201, 112.202</td>
</tr>
<tr>
<td>460(g)</td>
<td>112.208</td>
</tr>
<tr>
<td>461</td>
<td>112.251-112.253</td>
</tr>
<tr>
<td>462</td>
<td>112.002</td>
</tr>
<tr>
<td>471</td>
<td>123.051</td>
</tr>
<tr>
<td>472(a)</td>
<td>123.052</td>
</tr>
<tr>
<td>472(b)</td>
<td>123.053</td>
</tr>
<tr>
<td>473(a)</td>
<td>123.054</td>
</tr>
<tr>
<td>473(b)</td>
<td>123.055</td>
</tr>
<tr>
<td>481</td>
<td>751.001</td>
</tr>
<tr>
<td>482</td>
<td>751.002</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>483</td>
<td>751.004 [repealed]</td>
</tr>
<tr>
<td>484</td>
<td>751.051</td>
</tr>
<tr>
<td>485</td>
<td>751.133</td>
</tr>
<tr>
<td>485A</td>
<td>751.053</td>
</tr>
<tr>
<td>486</td>
<td>751.054</td>
</tr>
<tr>
<td>487</td>
<td>751.055-751.056</td>
</tr>
<tr>
<td>487A</td>
<td>751.057</td>
</tr>
<tr>
<td>488</td>
<td>751.058</td>
</tr>
<tr>
<td>489</td>
<td>751.151</td>
</tr>
<tr>
<td>489A(a)</td>
<td>751.101</td>
</tr>
<tr>
<td>489A(b)</td>
<td>751.102</td>
</tr>
<tr>
<td>489B(c)</td>
<td>751.103</td>
</tr>
<tr>
<td>489B(d)</td>
<td>751.104</td>
</tr>
<tr>
<td>489B(e)</td>
<td>751.104</td>
</tr>
<tr>
<td>489B(f)</td>
<td>751.103</td>
</tr>
<tr>
<td>489B(g)</td>
<td>751.105</td>
</tr>
<tr>
<td>489B(h)</td>
<td>751.106</td>
</tr>
<tr>
<td>489B(i)</td>
<td>751.005</td>
</tr>
<tr>
<td>489B(j)</td>
<td>751.006</td>
</tr>
<tr>
<td>490(a)</td>
<td>752.001-752.003, 752.051</td>
</tr>
<tr>
<td>490(b)</td>
<td>752.004</td>
</tr>
<tr>
<td>491</td>
<td>752.101</td>
</tr>
<tr>
<td>492</td>
<td>752.102</td>
</tr>
<tr>
<td>493</td>
<td>752.103</td>
</tr>
<tr>
<td>494</td>
<td>752.104</td>
</tr>
<tr>
<td>495</td>
<td>752.105</td>
</tr>
<tr>
<td>496</td>
<td>752.106</td>
</tr>
<tr>
<td>497</td>
<td>752.107</td>
</tr>
<tr>
<td>498</td>
<td>752.108</td>
</tr>
<tr>
<td>499</td>
<td>752.109</td>
</tr>
<tr>
<td>500</td>
<td>752.110</td>
</tr>
<tr>
<td>501</td>
<td>752.111</td>
</tr>
<tr>
<td>502</td>
<td>752.112</td>
</tr>
<tr>
<td>503</td>
<td>752.113</td>
</tr>
<tr>
<td>504</td>
<td>752.114</td>
</tr>
<tr>
<td>505</td>
<td>752.115</td>
</tr>
<tr>
<td>506</td>
<td>751.003</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>601</td>
<td>1002.001</td>
</tr>
<tr>
<td>601(1)</td>
<td>1002.002</td>
</tr>
<tr>
<td>601(2)</td>
<td>1002.003</td>
</tr>
<tr>
<td>601(3)</td>
<td>1002.004</td>
</tr>
<tr>
<td>601(4)</td>
<td>1002.005</td>
</tr>
<tr>
<td>601(5)</td>
<td>1002.006</td>
</tr>
<tr>
<td>601(6)</td>
<td>1002.007</td>
</tr>
<tr>
<td>601(7)</td>
<td>1002.009</td>
</tr>
<tr>
<td>601(8)</td>
<td>1002.008</td>
</tr>
<tr>
<td>601(9)</td>
<td>1002.010</td>
</tr>
<tr>
<td>601(10)</td>
<td>1002.011</td>
</tr>
<tr>
<td>601(11)</td>
<td>1002.012</td>
</tr>
<tr>
<td>601(12)</td>
<td>1002.013</td>
</tr>
<tr>
<td>601(12-a)</td>
<td>1002.014</td>
</tr>
<tr>
<td>601(13)</td>
<td>1002.016</td>
</tr>
<tr>
<td>601(14)</td>
<td>1002.017</td>
</tr>
<tr>
<td>601(15)</td>
<td>1002.018</td>
</tr>
<tr>
<td>601(16)</td>
<td>1002.019</td>
</tr>
<tr>
<td>601(17)</td>
<td>1002.020</td>
</tr>
<tr>
<td>601(19)</td>
<td>1002.021</td>
</tr>
<tr>
<td>601(20)</td>
<td>1002.022</td>
</tr>
<tr>
<td>601(21)</td>
<td>1002.023</td>
</tr>
<tr>
<td>601(22)</td>
<td>1002.024</td>
</tr>
<tr>
<td>601(23)</td>
<td>1002.028</td>
</tr>
<tr>
<td>601(24)</td>
<td>1002.025</td>
</tr>
<tr>
<td>601(25)</td>
<td>1002.015</td>
</tr>
<tr>
<td>601(27)</td>
<td>1002.026</td>
</tr>
<tr>
<td>601(28)</td>
<td>1002.027</td>
</tr>
<tr>
<td>601(29)</td>
<td>1002.008</td>
</tr>
<tr>
<td>601(30)</td>
<td>1002.029</td>
</tr>
<tr>
<td>601(31)</td>
<td>1002.030</td>
</tr>
<tr>
<td>602</td>
<td>1001.001, 1101.105</td>
</tr>
<tr>
<td>603(a)</td>
<td>1001.002</td>
</tr>
<tr>
<td>603(b)</td>
<td>1001.003</td>
</tr>
<tr>
<td>604</td>
<td>1022.002</td>
</tr>
<tr>
<td>605</td>
<td>1022.001</td>
</tr>
<tr>
<td>606</td>
<td>none</td>
</tr>
<tr>
<td>606A</td>
<td>1021.001</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>607 repealed</td>
<td>none</td>
</tr>
<tr>
<td>607A</td>
<td>1022.002</td>
</tr>
<tr>
<td>607B</td>
<td>1022.003</td>
</tr>
<tr>
<td>607C</td>
<td>1022.004</td>
</tr>
<tr>
<td>607D</td>
<td>1022.005</td>
</tr>
<tr>
<td>607E</td>
<td>1022.006</td>
</tr>
<tr>
<td>608</td>
<td>1022.007</td>
</tr>
<tr>
<td>609</td>
<td>1022.008</td>
</tr>
<tr>
<td>610</td>
<td>1023.001</td>
</tr>
<tr>
<td>611</td>
<td>1023.002</td>
</tr>
<tr>
<td>612</td>
<td>1023.003</td>
</tr>
<tr>
<td>613</td>
<td>1023.004</td>
</tr>
<tr>
<td>614</td>
<td>1023.005</td>
</tr>
<tr>
<td>615</td>
<td>1023.006</td>
</tr>
<tr>
<td>616</td>
<td>1023.007</td>
</tr>
<tr>
<td>617</td>
<td>1023.008</td>
</tr>
<tr>
<td>618</td>
<td>1023.009</td>
</tr>
<tr>
<td>619</td>
<td>1023.010</td>
</tr>
<tr>
<td>621</td>
<td>1052.051</td>
</tr>
<tr>
<td>622(a)</td>
<td>1053.051</td>
</tr>
<tr>
<td>622(b)</td>
<td>1053.052</td>
</tr>
<tr>
<td>622(c)</td>
<td>1053.052</td>
</tr>
<tr>
<td>623(a)</td>
<td>1052.001</td>
</tr>
<tr>
<td>623(b)</td>
<td>1052.051</td>
</tr>
<tr>
<td>624</td>
<td>1052.002</td>
</tr>
<tr>
<td>625</td>
<td>1052.052</td>
</tr>
<tr>
<td>626</td>
<td>1052.003</td>
</tr>
<tr>
<td>627</td>
<td>1052.004</td>
</tr>
<tr>
<td>627A</td>
<td>1052.053</td>
</tr>
<tr>
<td>628</td>
<td>1055.102</td>
</tr>
<tr>
<td>629</td>
<td>1053.101</td>
</tr>
<tr>
<td>630</td>
<td>1053.102</td>
</tr>
<tr>
<td>632(a)</td>
<td>1051.001</td>
</tr>
<tr>
<td>632(b)</td>
<td>1051.001</td>
</tr>
<tr>
<td>632(c)</td>
<td>1051.002, 1051.003</td>
</tr>
<tr>
<td>632(d)</td>
<td>1051.201</td>
</tr>
<tr>
<td>632(e)</td>
<td>1051.056</td>
</tr>
<tr>
<td>632(f)(1)</td>
<td>1051.051</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>632(f)(2)</td>
<td>1051.053</td>
</tr>
<tr>
<td>632(f)(3)</td>
<td>1051.054</td>
</tr>
<tr>
<td>632(f)(4)</td>
<td>1051.052</td>
</tr>
<tr>
<td>632(g)</td>
<td>1051.154</td>
</tr>
<tr>
<td>632(h)</td>
<td>1051.152</td>
</tr>
<tr>
<td>632(i)</td>
<td>1051.153</td>
</tr>
<tr>
<td>632(j)</td>
<td>1051.252</td>
</tr>
<tr>
<td>633(a)</td>
<td>1051.101</td>
</tr>
<tr>
<td>633(b)</td>
<td>1051.102</td>
</tr>
<tr>
<td>633(c)</td>
<td>1051.103</td>
</tr>
<tr>
<td>633(d)</td>
<td>1051.104</td>
</tr>
<tr>
<td>633(d)</td>
<td>1051.104</td>
</tr>
<tr>
<td>633(e)</td>
<td>1051.105</td>
</tr>
<tr>
<td>633(f)</td>
<td>1051.104, 1051.106</td>
</tr>
<tr>
<td>633(g)</td>
<td>1051.101</td>
</tr>
<tr>
<td>634</td>
<td>1051.055</td>
</tr>
<tr>
<td>635</td>
<td>1051.251</td>
</tr>
<tr>
<td>636</td>
<td>1151.301</td>
</tr>
<tr>
<td>641</td>
<td>1055.002</td>
</tr>
<tr>
<td>642</td>
<td>1055.001</td>
</tr>
<tr>
<td>643</td>
<td>1055.052</td>
</tr>
<tr>
<td>644</td>
<td>1055.051</td>
</tr>
<tr>
<td>645(a)</td>
<td>1054.051</td>
</tr>
<tr>
<td>645(b)</td>
<td>1054.055</td>
</tr>
<tr>
<td>645(c)</td>
<td>1054.054</td>
</tr>
<tr>
<td>645(d)</td>
<td>1054.055</td>
</tr>
<tr>
<td>645(e)</td>
<td>1054.052</td>
</tr>
<tr>
<td>645(f)</td>
<td>1054.053</td>
</tr>
<tr>
<td>645A</td>
<td>1054.056</td>
</tr>
<tr>
<td>646(a)</td>
<td>1054.001, 1054.003</td>
</tr>
<tr>
<td>646(b)</td>
<td>1054.201</td>
</tr>
<tr>
<td>646(c)</td>
<td>1054.203</td>
</tr>
<tr>
<td>646(d)</td>
<td>1054.005</td>
</tr>
<tr>
<td>646(e)</td>
<td>1054.002</td>
</tr>
<tr>
<td>647</td>
<td>1054.004</td>
</tr>
<tr>
<td>647A(a)</td>
<td>1054.201</td>
</tr>
<tr>
<td>647A(b)</td>
<td>1054.201</td>
</tr>
<tr>
<td>647A(c)</td>
<td>1054.202</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>647A(d)</td>
<td>1054.203</td>
</tr>
<tr>
<td>647A(e)</td>
<td>1054.202</td>
</tr>
<tr>
<td>648(a)</td>
<td>1054.102, 1054.105</td>
</tr>
<tr>
<td>648(b)</td>
<td>1054.103</td>
</tr>
<tr>
<td>648(c)</td>
<td>1054.104</td>
</tr>
<tr>
<td>648(d)</td>
<td>1054.104</td>
</tr>
<tr>
<td>648(e)</td>
<td>1054.105</td>
</tr>
<tr>
<td>648(f)</td>
<td>1054.101</td>
</tr>
<tr>
<td>648A(a)</td>
<td>1054.151</td>
</tr>
<tr>
<td>648A(b)</td>
<td>1054.152</td>
</tr>
<tr>
<td>648A(c)</td>
<td>1054.153</td>
</tr>
<tr>
<td>648A(d)</td>
<td>1054.154</td>
</tr>
<tr>
<td>649</td>
<td>1051.253, 1055.101</td>
</tr>
<tr>
<td>650</td>
<td>1053.103</td>
</tr>
<tr>
<td>651</td>
<td>1053.001</td>
</tr>
<tr>
<td>652</td>
<td>1055.053</td>
</tr>
<tr>
<td>653</td>
<td>1056.001</td>
</tr>
<tr>
<td>654</td>
<td>1056.051, 1056.052</td>
</tr>
<tr>
<td>655</td>
<td>1152.001</td>
</tr>
<tr>
<td>656</td>
<td>1152.002</td>
</tr>
<tr>
<td>657</td>
<td>1056.101, 1056.102</td>
</tr>
<tr>
<td>659(a)</td>
<td>1106.001</td>
</tr>
<tr>
<td>659(b)</td>
<td>1106.002</td>
</tr>
<tr>
<td>659(c)</td>
<td>1106.003</td>
</tr>
<tr>
<td>659(d)</td>
<td>1106.003</td>
</tr>
<tr>
<td>660</td>
<td>1106.005</td>
</tr>
<tr>
<td>661</td>
<td>1106.004</td>
</tr>
<tr>
<td>662</td>
<td>1151.002</td>
</tr>
<tr>
<td>663</td>
<td>1106.006</td>
</tr>
<tr>
<td>665(a)</td>
<td>1155.002</td>
</tr>
<tr>
<td>665(a-1)</td>
<td>1155.004</td>
</tr>
<tr>
<td>665(b)</td>
<td>1155.003</td>
</tr>
<tr>
<td>665(c)</td>
<td>1155.006, 1155.007</td>
</tr>
<tr>
<td>665(d)</td>
<td>1155.006, 1155.007</td>
</tr>
<tr>
<td>665 (d-1)</td>
<td>1155.007</td>
</tr>
<tr>
<td>665(g)</td>
<td>1155.002</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
## Conversion Chart – Probate Code to Estates Code

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>665(e)</td>
<td>1155.008</td>
</tr>
<tr>
<td>665(f)</td>
<td>1155.005</td>
</tr>
<tr>
<td>665(h)</td>
<td>1155.001</td>
</tr>
<tr>
<td>665A</td>
<td>1155.051 [repealed]</td>
</tr>
<tr>
<td>665B</td>
<td>1155.054</td>
</tr>
<tr>
<td>665C(a)</td>
<td>1155.053</td>
</tr>
<tr>
<td>665C(b)</td>
<td>1155.053</td>
</tr>
<tr>
<td>665C(c)</td>
<td>1155.053</td>
</tr>
<tr>
<td>665C(d)</td>
<td>1155.102</td>
</tr>
<tr>
<td>665D</td>
<td>1155.052</td>
</tr>
<tr>
<td>666</td>
<td>1155.101</td>
</tr>
<tr>
<td>667</td>
<td>1155.103</td>
</tr>
<tr>
<td>668</td>
<td>1155.152</td>
</tr>
<tr>
<td>669</td>
<td>1155.151</td>
</tr>
<tr>
<td>670(a)</td>
<td>1155.201</td>
</tr>
<tr>
<td>670(b)</td>
<td>1155.202</td>
</tr>
<tr>
<td>670(c)</td>
<td>1155.202</td>
</tr>
<tr>
<td>671(a)</td>
<td>1201.001</td>
</tr>
<tr>
<td>671(b)</td>
<td>1201.002</td>
</tr>
<tr>
<td>671(c)</td>
<td>1201.002</td>
</tr>
<tr>
<td>671(d)</td>
<td>1201.002</td>
</tr>
<tr>
<td>671(e)</td>
<td>1201.004</td>
</tr>
<tr>
<td>672(a)</td>
<td>1201.052</td>
</tr>
<tr>
<td>672(b)</td>
<td>1201.053</td>
</tr>
<tr>
<td>672(c)</td>
<td>1201.053</td>
</tr>
<tr>
<td>672(d)</td>
<td>1201.054</td>
</tr>
<tr>
<td>672(e)</td>
<td>1201.051</td>
</tr>
<tr>
<td>673</td>
<td>1164.001</td>
</tr>
<tr>
<td>674</td>
<td>1164.002</td>
</tr>
<tr>
<td>675</td>
<td>1151.001</td>
</tr>
<tr>
<td>676(a)</td>
<td>1104.054</td>
</tr>
<tr>
<td>676(b)</td>
<td>1104.051</td>
</tr>
<tr>
<td>676(c)</td>
<td>1104.052</td>
</tr>
<tr>
<td>676(d)</td>
<td>1104.053</td>
</tr>
<tr>
<td>676(e)</td>
<td>1104.053</td>
</tr>
<tr>
<td>676(f)</td>
<td>1104.053</td>
</tr>
<tr>
<td>676(g)</td>
<td>1202.002</td>
</tr>
<tr>
<td>677(a)</td>
<td>1104.101, 1104.102</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>677(b)</td>
<td>1104.103</td>
</tr>
<tr>
<td>677(c)</td>
<td>1104.103</td>
</tr>
<tr>
<td>677(d)</td>
<td>1104.103</td>
</tr>
<tr>
<td>677(e)</td>
<td>1202.002</td>
</tr>
<tr>
<td>677A(a)</td>
<td>1104.152</td>
</tr>
<tr>
<td>677A(b)</td>
<td>1104.152</td>
</tr>
<tr>
<td>677A(c)</td>
<td>1104.152</td>
</tr>
<tr>
<td>677A(d)</td>
<td>1104.156</td>
</tr>
<tr>
<td>677A(e)</td>
<td>1104.160</td>
</tr>
<tr>
<td>677A(f)</td>
<td>1104.159</td>
</tr>
<tr>
<td>677A(g)</td>
<td>1104.153</td>
</tr>
<tr>
<td>677A(h)</td>
<td>1104.151</td>
</tr>
<tr>
<td>677A(i)</td>
<td>1104.154</td>
</tr>
<tr>
<td>677A(j)</td>
<td>1104.154</td>
</tr>
<tr>
<td>677B(a)</td>
<td>1104.157</td>
</tr>
<tr>
<td>677B(c)</td>
<td>1104.155</td>
</tr>
<tr>
<td>677B(d)</td>
<td>1104.158</td>
</tr>
<tr>
<td>677B(e)</td>
<td>1104.157</td>
</tr>
<tr>
<td>677B(f)</td>
<td>1104.157</td>
</tr>
<tr>
<td>678</td>
<td>1104.353</td>
</tr>
<tr>
<td>679(a)</td>
<td>1104.202</td>
</tr>
<tr>
<td>679(b)</td>
<td>1104.202</td>
</tr>
<tr>
<td>679(c)</td>
<td>1104.203</td>
</tr>
<tr>
<td>679A(d)</td>
<td>1104.209</td>
</tr>
<tr>
<td>679A(e)</td>
<td>1104.207</td>
</tr>
<tr>
<td>679(f)</td>
<td>1104.202, 1104.212</td>
</tr>
<tr>
<td>679(g)</td>
<td>1104.210</td>
</tr>
<tr>
<td>679(h)</td>
<td>1104.211</td>
</tr>
<tr>
<td>679(i)</td>
<td>1104.204</td>
</tr>
<tr>
<td>679(j)</td>
<td>1104.201</td>
</tr>
<tr>
<td>679(k)</td>
<td>1104.205</td>
</tr>
<tr>
<td>679(l)</td>
<td>1104.205</td>
</tr>
<tr>
<td>679A(a)</td>
<td>1104.201</td>
</tr>
<tr>
<td>679A(b)</td>
<td>1104.208</td>
</tr>
<tr>
<td>679A(c)</td>
<td>1104.206</td>
</tr>
<tr>
<td>679A(e)</td>
<td>1104.208</td>
</tr>
<tr>
<td>679A(f)</td>
<td>1104.208</td>
</tr>
<tr>
<td>680</td>
<td>1104.054</td>
</tr>
<tr>
<td>681</td>
<td>1104.351</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>682</td>
<td>1101.001</td>
</tr>
<tr>
<td>682A(a)</td>
<td>1103.001, 1103.003</td>
</tr>
<tr>
<td>682A(a-1)</td>
<td>1103.002</td>
</tr>
<tr>
<td>682A(a-2)</td>
<td>1103.002</td>
</tr>
<tr>
<td>682A(b)</td>
<td>1103.004</td>
</tr>
<tr>
<td>683(a)</td>
<td>1102.001, 1102.004</td>
</tr>
<tr>
<td>683(b)</td>
<td>1102.002</td>
</tr>
<tr>
<td>683(c)</td>
<td>1102.005</td>
</tr>
<tr>
<td>683A</td>
<td>1102.003</td>
</tr>
<tr>
<td>684(a)</td>
<td>1101.101</td>
</tr>
<tr>
<td>684(b)</td>
<td>1101.101</td>
</tr>
<tr>
<td>684(c)</td>
<td>1101.101, 1101.102</td>
</tr>
<tr>
<td>684(d)</td>
<td>1101.154</td>
</tr>
<tr>
<td>684(e)</td>
<td>1101.106</td>
</tr>
<tr>
<td>685(a)</td>
<td>1101.051</td>
</tr>
<tr>
<td>685(b)</td>
<td>1101.052</td>
</tr>
<tr>
<td>685(c)</td>
<td>1101.051</td>
</tr>
<tr>
<td>686</td>
<td>1101.053</td>
</tr>
<tr>
<td>687(a)</td>
<td>1101.103</td>
</tr>
<tr>
<td>687(b)</td>
<td>1101.103</td>
</tr>
<tr>
<td>687(c)</td>
<td>1101.104</td>
</tr>
<tr>
<td>689</td>
<td>1104.002</td>
</tr>
<tr>
<td>690</td>
<td>1104.001</td>
</tr>
<tr>
<td>692</td>
<td>1101.155</td>
</tr>
<tr>
<td>693(a)</td>
<td>1101.151</td>
</tr>
<tr>
<td>693(b)</td>
<td>1101.152</td>
</tr>
<tr>
<td>693(c)</td>
<td>1101.153</td>
</tr>
<tr>
<td>693(d)</td>
<td>1101.153</td>
</tr>
<tr>
<td>693(e)</td>
<td>1101.153</td>
</tr>
<tr>
<td>694</td>
<td>1202.001</td>
</tr>
<tr>
<td>694A(a)</td>
<td>1202.051</td>
</tr>
<tr>
<td>694A(b)</td>
<td>1202.054</td>
</tr>
<tr>
<td>694A(c)</td>
<td>1202.054</td>
</tr>
<tr>
<td>694A(d)</td>
<td>1202.053</td>
</tr>
<tr>
<td>694A(e)</td>
<td>1202.055</td>
</tr>
<tr>
<td>694B</td>
<td>1202.052</td>
</tr>
<tr>
<td>694C(a)</td>
<td>1202.101</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>694C(b)</td>
<td>1202.101</td>
</tr>
<tr>
<td>694C(c)</td>
<td>1202.102</td>
</tr>
<tr>
<td>694D</td>
<td>1202.151</td>
</tr>
<tr>
<td>694E</td>
<td>1202.153</td>
</tr>
<tr>
<td>694F</td>
<td>1202.152</td>
</tr>
<tr>
<td>694G</td>
<td>1202.155</td>
</tr>
<tr>
<td>694H</td>
<td>1202.156</td>
</tr>
<tr>
<td>694I</td>
<td>1202.157</td>
</tr>
<tr>
<td>694J</td>
<td>1202.154</td>
</tr>
<tr>
<td>694K</td>
<td>1202.103</td>
</tr>
<tr>
<td>694L</td>
<td>1202.102</td>
</tr>
<tr>
<td>695(a)</td>
<td>1203.102</td>
</tr>
<tr>
<td>695A(a)</td>
<td>1203.151</td>
</tr>
<tr>
<td>695A(a-1)</td>
<td>1203.151</td>
</tr>
<tr>
<td>695A(b)</td>
<td>1203.152</td>
</tr>
<tr>
<td>695A(c)</td>
<td>1203.153</td>
</tr>
<tr>
<td>696</td>
<td>1104.301</td>
</tr>
<tr>
<td>696A</td>
<td>1104.251</td>
</tr>
<tr>
<td>696B</td>
<td>1104.253</td>
</tr>
<tr>
<td>697(a)</td>
<td>1104.302, 1104.303</td>
</tr>
<tr>
<td>697(b)</td>
<td>1104.303</td>
</tr>
<tr>
<td>697(c)</td>
<td>1104.304</td>
</tr>
<tr>
<td>697(d)</td>
<td>1104.305</td>
</tr>
<tr>
<td>697(e)</td>
<td>1104.306</td>
</tr>
<tr>
<td>697A(a)</td>
<td>1104.257</td>
</tr>
<tr>
<td>697A(b)</td>
<td>1104.258</td>
</tr>
<tr>
<td>697B(a)</td>
<td>1104.251</td>
</tr>
<tr>
<td>697B(b)</td>
<td>1104.255</td>
</tr>
<tr>
<td>697B(c)</td>
<td>1104.256</td>
</tr>
<tr>
<td>697B(d)</td>
<td>1104.254</td>
</tr>
<tr>
<td>697B(e)</td>
<td>1104.252</td>
</tr>
<tr>
<td>698(a)</td>
<td>1104.402</td>
</tr>
<tr>
<td>698(a-1)</td>
<td>1104.406</td>
</tr>
<tr>
<td>698(a-2)</td>
<td>1104.406</td>
</tr>
<tr>
<td>698(a-3)</td>
<td>1104.406</td>
</tr>
<tr>
<td>698(a-4)</td>
<td>1104.407</td>
</tr>
<tr>
<td>698(a-5)</td>
<td>1104.403</td>
</tr>
<tr>
<td>698(a-6)</td>
<td>1104.404</td>
</tr>
<tr>
<td>698(b-1)</td>
<td>1104.408</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>698(c-1)</td>
<td>1104.410</td>
</tr>
<tr>
<td>698(b)</td>
<td>1104.405</td>
</tr>
<tr>
<td>698(c)</td>
<td>1104.409</td>
</tr>
<tr>
<td>698(d)</td>
<td>1104.411</td>
</tr>
<tr>
<td>698(e)</td>
<td>1104.402</td>
</tr>
<tr>
<td>698(f)</td>
<td>1104.412</td>
</tr>
<tr>
<td>699</td>
<td>1105.002</td>
</tr>
<tr>
<td>700</td>
<td>1105.051</td>
</tr>
<tr>
<td>701</td>
<td>1105.003, 1105.052</td>
</tr>
<tr>
<td>702</td>
<td>1105.101</td>
</tr>
<tr>
<td>702A</td>
<td>1105.102</td>
</tr>
<tr>
<td>703(a)</td>
<td>1105.003, 1105.151</td>
</tr>
<tr>
<td>703(b)</td>
<td>1105.152</td>
</tr>
<tr>
<td>703(c)</td>
<td>1105.153</td>
</tr>
<tr>
<td>703(d)</td>
<td>1105.154</td>
</tr>
<tr>
<td>703(e)</td>
<td>1105.155</td>
</tr>
<tr>
<td>703(f)</td>
<td>1105.156</td>
</tr>
<tr>
<td>703(g)</td>
<td>1105.157</td>
</tr>
<tr>
<td>703(h)</td>
<td>1105.157</td>
</tr>
<tr>
<td>703(i)</td>
<td>1105.157</td>
</tr>
<tr>
<td>703(j)</td>
<td>1105.157</td>
</tr>
<tr>
<td>703(k)</td>
<td>1105.157</td>
</tr>
<tr>
<td>703(l)</td>
<td>1105.158</td>
</tr>
<tr>
<td>703(m)</td>
<td>1105.159</td>
</tr>
<tr>
<td>703(n)</td>
<td>1105.160</td>
</tr>
<tr>
<td>703(o)</td>
<td>1105.161</td>
</tr>
<tr>
<td>703(p)</td>
<td>1105.160, 1105.162</td>
</tr>
<tr>
<td>703(q)</td>
<td>1105.154</td>
</tr>
<tr>
<td>703(r)</td>
<td>1105.163</td>
</tr>
<tr>
<td>703(s)</td>
<td>1105.152</td>
</tr>
<tr>
<td>704</td>
<td>1105.109</td>
</tr>
<tr>
<td>705</td>
<td>1105.108, 1105.110</td>
</tr>
<tr>
<td>706</td>
<td>1105.104</td>
</tr>
<tr>
<td>707</td>
<td>1105.105</td>
</tr>
<tr>
<td>708</td>
<td>1105.106</td>
</tr>
<tr>
<td>708A</td>
<td>1105.107</td>
</tr>
<tr>
<td>709(a)</td>
<td>1105.201</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>709(b)</td>
<td>1105.202</td>
</tr>
<tr>
<td>709(c)</td>
<td>1105.203</td>
</tr>
<tr>
<td>710</td>
<td>1105.202</td>
</tr>
<tr>
<td>711</td>
<td>1105.251</td>
</tr>
<tr>
<td>712</td>
<td>1105.251</td>
</tr>
<tr>
<td>713</td>
<td>1105.252</td>
</tr>
<tr>
<td>714(a)</td>
<td>1105.252</td>
</tr>
<tr>
<td>714(b)</td>
<td>1105.253</td>
</tr>
<tr>
<td>715</td>
<td>1105.254</td>
</tr>
<tr>
<td>716</td>
<td>1105.255</td>
</tr>
<tr>
<td>717</td>
<td>1105.257</td>
</tr>
<tr>
<td>718</td>
<td>1105.256</td>
</tr>
<tr>
<td>719</td>
<td>1105.204</td>
</tr>
<tr>
<td>720</td>
<td>1105.204</td>
</tr>
<tr>
<td>721</td>
<td>1105.111</td>
</tr>
<tr>
<td>722</td>
<td>1105.103</td>
</tr>
<tr>
<td>723</td>
<td>1105.103</td>
</tr>
<tr>
<td>724</td>
<td>1105.103</td>
</tr>
<tr>
<td>725</td>
<td>1105.103</td>
</tr>
<tr>
<td>726</td>
<td>1105.112</td>
</tr>
<tr>
<td>727</td>
<td>1154.001</td>
</tr>
<tr>
<td>728</td>
<td>1154.003</td>
</tr>
<tr>
<td>729</td>
<td>1154.051</td>
</tr>
<tr>
<td>730</td>
<td>1154.052</td>
</tr>
<tr>
<td>731</td>
<td>1154.053</td>
</tr>
<tr>
<td>732</td>
<td>1154.002</td>
</tr>
<tr>
<td>733</td>
<td>1154.054</td>
</tr>
<tr>
<td>734</td>
<td>1154.101</td>
</tr>
<tr>
<td>735</td>
<td>1154.102</td>
</tr>
<tr>
<td>736</td>
<td>1154.103</td>
</tr>
<tr>
<td>737</td>
<td>1154.104</td>
</tr>
<tr>
<td>738</td>
<td>1154.055</td>
</tr>
<tr>
<td>739</td>
<td>1154.151</td>
</tr>
<tr>
<td>741(a)</td>
<td>1163.001</td>
</tr>
<tr>
<td>741(b)</td>
<td>1163.002</td>
</tr>
<tr>
<td>741(c)</td>
<td>1163.003, 1163.004</td>
</tr>
<tr>
<td>741(d)</td>
<td>1163.004</td>
</tr>
<tr>
<td>741(e)</td>
<td>1163.005</td>
</tr>
<tr>
<td>741(f)</td>
<td>1163.005</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>741(g)</td>
<td>1163.006</td>
</tr>
<tr>
<td>742(a)</td>
<td>1163.051</td>
</tr>
<tr>
<td>742(b)</td>
<td>1163.051</td>
</tr>
<tr>
<td>742(c)</td>
<td>1163.051</td>
</tr>
<tr>
<td>742(d)</td>
<td>1163.051</td>
</tr>
<tr>
<td>742(e)</td>
<td>1163.051</td>
</tr>
<tr>
<td>742(f)</td>
<td>1163.052-1163.054</td>
</tr>
<tr>
<td>743(a)</td>
<td>1163.101</td>
</tr>
<tr>
<td>743(b)</td>
<td>1163.101</td>
</tr>
<tr>
<td>743(c)</td>
<td>1163.103</td>
</tr>
<tr>
<td>743(d)</td>
<td>1163.104</td>
</tr>
<tr>
<td>743(e)</td>
<td>1163.104</td>
</tr>
<tr>
<td>743(f)</td>
<td>1163.104</td>
</tr>
<tr>
<td>743(g)</td>
<td>1163.101, 1163.102</td>
</tr>
<tr>
<td>743(h)</td>
<td>1163.102</td>
</tr>
<tr>
<td>743(i)</td>
<td>1163.105</td>
</tr>
<tr>
<td>743(j)</td>
<td>1163.102</td>
</tr>
<tr>
<td>744</td>
<td>1163.151</td>
</tr>
<tr>
<td>745</td>
<td>1204.001</td>
</tr>
<tr>
<td>746</td>
<td>1204.051</td>
</tr>
<tr>
<td>747</td>
<td>1204.051</td>
</tr>
<tr>
<td>748</td>
<td>1204.052</td>
</tr>
<tr>
<td>749</td>
<td>1204.101, 1204.102</td>
</tr>
<tr>
<td>750</td>
<td>1204.201</td>
</tr>
<tr>
<td>751</td>
<td>1204.105</td>
</tr>
<tr>
<td>752(a)</td>
<td>1204.106</td>
</tr>
<tr>
<td>752(b)</td>
<td>1204.099</td>
</tr>
<tr>
<td>752(c)</td>
<td>1204.151</td>
</tr>
<tr>
<td>752(d)</td>
<td>1204.152</td>
</tr>
<tr>
<td>753</td>
<td>1204.107</td>
</tr>
<tr>
<td>754</td>
<td>1204.053</td>
</tr>
<tr>
<td>755</td>
<td>1204.002</td>
</tr>
<tr>
<td>756</td>
<td>1204.103</td>
</tr>
<tr>
<td>757</td>
<td>1204.104</td>
</tr>
<tr>
<td>758</td>
<td>1204.202</td>
</tr>
<tr>
<td>759(a)</td>
<td>1203.102</td>
</tr>
<tr>
<td>759(b)</td>
<td>1203.103</td>
</tr>
<tr>
<td>759(c)</td>
<td>1203.104</td>
</tr>
<tr>
<td>759(d)</td>
<td>1203.105</td>
</tr>
<tr>
<td>759(e)</td>
<td>1203.106</td>
</tr>
<tr>
<td>759(f)</td>
<td>1203.101</td>
</tr>
<tr>
<td>759(g)</td>
<td>1203.201</td>
</tr>
<tr>
<td>759(h)</td>
<td>1203.107</td>
</tr>
<tr>
<td>760(a)</td>
<td>1203.001</td>
</tr>
<tr>
<td>760(b)</td>
<td>1203.002, 1203.102</td>
</tr>
<tr>
<td>760(c)</td>
<td>1203.004</td>
</tr>
<tr>
<td>760(d)</td>
<td>1203.005</td>
</tr>
<tr>
<td>760(e)</td>
<td>1203.006</td>
</tr>
<tr>
<td>760(f)</td>
<td>1203.006</td>
</tr>
<tr>
<td>760(g)</td>
<td>1203.003</td>
</tr>
<tr>
<td>760A</td>
<td>1057.001</td>
</tr>
<tr>
<td>760B</td>
<td>1057.002</td>
</tr>
<tr>
<td>761(a)</td>
<td>1203.051</td>
</tr>
<tr>
<td>761(b)</td>
<td>1203.056</td>
</tr>
<tr>
<td>761(c)</td>
<td>1203.052</td>
</tr>
<tr>
<td>761(c-1)</td>
<td>1203.052</td>
</tr>
<tr>
<td>761(d)</td>
<td>1203.053</td>
</tr>
<tr>
<td>761(e)</td>
<td>1203.057</td>
</tr>
<tr>
<td>761(f)</td>
<td>1203.054, 1203.102</td>
</tr>
<tr>
<td>761(g)</td>
<td>1203.055</td>
</tr>
<tr>
<td>762</td>
<td>1203.056</td>
</tr>
<tr>
<td>763</td>
<td>1203.202</td>
</tr>
<tr>
<td>764</td>
<td>1203.202</td>
</tr>
<tr>
<td>765</td>
<td>1203.203</td>
</tr>
<tr>
<td>766</td>
<td>1203.203</td>
</tr>
<tr>
<td>767</td>
<td>1151.051</td>
</tr>
<tr>
<td>768</td>
<td>1151.101, 1151.151</td>
</tr>
<tr>
<td>769</td>
<td>1151.004</td>
</tr>
<tr>
<td>770(a)</td>
<td>1151.052</td>
</tr>
<tr>
<td>770(b)</td>
<td>1151.053</td>
</tr>
<tr>
<td>770(c)</td>
<td>1151.053</td>
</tr>
<tr>
<td>770(d)</td>
<td>1151.053</td>
</tr>
<tr>
<td>770A</td>
<td>1151.054</td>
</tr>
<tr>
<td>771</td>
<td>1151.152</td>
</tr>
<tr>
<td>776(a-2)</td>
<td>1156.003</td>
</tr>
<tr>
<td>776(a-3)</td>
<td>1156.003</td>
</tr>
<tr>
<td>772</td>
<td>1151.105</td>
</tr>
</tbody>
</table>

### Probate Code 773 to Estates Code 1151.104

- 773
- 774(a) 1151.102
- 774(b) 1151.103
- 775 1151.153
- 776(a) 1156.001
- 776(a-1) 1156.001
- 776(a-2) 1156.002
- 776(b) 1156.004
- 776A 1156.052
- 777 1156.051
- 778 1151.003
- 779 1151.155
- 780 1151.154
- 781(a) 1151.201
- 781(a-1) 1151.201
- 781(a-2) 1151.201
- 781(b) 1151.202
- 781(c) 1151.202, 1151.203
- 782(a) 1151.251
- 782(b) 1151.252
- 783(a) 1153.001
- 783(b) 1153.002
- 783(c) 1153.001
- 784(a) 1153.003
- 784(b) 1153.003
- 784(c) 1153.003
- 784(d) 1153.003
- 784(e) 1153.004
- 785 1153.005
- 786(a) 1157.001, 1157.060
- 786(b) 1157.061
- 787 1157.008
- 788 1157.004, 1157.059
- 789 1157.007
- 790 1157.006, 1157.062
- 791 1157.005
- 792 1157.102

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>793(a)</td>
<td>1157.151</td>
</tr>
<tr>
<td>793(b)</td>
<td>1157.151</td>
</tr>
<tr>
<td>793(c)</td>
<td>1157.152</td>
</tr>
<tr>
<td>793(d)</td>
<td>1157.153</td>
</tr>
<tr>
<td>794</td>
<td>1157.003</td>
</tr>
<tr>
<td>795</td>
<td>1157.002</td>
</tr>
<tr>
<td>796</td>
<td>1157.051</td>
</tr>
<tr>
<td>797</td>
<td>1157.052</td>
</tr>
<tr>
<td>798</td>
<td>1157.053</td>
</tr>
<tr>
<td>799(a)</td>
<td>1157.054</td>
</tr>
<tr>
<td>799(b)</td>
<td>1157.055</td>
</tr>
<tr>
<td>799(c)</td>
<td>1157.056</td>
</tr>
<tr>
<td>799(d)</td>
<td>1157.057</td>
</tr>
<tr>
<td>799(e)</td>
<td>1157.058</td>
</tr>
<tr>
<td>800</td>
<td>1157.063, 1157.065</td>
</tr>
<tr>
<td>801</td>
<td>1157.064</td>
</tr>
<tr>
<td>802</td>
<td>1157.107</td>
</tr>
<tr>
<td>803</td>
<td>1157.201</td>
</tr>
<tr>
<td>804</td>
<td>1157.101</td>
</tr>
<tr>
<td>805(a)</td>
<td>1157.103</td>
</tr>
<tr>
<td>805(b)</td>
<td>1157.103</td>
</tr>
<tr>
<td>805(c)</td>
<td>1157.105</td>
</tr>
<tr>
<td>806</td>
<td>1157.106</td>
</tr>
<tr>
<td>807</td>
<td>1157.202</td>
</tr>
<tr>
<td>808</td>
<td>1157.104</td>
</tr>
<tr>
<td>809</td>
<td>1157.108</td>
</tr>
<tr>
<td>811</td>
<td>1158.001</td>
</tr>
<tr>
<td>812</td>
<td>1158.051</td>
</tr>
<tr>
<td>813</td>
<td>1158.101, 1158.102</td>
</tr>
<tr>
<td>814(a)</td>
<td>1158.151</td>
</tr>
<tr>
<td>814(b)</td>
<td>1158.151, 1158.152</td>
</tr>
<tr>
<td>814(c)</td>
<td>1158.153-1158.155</td>
</tr>
<tr>
<td>815</td>
<td>1158.103</td>
</tr>
<tr>
<td>816</td>
<td>1158.104</td>
</tr>
<tr>
<td>817</td>
<td>1158.201-1158.203</td>
</tr>
<tr>
<td>818</td>
<td>1158.105</td>
</tr>
<tr>
<td>819</td>
<td>1158.257</td>
</tr>
<tr>
<td>820</td>
<td>1158.251</td>
</tr>
<tr>
<td>821</td>
<td>1158.252</td>
</tr>
<tr>
<td>822</td>
<td>1158.253</td>
</tr>
<tr>
<td>824</td>
<td>1158.254</td>
</tr>
<tr>
<td>824A</td>
<td>1158.255</td>
</tr>
<tr>
<td>825</td>
<td>1158.256</td>
</tr>
<tr>
<td>826</td>
<td>1158.601, 1158.602</td>
</tr>
<tr>
<td>827(a)</td>
<td>1158.301, 1158.302</td>
</tr>
<tr>
<td>827(b)</td>
<td>1158.351-1158.353</td>
</tr>
<tr>
<td>828(a)</td>
<td>1158.401</td>
</tr>
<tr>
<td>828(b)</td>
<td>1158.402</td>
</tr>
<tr>
<td>828(c)</td>
<td>1158.403</td>
</tr>
<tr>
<td>828(d)</td>
<td>1158.404</td>
</tr>
<tr>
<td>828(e)</td>
<td>1158.405</td>
</tr>
<tr>
<td>829</td>
<td>1158.451</td>
</tr>
<tr>
<td>830</td>
<td>1158.501, 1158.502</td>
</tr>
<tr>
<td>831(a)</td>
<td>1158.651</td>
</tr>
<tr>
<td>831(b)</td>
<td>1158.652</td>
</tr>
<tr>
<td>831(c)</td>
<td>1158.653</td>
</tr>
<tr>
<td>831(d)</td>
<td>1158.654</td>
</tr>
<tr>
<td>832</td>
<td>1158.551</td>
</tr>
<tr>
<td>833</td>
<td>1158.552-1158.556</td>
</tr>
<tr>
<td>835</td>
<td>1158.557</td>
</tr>
<tr>
<td>836</td>
<td>1158.558</td>
</tr>
<tr>
<td>837</td>
<td>1158.559</td>
</tr>
<tr>
<td>839</td>
<td>1159.001</td>
</tr>
<tr>
<td>840</td>
<td>1159.001</td>
</tr>
<tr>
<td>841</td>
<td>1159.002</td>
</tr>
<tr>
<td>842</td>
<td>1159.005</td>
</tr>
<tr>
<td>843</td>
<td>1159.003</td>
</tr>
<tr>
<td>844</td>
<td>1159.004</td>
</tr>
<tr>
<td>845</td>
<td>1159.051</td>
</tr>
<tr>
<td>846</td>
<td>1159.052</td>
</tr>
<tr>
<td>847(a)</td>
<td>1160.001</td>
</tr>
<tr>
<td>847(b)</td>
<td>1160.051</td>
</tr>
<tr>
<td>847(c)</td>
<td>1160.051</td>
</tr>
<tr>
<td>847(d)</td>
<td>1160.052</td>
</tr>
<tr>
<td>847(e)</td>
<td>1160.053</td>
</tr>
<tr>
<td>847(f)</td>
<td>1160.054</td>
</tr>
<tr>
<td>847(g)</td>
<td>1160.055</td>
</tr>
<tr>
<td>847(h)</td>
<td>1160.056</td>
</tr>
<tr>
<td>847(i)</td>
<td>1160.056</td>
</tr>
<tr>
<td>847(j)</td>
<td>1160.057, 1160.058</td>
</tr>
<tr>
<td>847(k)</td>
<td>1160.059</td>
</tr>
<tr>
<td>847(m)</td>
<td>1160.060</td>
</tr>
<tr>
<td>848(a)</td>
<td>1160.101</td>
</tr>
<tr>
<td>848(b)</td>
<td>1160.102</td>
</tr>
<tr>
<td>849(a)</td>
<td>1160.151</td>
</tr>
<tr>
<td>849(b)</td>
<td>1160.151</td>
</tr>
<tr>
<td>849(c)</td>
<td>1160.152</td>
</tr>
<tr>
<td>849(d)</td>
<td>1160.153</td>
</tr>
<tr>
<td>849(e)</td>
<td>1160.154</td>
</tr>
<tr>
<td>849(f)</td>
<td>1160.155</td>
</tr>
<tr>
<td>850</td>
<td>1160.201</td>
</tr>
<tr>
<td>851</td>
<td>1160.251-1160.254</td>
</tr>
<tr>
<td>853(a)</td>
<td>1158.701</td>
</tr>
<tr>
<td>853(b)</td>
<td>1158.702,</td>
</tr>
<tr>
<td>853(c)</td>
<td>1158.703</td>
</tr>
<tr>
<td>853(d)</td>
<td>1158.704</td>
</tr>
<tr>
<td>853(e)</td>
<td>1158.705</td>
</tr>
<tr>
<td>853(f)</td>
<td>1158.706</td>
</tr>
<tr>
<td>854(a)</td>
<td>1161.001</td>
</tr>
<tr>
<td>854(b)</td>
<td>1161.007</td>
</tr>
<tr>
<td>854(c)</td>
<td>1161.007</td>
</tr>
<tr>
<td>855(a)</td>
<td>1161.002</td>
</tr>
<tr>
<td>855(a-1)</td>
<td>1161.002</td>
</tr>
<tr>
<td>855(b)</td>
<td>1161.003</td>
</tr>
<tr>
<td>855(c)</td>
<td>1161.004</td>
</tr>
<tr>
<td>855(d)</td>
<td>1161.004</td>
</tr>
<tr>
<td>855(e)</td>
<td>1161.004</td>
</tr>
<tr>
<td>855(f)</td>
<td>1161.004</td>
</tr>
<tr>
<td>855(g)</td>
<td>1161.005</td>
</tr>
<tr>
<td>855A</td>
<td>1161.006</td>
</tr>
<tr>
<td>855B(a)</td>
<td>1161.051</td>
</tr>
<tr>
<td>855B(a-1)</td>
<td>1161.051</td>
</tr>
<tr>
<td>Probate Code</td>
<td>Estates Code</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td>855B(b)</td>
<td>1161.052</td>
</tr>
<tr>
<td>855B(c)</td>
<td>1161.053</td>
</tr>
<tr>
<td>855B(d)</td>
<td>1161.054</td>
</tr>
<tr>
<td>855B(e)</td>
<td>1161.052</td>
</tr>
<tr>
<td>857(a)</td>
<td>1161.101</td>
</tr>
<tr>
<td>857(b)</td>
<td>1161.102</td>
</tr>
<tr>
<td>857(c)</td>
<td>1161.104</td>
</tr>
<tr>
<td>857(d)</td>
<td>1161.103</td>
</tr>
<tr>
<td>857(e)</td>
<td>1161.103</td>
</tr>
<tr>
<td>857(f)</td>
<td>1161.106</td>
</tr>
<tr>
<td>857(g)</td>
<td>1161.103</td>
</tr>
<tr>
<td>857(h)</td>
<td>1161.105</td>
</tr>
<tr>
<td>857(i)</td>
<td>1161.104</td>
</tr>
<tr>
<td>857(j)</td>
<td>1161.106</td>
</tr>
<tr>
<td>858(a)</td>
<td>1161.202, 1161.203</td>
</tr>
<tr>
<td>858(b)</td>
<td>1161.202</td>
</tr>
<tr>
<td>858(c)</td>
<td>1161.205</td>
</tr>
<tr>
<td>858(d)</td>
<td>1161.203</td>
</tr>
<tr>
<td>858(e)</td>
<td>1161.203</td>
</tr>
<tr>
<td>858(f)</td>
<td>1161.203</td>
</tr>
<tr>
<td>858(g)</td>
<td>1161.204</td>
</tr>
<tr>
<td>860(a)</td>
<td>1161.151</td>
</tr>
<tr>
<td>860(b)</td>
<td>1161.152</td>
</tr>
<tr>
<td>860(c)</td>
<td>1161.153</td>
</tr>
<tr>
<td>860(d)</td>
<td>1161.151</td>
</tr>
<tr>
<td>861</td>
<td>1161.203</td>
</tr>
<tr>
<td>862</td>
<td>1161.204</td>
</tr>
<tr>
<td>865(a)</td>
<td>1162.001</td>
</tr>
<tr>
<td>865(b)</td>
<td>1162.002</td>
</tr>
<tr>
<td>865(c)</td>
<td>1162.008</td>
</tr>
<tr>
<td>865(d)</td>
<td>1162.002</td>
</tr>
<tr>
<td>865(f)</td>
<td>1162.004</td>
</tr>
<tr>
<td>865A(a)</td>
<td>1162.005</td>
</tr>
<tr>
<td>865A(b)</td>
<td>1162.005</td>
</tr>
<tr>
<td>865A(c)</td>
<td>1162.006</td>
</tr>
<tr>
<td>865A(d)</td>
<td>1162.006, 1162.007</td>
</tr>
<tr>
<td>865A(e)</td>
<td>1162.007</td>
</tr>
<tr>
<td>865A(f)</td>
<td>1162.008</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>865A(g)</td>
<td>1162.007</td>
</tr>
<tr>
<td>866(a)</td>
<td>1162.051</td>
</tr>
<tr>
<td>866(b)</td>
<td>1162.052</td>
</tr>
<tr>
<td>866(c)</td>
<td>1162.053</td>
</tr>
<tr>
<td>867(a)</td>
<td>1301.057</td>
</tr>
<tr>
<td>867(b-1)</td>
<td>1301.051</td>
</tr>
<tr>
<td>867(b-2)</td>
<td>1301.053</td>
</tr>
<tr>
<td>867(b-3)</td>
<td>1301.054</td>
</tr>
<tr>
<td>867(b-4)</td>
<td>1301.055</td>
</tr>
<tr>
<td>867(c)</td>
<td>1301.057</td>
</tr>
<tr>
<td>867(d)</td>
<td>1301.057</td>
</tr>
<tr>
<td>867(e)</td>
<td>1301.057</td>
</tr>
<tr>
<td>867(f)</td>
<td>1301.053, 1301.054, 1301.056</td>
</tr>
<tr>
<td>867A</td>
<td>1301.052</td>
</tr>
<tr>
<td>868(a)</td>
<td>1301.058, 1301.101</td>
</tr>
<tr>
<td>868(b)</td>
<td>1301.103</td>
</tr>
<tr>
<td>868(c)</td>
<td>1301.101</td>
</tr>
<tr>
<td>868(d)</td>
<td>1301.101</td>
</tr>
<tr>
<td>868(e)</td>
<td>1301.102</td>
</tr>
<tr>
<td>868(f)</td>
<td>1301.153</td>
</tr>
<tr>
<td>868A</td>
<td>1301.152</td>
</tr>
<tr>
<td>868B</td>
<td>1301.058</td>
</tr>
<tr>
<td>868C</td>
<td>1301.202</td>
</tr>
<tr>
<td>869</td>
<td>1301.201</td>
</tr>
<tr>
<td>869A</td>
<td>1301.155</td>
</tr>
<tr>
<td>869B</td>
<td>1301.002</td>
</tr>
<tr>
<td>869C</td>
<td>1301.151</td>
</tr>
<tr>
<td>870</td>
<td>1301.203</td>
</tr>
<tr>
<td>870A</td>
<td>1301.1535</td>
</tr>
<tr>
<td>871</td>
<td>1301.154</td>
</tr>
<tr>
<td>872</td>
<td>1301.156</td>
</tr>
<tr>
<td>873</td>
<td>1301.204</td>
</tr>
<tr>
<td>874</td>
<td>1251.002</td>
</tr>
<tr>
<td>875(a)</td>
<td>1251.001</td>
</tr>
<tr>
<td>875(b)</td>
<td>1251.001</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Probate Code</th>
<th>Estates Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>875(c)</td>
<td>1251.003</td>
</tr>
<tr>
<td>875(d)</td>
<td>1251.004</td>
</tr>
<tr>
<td>875(e)</td>
<td>1251.005</td>
</tr>
<tr>
<td>875(f)(1)</td>
<td>1251.006, 1251.008</td>
</tr>
<tr>
<td>875(f)(2)</td>
<td>1251.006</td>
</tr>
<tr>
<td>875(f)(3)</td>
<td>1251.006</td>
</tr>
<tr>
<td>875(f)(4)</td>
<td>1251.006</td>
</tr>
<tr>
<td>875(f)(5)</td>
<td>1251.007</td>
</tr>
<tr>
<td>875(f)(6)</td>
<td>1251.009</td>
</tr>
<tr>
<td>875(g)</td>
<td>1251.010, 1251.012</td>
</tr>
<tr>
<td>875(h)</td>
<td>1251.151</td>
</tr>
<tr>
<td>875(i)</td>
<td>1251.013</td>
</tr>
<tr>
<td>875(j)</td>
<td>1251.011</td>
</tr>
<tr>
<td>875(k)</td>
<td>1251.051</td>
</tr>
<tr>
<td>875(l)</td>
<td>1251.052</td>
</tr>
<tr>
<td>876</td>
<td>1251.101</td>
</tr>
<tr>
<td>877</td>
<td>1251.102</td>
</tr>
<tr>
<td>878</td>
<td>1251.152</td>
</tr>
<tr>
<td>879</td>
<td>1251.152, 1251.153</td>
</tr>
<tr>
<td>881(a)</td>
<td>1252.051</td>
</tr>
<tr>
<td>881(b)</td>
<td>1252.051</td>
</tr>
<tr>
<td>881(c)</td>
<td>1252.052</td>
</tr>
<tr>
<td>881(d)</td>
<td>1252.053</td>
</tr>
<tr>
<td>881(e)</td>
<td>1252.054</td>
</tr>
<tr>
<td>881A</td>
<td>1252.055</td>
</tr>
<tr>
<td>882</td>
<td>1252.001-1252.003</td>
</tr>
<tr>
<td>883(a)</td>
<td>1353.002, 1353.003</td>
</tr>
<tr>
<td>883(b)</td>
<td>1353.002, 1353.003</td>
</tr>
<tr>
<td>883(c)</td>
<td>1353.004</td>
</tr>
<tr>
<td>883(d)</td>
<td>1353.005</td>
</tr>
<tr>
<td>883(e)</td>
<td>1353.001</td>
</tr>
<tr>
<td>883(f)</td>
<td>1353.001</td>
</tr>
<tr>
<td>883(g)</td>
<td>1353.004, 1353.005</td>
</tr>
<tr>
<td>883(h)</td>
<td>1353.006</td>
</tr>
<tr>
<td>883A</td>
<td>1353.103</td>
</tr>
<tr>
<td>883B(a)</td>
<td>1353.051</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>883B(b)</td>
<td>1353.052</td>
<td>889A(f)</td>
<td>1352.054</td>
<td>893</td>
<td>1253.054</td>
</tr>
<tr>
<td>883B(c)</td>
<td>1353.051</td>
<td>889A(g)</td>
<td>1352.057,</td>
<td>894(a)</td>
<td>1253.101</td>
</tr>
<tr>
<td>883B(d)</td>
<td>1353.052</td>
<td>889A(h)</td>
<td>1352.055</td>
<td>894(b)</td>
<td>1253.102</td>
</tr>
<tr>
<td>883B(e)</td>
<td>1353.052</td>
<td>889A(i)</td>
<td>1352.055</td>
<td>894(c)</td>
<td>1253.103</td>
</tr>
<tr>
<td>883C(a)</td>
<td>1353.101,</td>
<td>889A(j)</td>
<td>1352.052</td>
<td>894(d)</td>
<td>1253.102</td>
</tr>
<tr>
<td></td>
<td>1353.102</td>
<td>889A(k)</td>
<td>1352.059</td>
<td>895(a)</td>
<td>1253.151</td>
</tr>
<tr>
<td>883C(b)</td>
<td>1353.102</td>
<td>890(a)</td>
<td>1351.051</td>
<td>895(b)</td>
<td>1253.152</td>
</tr>
<tr>
<td>883C(c)</td>
<td>1353.102</td>
<td>890(b)</td>
<td>1351.052,</td>
<td>901</td>
<td>1356.001</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1351.053,</td>
<td></td>
<td>1356.002</td>
</tr>
<tr>
<td>883D</td>
<td>1353.151</td>
<td>890(c)</td>
<td>1351.053</td>
<td></td>
<td>1356.002</td>
</tr>
<tr>
<td>884</td>
<td>1353.054</td>
<td>890(d)</td>
<td>1351.054</td>
<td></td>
<td>1356.051,</td>
</tr>
<tr>
<td>884A</td>
<td>1353.053</td>
<td>890(e)</td>
<td>1351.054</td>
<td></td>
<td>1356.052</td>
</tr>
<tr>
<td>884(a)</td>
<td>1354.001-</td>
<td>890(f)</td>
<td>1351.055</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td></td>
<td>1354.003</td>
<td>890(g)</td>
<td>1351.056</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>885(b)</td>
<td>1354.004</td>
<td>890A(a)</td>
<td>1352.001</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>885(c)</td>
<td>1354.005</td>
<td>890A(b)</td>
<td>1352.101</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>885(d)</td>
<td>1354.006</td>
<td>890A(c)</td>
<td>1352.101,</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>885(e)</td>
<td>1354.007</td>
<td></td>
<td>1352.102,</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>885(f)</td>
<td>1354.008</td>
<td></td>
<td>1352.106</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>885(g)</td>
<td>1354.009</td>
<td></td>
<td>1352.151</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>887(a)</td>
<td>1355.001,</td>
<td></td>
<td>1352.152</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td></td>
<td>1355.051</td>
<td></td>
<td>1352.154</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>887(b)</td>
<td>1355.052</td>
<td></td>
<td>1352.155</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>887(c)</td>
<td>1355.102,</td>
<td></td>
<td>1352.156</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td></td>
<td>1355.103</td>
<td></td>
<td>1352.157</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>887(d)</td>
<td>1355.104</td>
<td></td>
<td>1352.158</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>887(e)</td>
<td>1355.002</td>
<td></td>
<td>1352.159</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>887(f)</td>
<td>1355.105</td>
<td></td>
<td>1352.160</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>887(g)</td>
<td>1355.151-</td>
<td></td>
<td>1352.161</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td></td>
<td>1355.154</td>
<td></td>
<td>1352.162</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889(a)</td>
<td>1351.001,</td>
<td></td>
<td>1352.163</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td></td>
<td>1351.006</td>
<td></td>
<td>1352.164</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889(b)</td>
<td>1351.002</td>
<td></td>
<td>1352.165</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889(c)</td>
<td>1351.003</td>
<td></td>
<td>1352.166</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889(d)</td>
<td>1351.003</td>
<td></td>
<td>1352.167</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889(e)</td>
<td>1351.004</td>
<td></td>
<td>1352.168</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889(f)</td>
<td>1351.005</td>
<td></td>
<td>1352.169</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889A(a)</td>
<td>1352.001</td>
<td></td>
<td>1352.170</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889A(b)</td>
<td>1352.051,</td>
<td></td>
<td>1352.171</td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td></td>
<td>1352.052,</td>
<td></td>
<td></td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td></td>
<td>1352.056</td>
<td></td>
<td></td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889A(c)</td>
<td>1352.053</td>
<td></td>
<td></td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889A(d)</td>
<td>1352.054</td>
<td></td>
<td></td>
<td></td>
<td>1356.051</td>
</tr>
<tr>
<td>889A(e)</td>
<td>1352.055</td>
<td></td>
<td></td>
<td></td>
<td>1356.051</td>
</tr>
</tbody>
</table>

893 repealed
## Conversion Chart

### Estates Code to Probate Code

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.001</td>
<td>new</td>
</tr>
<tr>
<td>21.002</td>
<td>new</td>
</tr>
<tr>
<td>21.003</td>
<td>new</td>
</tr>
<tr>
<td>21.004</td>
<td>2(c)</td>
</tr>
<tr>
<td>21.005</td>
<td>new</td>
</tr>
<tr>
<td>21.006</td>
<td>2(a)</td>
</tr>
<tr>
<td>22.001</td>
<td>3</td>
</tr>
<tr>
<td>22.002</td>
<td>3(a)</td>
</tr>
<tr>
<td>22.003</td>
<td>3(kk)</td>
</tr>
<tr>
<td>22.004</td>
<td>3(b)</td>
</tr>
<tr>
<td>22.005</td>
<td>3(c)</td>
</tr>
<tr>
<td>22.006</td>
<td>3(d)</td>
</tr>
<tr>
<td>22.007</td>
<td>3(e), (g), (ii)</td>
</tr>
<tr>
<td>22.008</td>
<td>3(h)</td>
</tr>
<tr>
<td>22.009</td>
<td>3(i)</td>
</tr>
<tr>
<td>22.010</td>
<td>3(j)</td>
</tr>
<tr>
<td>22.011</td>
<td>3(k)</td>
</tr>
<tr>
<td>22.012</td>
<td>3(l)</td>
</tr>
<tr>
<td>22.013</td>
<td>3(m)</td>
</tr>
<tr>
<td>22.014</td>
<td>3(ll)</td>
</tr>
<tr>
<td>22.015</td>
<td>3(o)</td>
</tr>
<tr>
<td>22.016</td>
<td>3(p)</td>
</tr>
<tr>
<td>22.017</td>
<td>3(q)</td>
</tr>
<tr>
<td>22.018</td>
<td>3(r)</td>
</tr>
<tr>
<td>22.019</td>
<td>3(f)</td>
</tr>
<tr>
<td>22.020</td>
<td>3(s)</td>
</tr>
<tr>
<td>22.021</td>
<td>3(s)</td>
</tr>
<tr>
<td>22.022</td>
<td>3(t)</td>
</tr>
<tr>
<td>22.023 repealed</td>
<td>3(u)</td>
</tr>
<tr>
<td>22.024</td>
<td>3(v)</td>
</tr>
<tr>
<td>22.025</td>
<td>3(w)</td>
</tr>
<tr>
<td>22.026</td>
<td>3(jj)</td>
</tr>
<tr>
<td>22.027</td>
<td>3(x)</td>
</tr>
<tr>
<td>22.028</td>
<td>3(z)</td>
</tr>
<tr>
<td>22.029</td>
<td>3(bb)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>22.0295</td>
<td>new</td>
</tr>
<tr>
<td>22.030</td>
<td>3(dd)</td>
</tr>
<tr>
<td>22.031</td>
<td>3(aa)</td>
</tr>
<tr>
<td>22.032</td>
<td>3(ee)</td>
</tr>
<tr>
<td>22.033</td>
<td>3(mm)</td>
</tr>
<tr>
<td>22.034</td>
<td>3(ff)</td>
</tr>
<tr>
<td>31.001</td>
<td>3(bb)</td>
</tr>
<tr>
<td>31.002</td>
<td>4B</td>
</tr>
<tr>
<td>32.001</td>
<td>4A</td>
</tr>
<tr>
<td>32.002</td>
<td>4C</td>
</tr>
<tr>
<td>32.003</td>
<td>4D</td>
</tr>
<tr>
<td>32.004</td>
<td>4E</td>
</tr>
<tr>
<td>32.005</td>
<td>4F</td>
</tr>
<tr>
<td>32.006</td>
<td>4G</td>
</tr>
<tr>
<td>32.007</td>
<td>4H</td>
</tr>
<tr>
<td>33.001</td>
<td>6</td>
</tr>
<tr>
<td>33.002</td>
<td>6A</td>
</tr>
<tr>
<td>33.003</td>
<td>6B</td>
</tr>
<tr>
<td>33.004</td>
<td>6C</td>
</tr>
<tr>
<td>33.005</td>
<td>6D</td>
</tr>
<tr>
<td>33.051</td>
<td>8(a)</td>
</tr>
<tr>
<td>33.052</td>
<td>8(a)</td>
</tr>
<tr>
<td>33.053</td>
<td>8(b)</td>
</tr>
<tr>
<td>33.054</td>
<td>8(e)</td>
</tr>
<tr>
<td>33.055</td>
<td>8(a)</td>
</tr>
<tr>
<td>33.101</td>
<td>8(c)(1), 8A(a)</td>
</tr>
<tr>
<td>33.102</td>
<td>8(c)(1), 8A(a)</td>
</tr>
<tr>
<td>33.103</td>
<td>8(c)(2), 8A(b)</td>
</tr>
<tr>
<td>33.104</td>
<td>8(d), 8B</td>
</tr>
<tr>
<td>33.105</td>
<td>new</td>
</tr>
<tr>
<td>34.001</td>
<td>5B</td>
</tr>
<tr>
<td>34.002</td>
<td>5C</td>
</tr>
<tr>
<td>51.001</td>
<td>33(a), (b)</td>
</tr>
<tr>
<td>51.002</td>
<td>33(c)</td>
</tr>
<tr>
<td>51.003</td>
<td>33(c)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>51.051</td>
<td>33(f)(1)</td>
</tr>
<tr>
<td>51.052</td>
<td>33(f)(4)</td>
</tr>
<tr>
<td>51.053</td>
<td>33(f)(2)</td>
</tr>
<tr>
<td>51.054</td>
<td>33(f)(3)</td>
</tr>
<tr>
<td>51.055</td>
<td>34</td>
</tr>
<tr>
<td>51.056</td>
<td>33(e)</td>
</tr>
<tr>
<td>51.101</td>
<td>33(f)(1)</td>
</tr>
<tr>
<td>51.102</td>
<td>33(h)</td>
</tr>
<tr>
<td>51.103</td>
<td>33(i)</td>
</tr>
<tr>
<td>51.104</td>
<td>33(g)</td>
</tr>
<tr>
<td>51.151</td>
<td>33(d)</td>
</tr>
<tr>
<td>51.201</td>
<td>35</td>
</tr>
<tr>
<td>51.202</td>
<td>33(j)</td>
</tr>
<tr>
<td>52.001</td>
<td>13</td>
</tr>
<tr>
<td>52.002</td>
<td>14</td>
</tr>
<tr>
<td>52.003</td>
<td>16</td>
</tr>
<tr>
<td>52.004</td>
<td>17</td>
</tr>
<tr>
<td>52.051</td>
<td>11, 13(e)</td>
</tr>
<tr>
<td>52.052</td>
<td>15</td>
</tr>
<tr>
<td>52.053</td>
<td>17A</td>
</tr>
<tr>
<td>53.001</td>
<td>24</td>
</tr>
<tr>
<td>53.051</td>
<td>12(a)</td>
</tr>
<tr>
<td>53.052</td>
<td>12(b), (c)</td>
</tr>
<tr>
<td>53.053</td>
<td>11A</td>
</tr>
<tr>
<td>53.054</td>
<td>11B</td>
</tr>
<tr>
<td>53.101</td>
<td>19</td>
</tr>
<tr>
<td>53.102</td>
<td>20</td>
</tr>
<tr>
<td>53.103</td>
<td>23</td>
</tr>
<tr>
<td>53.104</td>
<td>34A</td>
</tr>
<tr>
<td>53.105 repealed</td>
<td>23</td>
</tr>
<tr>
<td>53.106</td>
<td>25</td>
</tr>
<tr>
<td>53.107</td>
<td>new</td>
</tr>
<tr>
<td>54.001</td>
<td>10C</td>
</tr>
<tr>
<td>54.002</td>
<td>9</td>
</tr>
</tbody>
</table>
### Conversion Chart – Estates Code to Probate Code

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>54.051</td>
<td>22</td>
</tr>
<tr>
<td>54.052</td>
<td>18</td>
</tr>
<tr>
<td>55.001</td>
<td>10</td>
</tr>
<tr>
<td>55.002</td>
<td>21</td>
</tr>
<tr>
<td>55.051</td>
<td>10A(a)</td>
</tr>
<tr>
<td>55.052</td>
<td>10A(a)</td>
</tr>
<tr>
<td>55.053</td>
<td>10A(b)</td>
</tr>
<tr>
<td>55.101</td>
<td>10B</td>
</tr>
<tr>
<td>55.102</td>
<td>10B</td>
</tr>
<tr>
<td>55.151</td>
<td>26</td>
</tr>
<tr>
<td>55.152</td>
<td>26</td>
</tr>
<tr>
<td>55.201</td>
<td>27</td>
</tr>
<tr>
<td>55.202</td>
<td>27</td>
</tr>
<tr>
<td>55.203</td>
<td>27</td>
</tr>
<tr>
<td>55.251</td>
<td>31</td>
</tr>
<tr>
<td>55.252</td>
<td>31</td>
</tr>
<tr>
<td>56.001</td>
<td>221A</td>
</tr>
<tr>
<td>56.002</td>
<td>221B</td>
</tr>
<tr>
<td>101.001</td>
<td>37</td>
</tr>
<tr>
<td>101.002</td>
<td>46(a)</td>
</tr>
<tr>
<td>101.003</td>
<td>37</td>
</tr>
<tr>
<td>101.051</td>
<td>37</td>
</tr>
<tr>
<td>101.052</td>
<td>155, 156</td>
</tr>
<tr>
<td>102.001</td>
<td>42(c)</td>
</tr>
<tr>
<td>102.002</td>
<td>282</td>
</tr>
<tr>
<td>102.003</td>
<td>283</td>
</tr>
<tr>
<td>102.004</td>
<td>270</td>
</tr>
<tr>
<td>102.005</td>
<td>284</td>
</tr>
<tr>
<td>102.006</td>
<td>285</td>
</tr>
<tr>
<td>111.001</td>
<td>46(a)</td>
</tr>
<tr>
<td>111.002</td>
<td>46(b)</td>
</tr>
<tr>
<td>111.051</td>
<td>450(a), (c)</td>
</tr>
<tr>
<td>111.052</td>
<td>450(a)</td>
</tr>
<tr>
<td>111.053</td>
<td>450(b)</td>
</tr>
<tr>
<td>111.054</td>
<td>new</td>
</tr>
<tr>
<td>111.101</td>
<td>new</td>
</tr>
<tr>
<td>111.102</td>
<td>new</td>
</tr>
<tr>
<td>112.001</td>
<td>new</td>
</tr>
<tr>
<td>112.002</td>
<td>462</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>112.051</td>
<td>451</td>
</tr>
<tr>
<td>112.052</td>
<td>452</td>
</tr>
<tr>
<td>112.053</td>
<td>456(a), 458</td>
</tr>
<tr>
<td>112.054</td>
<td>455</td>
</tr>
<tr>
<td>112.101</td>
<td>456(a), (d)</td>
</tr>
<tr>
<td>112.102</td>
<td>456(b)</td>
</tr>
<tr>
<td>112.103</td>
<td>456(c)</td>
</tr>
<tr>
<td>112.104</td>
<td>457</td>
</tr>
<tr>
<td>112.105</td>
<td>458</td>
</tr>
<tr>
<td>112.106</td>
<td>459</td>
</tr>
<tr>
<td>112.151</td>
<td>453</td>
</tr>
<tr>
<td>112.152</td>
<td>454</td>
</tr>
<tr>
<td>112.201</td>
<td>460(f)</td>
</tr>
<tr>
<td>112.202</td>
<td>460(f)</td>
</tr>
<tr>
<td>112.203</td>
<td>460(a)</td>
</tr>
<tr>
<td>112.204</td>
<td>460(b)</td>
</tr>
<tr>
<td>112.205</td>
<td>460(d)</td>
</tr>
<tr>
<td>112.206</td>
<td>460(e)</td>
</tr>
<tr>
<td>112.207</td>
<td>460(g)</td>
</tr>
<tr>
<td>112.251</td>
<td>461</td>
</tr>
<tr>
<td>112.252</td>
<td>461</td>
</tr>
<tr>
<td>112.253</td>
<td>461</td>
</tr>
<tr>
<td>113.001</td>
<td>436(1), (2), (3), (8), (9), (11), (12), (13), (15)</td>
</tr>
<tr>
<td>113.002</td>
<td>436(7)</td>
</tr>
<tr>
<td>113.003</td>
<td>436(6), 444</td>
</tr>
<tr>
<td>113.004</td>
<td>436(4), (5), (10), (14), 438A(a)</td>
</tr>
<tr>
<td>113.005</td>
<td>444</td>
</tr>
<tr>
<td>113.051</td>
<td>439A(a)</td>
</tr>
<tr>
<td>113.052</td>
<td>439A(b)</td>
</tr>
<tr>
<td>113.053</td>
<td>439A(c), (d)</td>
</tr>
<tr>
<td>113.0531</td>
<td>new</td>
</tr>
<tr>
<td>113.101</td>
<td>437</td>
</tr>
<tr>
<td>113.102</td>
<td>438(a)</td>
</tr>
<tr>
<td>113.103</td>
<td>438(b)</td>
</tr>
<tr>
<td>113.104</td>
<td>438(c)</td>
</tr>
<tr>
<td>113.105</td>
<td>438A(b), (c), (e)</td>
</tr>
<tr>
<td>113.106</td>
<td>438B</td>
</tr>
<tr>
<td>113.151</td>
<td>439(a)</td>
</tr>
<tr>
<td>113.152</td>
<td>439(b)</td>
</tr>
<tr>
<td>113.153</td>
<td>439(c)</td>
</tr>
<tr>
<td>113.154</td>
<td>438A(d)</td>
</tr>
<tr>
<td>113.1541</td>
<td>438B(c)</td>
</tr>
<tr>
<td>113.155</td>
<td>439(d)</td>
</tr>
<tr>
<td>113.156</td>
<td>440</td>
</tr>
<tr>
<td>113.157</td>
<td>440</td>
</tr>
<tr>
<td>113.158</td>
<td>441</td>
</tr>
<tr>
<td>113.201</td>
<td>443</td>
</tr>
<tr>
<td>113.202</td>
<td>444</td>
</tr>
<tr>
<td>113.203</td>
<td>445</td>
</tr>
<tr>
<td>113.204</td>
<td>446</td>
</tr>
<tr>
<td>113.205</td>
<td>447</td>
</tr>
<tr>
<td>113.206</td>
<td>438A(f)</td>
</tr>
<tr>
<td>113.207</td>
<td>445</td>
</tr>
<tr>
<td>113.208</td>
<td>438A(f), (g)</td>
</tr>
<tr>
<td>113.209</td>
<td>448</td>
</tr>
<tr>
<td>113.210</td>
<td>449</td>
</tr>
<tr>
<td>113.215</td>
<td>442</td>
</tr>
<tr>
<td>113.253</td>
<td>442</td>
</tr>
<tr>
<td>114.001</td>
<td>new</td>
</tr>
<tr>
<td>114.002</td>
<td>new</td>
</tr>
<tr>
<td>114.003</td>
<td>new</td>
</tr>
<tr>
<td>114.004</td>
<td>new</td>
</tr>
<tr>
<td>114.005</td>
<td>new</td>
</tr>
<tr>
<td>114.006</td>
<td>new</td>
</tr>
<tr>
<td>114.051</td>
<td>new</td>
</tr>
<tr>
<td>114.052</td>
<td>new</td>
</tr>
<tr>
<td>114.053</td>
<td>new</td>
</tr>
<tr>
<td>114.054</td>
<td>new</td>
</tr>
<tr>
<td>114.055</td>
<td>new</td>
</tr>
<tr>
<td>114.056</td>
<td>new</td>
</tr>
<tr>
<td>114.057</td>
<td>new</td>
</tr>
<tr>
<td>114.101</td>
<td>new</td>
</tr>
<tr>
<td>114.102</td>
<td>new</td>
</tr>
</tbody>
</table>
## Conversion Chart – Estates Code to Probate Code

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>114.103</td>
<td>new</td>
</tr>
<tr>
<td>114.104</td>
<td>new</td>
</tr>
<tr>
<td>114.105</td>
<td>new</td>
</tr>
<tr>
<td>114.106</td>
<td>new</td>
</tr>
<tr>
<td>114.151</td>
<td>new</td>
</tr>
<tr>
<td>114.152</td>
<td>new</td>
</tr>
<tr>
<td>115.001</td>
<td>new</td>
</tr>
<tr>
<td>115.002</td>
<td>new</td>
</tr>
<tr>
<td>115.003</td>
<td>new</td>
</tr>
<tr>
<td>115.004</td>
<td>new</td>
</tr>
<tr>
<td>115.005</td>
<td>new</td>
</tr>
<tr>
<td>115.006</td>
<td>new</td>
</tr>
<tr>
<td>121.001</td>
<td>47(f)</td>
</tr>
<tr>
<td>121.051</td>
<td>47(a)</td>
</tr>
<tr>
<td>121.052</td>
<td>47(a)</td>
</tr>
<tr>
<td>121.053</td>
<td>47(a)</td>
</tr>
<tr>
<td>121.054</td>
<td>47(a)</td>
</tr>
<tr>
<td>121.055</td>
<td>47(a)</td>
</tr>
<tr>
<td>121.056</td>
<td>47(a)</td>
</tr>
<tr>
<td>121.057</td>
<td>47(a)</td>
</tr>
<tr>
<td>121.101</td>
<td>47(c)</td>
</tr>
<tr>
<td>121.102</td>
<td>47(c)</td>
</tr>
<tr>
<td>121.103</td>
<td>47(c)</td>
</tr>
<tr>
<td>121.104</td>
<td>47(c)</td>
</tr>
<tr>
<td>122.001</td>
<td>37A(e)</td>
</tr>
<tr>
<td>122.002</td>
<td>37A(a)</td>
</tr>
<tr>
<td>122.003</td>
<td>37A(b)</td>
</tr>
<tr>
<td>122.004</td>
<td>37A(k)</td>
</tr>
<tr>
<td>122.005</td>
<td>37A(j)</td>
</tr>
<tr>
<td>122.051</td>
<td>37A(g)</td>
</tr>
<tr>
<td>122.052</td>
<td>37A(h)</td>
</tr>
<tr>
<td>122.053</td>
<td>37A(h)</td>
</tr>
<tr>
<td>122.054</td>
<td>37A(h)</td>
</tr>
<tr>
<td>122.055</td>
<td>37A(h)</td>
</tr>
<tr>
<td>122.056</td>
<td>37A(i)</td>
</tr>
<tr>
<td>122.057</td>
<td>37A(p)</td>
</tr>
<tr>
<td>122.101</td>
<td>37A(c)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>122.102</td>
<td>37A(d)</td>
</tr>
<tr>
<td>122.103</td>
<td>37A(f)</td>
</tr>
<tr>
<td>122.104</td>
<td>37A(n)</td>
</tr>
<tr>
<td>122.105</td>
<td>37A(o)</td>
</tr>
<tr>
<td>122.106</td>
<td>37A(o)</td>
</tr>
<tr>
<td>122.107</td>
<td>new</td>
</tr>
<tr>
<td>122.151</td>
<td>37A(l)</td>
</tr>
<tr>
<td>122.152</td>
<td>37A(l)</td>
</tr>
<tr>
<td>122.153</td>
<td>37A(m)</td>
</tr>
<tr>
<td>122.201</td>
<td>37B(a)</td>
</tr>
<tr>
<td>122.202</td>
<td>37B(b)</td>
</tr>
<tr>
<td>122.203</td>
<td>37B(b)</td>
</tr>
<tr>
<td>122.204</td>
<td>37B(c)</td>
</tr>
<tr>
<td>122.205</td>
<td>37B(d)</td>
</tr>
<tr>
<td>122.206</td>
<td>37B(e)</td>
</tr>
<tr>
<td>123.001</td>
<td>69(a), (b)</td>
</tr>
<tr>
<td>123.002</td>
<td>69(c)</td>
</tr>
<tr>
<td>123.051</td>
<td>471</td>
</tr>
<tr>
<td>123.052</td>
<td>472(a)</td>
</tr>
<tr>
<td>123.053</td>
<td>472(b)</td>
</tr>
<tr>
<td>123.054</td>
<td>473(a)</td>
</tr>
<tr>
<td>123.055</td>
<td>473(b)</td>
</tr>
<tr>
<td>123.056</td>
<td>new</td>
</tr>
<tr>
<td>123.057</td>
<td>473(h)</td>
</tr>
<tr>
<td>123.101</td>
<td>473(h)</td>
</tr>
<tr>
<td>123.102</td>
<td>473(h)</td>
</tr>
<tr>
<td>123.103</td>
<td>473(h)</td>
</tr>
<tr>
<td>123.104</td>
<td>473(h)</td>
</tr>
<tr>
<td>123.151</td>
<td>new</td>
</tr>
<tr>
<td>124.001</td>
<td>322A(a), (s)</td>
</tr>
<tr>
<td>124.002</td>
<td>322A(a)</td>
</tr>
<tr>
<td>124.003</td>
<td>322A(l)</td>
</tr>
<tr>
<td>124.004</td>
<td>322A(p)</td>
</tr>
<tr>
<td>124.005</td>
<td>322A(b)</td>
</tr>
<tr>
<td>124.006</td>
<td>322A(c), (d), (e), (f)</td>
</tr>
<tr>
<td>124.007</td>
<td>322A(g)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>124.008</td>
<td>322A(h)</td>
</tr>
<tr>
<td>124.009</td>
<td>322A(i)</td>
</tr>
<tr>
<td>124.010</td>
<td>322A(k), (m)</td>
</tr>
<tr>
<td>124.011</td>
<td>322A(q)</td>
</tr>
<tr>
<td>124.012</td>
<td>322A(r)</td>
</tr>
<tr>
<td>124.013</td>
<td>322A(t)</td>
</tr>
<tr>
<td>124.014</td>
<td>322A(u)</td>
</tr>
<tr>
<td>124.015</td>
<td>322A(o), (u)</td>
</tr>
<tr>
<td>124.016</td>
<td>322A(v)</td>
</tr>
<tr>
<td>124.017</td>
<td>322A(w)</td>
</tr>
<tr>
<td>124.018</td>
<td>322A(y)</td>
</tr>
<tr>
<td>124.051</td>
<td>378A(b)</td>
</tr>
<tr>
<td>124.052</td>
<td>378A(a)</td>
</tr>
<tr>
<td>151.001</td>
<td>36B</td>
</tr>
<tr>
<td>151.002</td>
<td>36C</td>
</tr>
<tr>
<td>151.003</td>
<td>36D</td>
</tr>
<tr>
<td>151.004</td>
<td>36E</td>
</tr>
<tr>
<td>151.005</td>
<td>36F</td>
</tr>
<tr>
<td>152.001</td>
<td>108, 109, 110</td>
</tr>
<tr>
<td>152.002</td>
<td>111(a), 112</td>
</tr>
<tr>
<td>152.003</td>
<td>111(b)</td>
</tr>
<tr>
<td>152.004</td>
<td>108</td>
</tr>
<tr>
<td>152.051</td>
<td>113(a)</td>
</tr>
<tr>
<td>152.052</td>
<td>113(b)</td>
</tr>
<tr>
<td>152.053</td>
<td>114(a)</td>
</tr>
<tr>
<td>152.054</td>
<td>113(c)</td>
</tr>
<tr>
<td>152.055</td>
<td>113(d), 114(b)</td>
</tr>
<tr>
<td>152.101</td>
<td>115(a), (b)</td>
</tr>
<tr>
<td>152.102</td>
<td>115(c), (d)</td>
</tr>
<tr>
<td>153.001</td>
<td>new</td>
</tr>
<tr>
<td>153.002</td>
<td>new</td>
</tr>
<tr>
<td>153.003</td>
<td>new</td>
</tr>
<tr>
<td>201.001</td>
<td>38(a)</td>
</tr>
<tr>
<td>201.002</td>
<td>38(b)</td>
</tr>
<tr>
<td>201.003</td>
<td>45</td>
</tr>
<tr>
<td>201.051</td>
<td>42(a)</td>
</tr>
<tr>
<td>201.052</td>
<td>42(b), (1)</td>
</tr>
<tr>
<td>201.053</td>
<td>42(b), (2)</td>
</tr>
<tr>
<td>201.054</td>
<td>40</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
## Conversion Chart – Estates Code to Probate Code

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>201.055</td>
<td>42(d)</td>
</tr>
<tr>
<td>201.056</td>
<td>41(a)</td>
</tr>
<tr>
<td>201.057</td>
<td>41(b)</td>
</tr>
<tr>
<td>201.058</td>
<td>41(d)</td>
</tr>
<tr>
<td>201.059</td>
<td>41(d)</td>
</tr>
<tr>
<td>201.060</td>
<td>41(d)</td>
</tr>
<tr>
<td>201.061</td>
<td>41(d)</td>
</tr>
<tr>
<td>201.062</td>
<td>41(e), (f)</td>
</tr>
<tr>
<td>201.101</td>
<td>43</td>
</tr>
<tr>
<td>201.102</td>
<td>39</td>
</tr>
<tr>
<td>201.103</td>
<td>39</td>
</tr>
<tr>
<td>201.151</td>
<td>44(a), (b)</td>
</tr>
<tr>
<td>201.152</td>
<td>44(c)</td>
</tr>
<tr>
<td>202.001</td>
<td>48(a)</td>
</tr>
<tr>
<td>202.002</td>
<td>48(a)</td>
</tr>
<tr>
<td>202.003</td>
<td>48(a), (c)</td>
</tr>
<tr>
<td>202.004</td>
<td>new</td>
</tr>
<tr>
<td>202.005</td>
<td>49(a)</td>
</tr>
<tr>
<td>202.006</td>
<td>48(b)</td>
</tr>
<tr>
<td>202.007</td>
<td>49(b)</td>
</tr>
<tr>
<td>202.008</td>
<td>49(b)</td>
</tr>
<tr>
<td>202.009</td>
<td>53(b), (c)</td>
</tr>
<tr>
<td>202.051</td>
<td>50(a)</td>
</tr>
<tr>
<td>202.052</td>
<td>50(b)</td>
</tr>
<tr>
<td>202.053</td>
<td>50(c)</td>
</tr>
<tr>
<td>202.054</td>
<td>50(a)</td>
</tr>
<tr>
<td>202.055</td>
<td>50(d)</td>
</tr>
<tr>
<td>202.056</td>
<td>50(e)</td>
</tr>
<tr>
<td>202.057</td>
<td>new</td>
</tr>
<tr>
<td>202.101</td>
<td>51</td>
</tr>
<tr>
<td>202.102</td>
<td>51</td>
</tr>
<tr>
<td>202.103</td>
<td>51</td>
</tr>
<tr>
<td>202.151</td>
<td>53(a)</td>
</tr>
<tr>
<td>202.201</td>
<td>54</td>
</tr>
<tr>
<td>202.202</td>
<td>55(a)</td>
</tr>
<tr>
<td>202.203</td>
<td>55(a)</td>
</tr>
<tr>
<td>202.204</td>
<td>55(b)</td>
</tr>
<tr>
<td>202.205</td>
<td>55(c)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>202.206</td>
<td>56</td>
</tr>
<tr>
<td>203.001</td>
<td>52</td>
</tr>
<tr>
<td>203.002</td>
<td>52A</td>
</tr>
<tr>
<td>204.001</td>
<td>53E</td>
</tr>
<tr>
<td>204.051</td>
<td>53A(a)</td>
</tr>
<tr>
<td>204.052</td>
<td>53A(b)</td>
</tr>
<tr>
<td>204.053</td>
<td>53A(c), (d)</td>
</tr>
<tr>
<td>204.054</td>
<td>53A(e)</td>
</tr>
<tr>
<td>204.055</td>
<td>53A(f)</td>
</tr>
<tr>
<td>204.056</td>
<td>53A(g)</td>
</tr>
<tr>
<td>204.101</td>
<td>53B(a)</td>
</tr>
<tr>
<td>204.102</td>
<td>53B(b)</td>
</tr>
<tr>
<td>204.103</td>
<td>53B(c)</td>
</tr>
<tr>
<td>204.151</td>
<td>53C(a)</td>
</tr>
<tr>
<td>204.152</td>
<td>53C(b), (c)</td>
</tr>
<tr>
<td>204.153</td>
<td>53C(d)</td>
</tr>
<tr>
<td>204.201</td>
<td>53D</td>
</tr>
<tr>
<td>205.001</td>
<td>137(a)</td>
</tr>
<tr>
<td>205.002</td>
<td>137(a)</td>
</tr>
<tr>
<td>205.003</td>
<td>137(a)</td>
</tr>
<tr>
<td>205.004</td>
<td>137(a)</td>
</tr>
<tr>
<td>205.005</td>
<td>137(d)</td>
</tr>
<tr>
<td>205.006</td>
<td>137(c)</td>
</tr>
<tr>
<td>205.007</td>
<td>138</td>
</tr>
<tr>
<td>205.008</td>
<td>137(b)</td>
</tr>
<tr>
<td>205.009</td>
<td>new</td>
</tr>
<tr>
<td>251.001</td>
<td>57</td>
</tr>
<tr>
<td>251.002</td>
<td>58(a), (b)</td>
</tr>
<tr>
<td>251.001</td>
<td>59(a)</td>
</tr>
<tr>
<td>251.002</td>
<td>59(a), 60</td>
</tr>
<tr>
<td>251.003</td>
<td>new</td>
</tr>
<tr>
<td>251.101</td>
<td>59(b)</td>
</tr>
<tr>
<td>251.102</td>
<td>59(a), (c)</td>
</tr>
<tr>
<td>251.103</td>
<td>59(a)</td>
</tr>
<tr>
<td>251.104</td>
<td>59(a), (b)</td>
</tr>
<tr>
<td>251.105</td>
<td>59(b)</td>
</tr>
<tr>
<td>251.106</td>
<td>59(c)</td>
</tr>
<tr>
<td>251.107</td>
<td>60</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>205.006</td>
<td>new</td>
</tr>
<tr>
<td>255.001</td>
<td>58(d)</td>
</tr>
<tr>
<td>255.002</td>
<td>58(c)</td>
</tr>
<tr>
<td>255.003</td>
<td>58(c)</td>
</tr>
<tr>
<td>255.004</td>
<td>59A</td>
</tr>
<tr>
<td>254.005</td>
<td>64</td>
</tr>
<tr>
<td>254.006</td>
<td>new</td>
</tr>
<tr>
<td>255.001</td>
<td>58(d)</td>
</tr>
<tr>
<td>255.002</td>
<td>58(c)</td>
</tr>
<tr>
<td>255.003</td>
<td>58(c)</td>
</tr>
<tr>
<td>255.004</td>
<td>59A</td>
</tr>
<tr>
<td>255.005</td>
<td>67(c)</td>
</tr>
<tr>
<td>255.006</td>
<td>67(a), (d)</td>
</tr>
<tr>
<td>255.003</td>
<td>67(a)(1)</td>
</tr>
<tr>
<td>255.004</td>
<td>67(a)(2)</td>
</tr>
<tr>
<td>255.005</td>
<td>67(b)</td>
</tr>
<tr>
<td>255.006</td>
<td>67(e)</td>
</tr>
<tr>
<td>255.101</td>
<td>37C(a)</td>
</tr>
<tr>
<td>255.102</td>
<td>37C(b)</td>
</tr>
<tr>
<td>255.151</td>
<td>68(e)</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>255.152</td>
<td>68(b), (c), (d)</td>
</tr>
<tr>
<td>255.153</td>
<td>68(a)</td>
</tr>
<tr>
<td>255.154</td>
<td>68(a)</td>
</tr>
<tr>
<td>255.201</td>
<td>repealed 70</td>
</tr>
<tr>
<td>255.251</td>
<td>70A(c)</td>
</tr>
<tr>
<td>255.252</td>
<td>70A(a)</td>
</tr>
<tr>
<td>255.253</td>
<td>70A(b)</td>
</tr>
<tr>
<td>255.301</td>
<td>71A(a)</td>
</tr>
<tr>
<td>255.302</td>
<td>71A(b)</td>
</tr>
<tr>
<td>255.303</td>
<td>71A(c)</td>
</tr>
<tr>
<td>255.304</td>
<td>new</td>
</tr>
<tr>
<td>255.351</td>
<td>58c</td>
</tr>
<tr>
<td>254.401</td>
<td>new</td>
</tr>
<tr>
<td>255.451</td>
<td>new</td>
</tr>
<tr>
<td>255.452</td>
<td>new</td>
</tr>
<tr>
<td>255.453</td>
<td>new</td>
</tr>
<tr>
<td>255.454</td>
<td>new</td>
</tr>
<tr>
<td>255.455</td>
<td>new</td>
</tr>
<tr>
<td>255.456</td>
<td>new</td>
</tr>
<tr>
<td>256.001</td>
<td>94</td>
</tr>
<tr>
<td>256.002</td>
<td>72(a)</td>
</tr>
<tr>
<td>256.003</td>
<td>73</td>
</tr>
<tr>
<td>256.051</td>
<td>76</td>
</tr>
<tr>
<td>256.052</td>
<td>81(a)</td>
</tr>
<tr>
<td>256.053</td>
<td>81(a)</td>
</tr>
<tr>
<td>256.054</td>
<td>81(b)</td>
</tr>
<tr>
<td>256.101</td>
<td>83(a)</td>
</tr>
<tr>
<td>256.102</td>
<td>83(b)</td>
</tr>
<tr>
<td>256.103</td>
<td>83(c)</td>
</tr>
<tr>
<td>256.151</td>
<td>88(a)</td>
</tr>
<tr>
<td>256.152</td>
<td>84(a), 88(b)</td>
</tr>
<tr>
<td>256.153</td>
<td>84(b)</td>
</tr>
<tr>
<td>256.154</td>
<td>84(c)</td>
</tr>
<tr>
<td>256.155</td>
<td>84(d)</td>
</tr>
<tr>
<td>256.156</td>
<td>85</td>
</tr>
<tr>
<td>256.157</td>
<td>87</td>
</tr>
<tr>
<td>256.201</td>
<td>89</td>
</tr>
<tr>
<td>256.202</td>
<td>90</td>
</tr>
<tr>
<td>256.203</td>
<td>91</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>256.204</td>
<td>93</td>
</tr>
<tr>
<td>257.001</td>
<td>89C(a)</td>
</tr>
<tr>
<td>257.051</td>
<td>89A(a)</td>
</tr>
<tr>
<td>257.052</td>
<td>89A(a)</td>
</tr>
<tr>
<td>257.053</td>
<td>89B</td>
</tr>
<tr>
<td>257.054</td>
<td>89C(b)</td>
</tr>
<tr>
<td>257.101</td>
<td>89C(c)</td>
</tr>
<tr>
<td>257.102</td>
<td>89C(d)</td>
</tr>
<tr>
<td>257.103</td>
<td>new</td>
</tr>
<tr>
<td>257.151</td>
<td>new</td>
</tr>
<tr>
<td>257.152</td>
<td>new</td>
</tr>
<tr>
<td>258.001</td>
<td>128(a)</td>
</tr>
<tr>
<td>258.002</td>
<td>128(b)</td>
</tr>
<tr>
<td>258.003</td>
<td>128(c)</td>
</tr>
<tr>
<td>258.051</td>
<td>128A(a), (b), (c)</td>
</tr>
<tr>
<td>258.052</td>
<td>128B(d)</td>
</tr>
<tr>
<td>258.053</td>
<td>128B(e)</td>
</tr>
<tr>
<td>258.101</td>
<td>129A</td>
</tr>
<tr>
<td>301.001</td>
<td>72(a)</td>
</tr>
<tr>
<td>301.002</td>
<td>74</td>
</tr>
<tr>
<td>301.051</td>
<td>76</td>
</tr>
<tr>
<td>301.052</td>
<td>82</td>
</tr>
<tr>
<td>301.101</td>
<td>179</td>
</tr>
<tr>
<td>301.151</td>
<td>88(a)</td>
</tr>
<tr>
<td>301.152</td>
<td>88(c)</td>
</tr>
<tr>
<td>301.153</td>
<td>88(d), 180</td>
</tr>
<tr>
<td>301.154</td>
<td>88(e)</td>
</tr>
<tr>
<td>301.155</td>
<td>new</td>
</tr>
<tr>
<td>301.201</td>
<td>80(a), (b)</td>
</tr>
<tr>
<td>301.202</td>
<td>80(b)</td>
</tr>
<tr>
<td>301.203</td>
<td>80(c)</td>
</tr>
<tr>
<td>303.001</td>
<td>128(a)</td>
</tr>
<tr>
<td>303.002</td>
<td>128(c)</td>
</tr>
<tr>
<td>303.003</td>
<td>[repealed] 129A</td>
</tr>
<tr>
<td>304.001</td>
<td>77</td>
</tr>
<tr>
<td>304.002</td>
<td>79</td>
</tr>
<tr>
<td>304.003</td>
<td>78</td>
</tr>
<tr>
<td>305.001</td>
<td>new</td>
</tr>
<tr>
<td>305.002</td>
<td>189</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>305.003</td>
<td>192</td>
</tr>
<tr>
<td>305.004</td>
<td>new</td>
</tr>
<tr>
<td>305.051</td>
<td>190(a)</td>
</tr>
<tr>
<td>305.052</td>
<td>190(b)</td>
</tr>
<tr>
<td>305.053</td>
<td>190(c)</td>
</tr>
<tr>
<td>305.054</td>
<td>190(d), 192</td>
</tr>
<tr>
<td>305.055</td>
<td>190(d)</td>
</tr>
<tr>
<td>305.101</td>
<td>194, 195</td>
</tr>
<tr>
<td>305.102</td>
<td>214, 215, 216, 217</td>
</tr>
<tr>
<td>305.103</td>
<td>198</td>
</tr>
<tr>
<td>305.104</td>
<td>199</td>
</tr>
<tr>
<td>305.105</td>
<td>200</td>
</tr>
<tr>
<td>305.106</td>
<td>194</td>
</tr>
<tr>
<td>305.107</td>
<td>197</td>
</tr>
<tr>
<td>305.108</td>
<td>196</td>
</tr>
<tr>
<td>305.109</td>
<td>197</td>
</tr>
<tr>
<td>305.110</td>
<td>213</td>
</tr>
<tr>
<td>305.111</td>
<td>218</td>
</tr>
<tr>
<td>305.151</td>
<td>194(1), (2)</td>
</tr>
<tr>
<td>305.152</td>
<td>194(3)</td>
</tr>
<tr>
<td>305.153</td>
<td>194(4), (13)</td>
</tr>
<tr>
<td>305.154</td>
<td>194(5)</td>
</tr>
<tr>
<td>305.155</td>
<td>194(6)</td>
</tr>
<tr>
<td>305.156</td>
<td>194(7), (8(b), (c), (d))</td>
</tr>
<tr>
<td>305.157</td>
<td>194(8(a))</td>
</tr>
<tr>
<td>305.158</td>
<td>194(8(e))</td>
</tr>
<tr>
<td>305.159</td>
<td>194(9)</td>
</tr>
<tr>
<td>305.160</td>
<td>194(14)</td>
</tr>
<tr>
<td>305.201</td>
<td>194(10), (12)</td>
</tr>
<tr>
<td>305.202</td>
<td>194(11)</td>
</tr>
<tr>
<td>305.203</td>
<td>201(a)</td>
</tr>
<tr>
<td>305.204</td>
<td>201(b), 202</td>
</tr>
<tr>
<td>305.205</td>
<td>201(c)</td>
</tr>
<tr>
<td>305.206</td>
<td>211, 212</td>
</tr>
<tr>
<td>305.207</td>
<td>194(12)</td>
</tr>
<tr>
<td>305.251</td>
<td>203, 204</td>
</tr>
<tr>
<td>305.252</td>
<td>205, 206(a)</td>
</tr>
<tr>
<td>305.253</td>
<td>206(b)</td>
</tr>
<tr>
<td>305.254</td>
<td>207</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>305.255</td>
<td>208</td>
</tr>
<tr>
<td>305.256</td>
<td>210</td>
</tr>
<tr>
<td>305.257</td>
<td>209</td>
</tr>
<tr>
<td>306.001</td>
<td>178(a), (c)</td>
</tr>
<tr>
<td>306.002</td>
<td>178(b)</td>
</tr>
<tr>
<td>306.003</td>
<td>181</td>
</tr>
<tr>
<td>306.004</td>
<td>182</td>
</tr>
<tr>
<td>306.005</td>
<td>183</td>
</tr>
<tr>
<td>306.006</td>
<td>187</td>
</tr>
<tr>
<td>306.007</td>
<td>186</td>
</tr>
<tr>
<td>307.001</td>
<td>188</td>
</tr>
<tr>
<td>307.002</td>
<td>240</td>
</tr>
<tr>
<td>308.001</td>
<td>128A(a)</td>
</tr>
<tr>
<td>308.0015</td>
<td>128A(a-1)</td>
</tr>
<tr>
<td>308.002</td>
<td>128A(b), (c), (d), (f)</td>
</tr>
<tr>
<td>308.003</td>
<td>128A(e)</td>
</tr>
<tr>
<td>308.004</td>
<td>128A(g), (h)</td>
</tr>
<tr>
<td>308.051</td>
<td>294(a), (c)</td>
</tr>
<tr>
<td>308.052</td>
<td>294(b)</td>
</tr>
<tr>
<td>308.053</td>
<td>295</td>
</tr>
<tr>
<td>308.054</td>
<td>294(d)</td>
</tr>
<tr>
<td>308.055</td>
<td>296</td>
</tr>
<tr>
<td>308.056</td>
<td>297</td>
</tr>
<tr>
<td>309.001</td>
<td>248</td>
</tr>
<tr>
<td>309.002</td>
<td>253</td>
</tr>
<tr>
<td>309.003</td>
<td>249</td>
</tr>
<tr>
<td>309.051</td>
<td>250</td>
</tr>
<tr>
<td>309.052</td>
<td>251</td>
</tr>
<tr>
<td>309.053</td>
<td>252</td>
</tr>
<tr>
<td>309.054</td>
<td>255</td>
</tr>
<tr>
<td>309.055</td>
<td>260</td>
</tr>
<tr>
<td>309.056</td>
<td>250(c), (d), (e)</td>
</tr>
<tr>
<td>309.057</td>
<td>new</td>
</tr>
<tr>
<td>309.0575</td>
<td>new</td>
</tr>
<tr>
<td>309.101</td>
<td>256</td>
</tr>
<tr>
<td>309.102</td>
<td>257</td>
</tr>
<tr>
<td>309.103</td>
<td>258</td>
</tr>
<tr>
<td>309.104</td>
<td>259</td>
</tr>
<tr>
<td>309.151</td>
<td>261</td>
</tr>
<tr>
<td>310.001</td>
<td>378B(h)</td>
</tr>
<tr>
<td>310.002</td>
<td>378B(j)</td>
</tr>
<tr>
<td>310.003</td>
<td>378B(a)</td>
</tr>
<tr>
<td>310.004</td>
<td>378B(b), (c), (d)</td>
</tr>
<tr>
<td>310.005</td>
<td>378B(g)</td>
</tr>
<tr>
<td>310.006</td>
<td>378B(h)</td>
</tr>
<tr>
<td>315.001</td>
<td>32</td>
</tr>
<tr>
<td>315.002</td>
<td>29</td>
</tr>
<tr>
<td>315.003</td>
<td>245</td>
</tr>
<tr>
<td>315.051</td>
<td>234(a)</td>
</tr>
<tr>
<td>315.052</td>
<td>234(b)</td>
</tr>
<tr>
<td>315.053</td>
<td>28</td>
</tr>
<tr>
<td>315.054</td>
<td>233A</td>
</tr>
<tr>
<td>315.101</td>
<td>230</td>
</tr>
<tr>
<td>315.102</td>
<td>232</td>
</tr>
<tr>
<td>315.103</td>
<td>235</td>
</tr>
<tr>
<td>315.104</td>
<td>238A</td>
</tr>
<tr>
<td>315.105</td>
<td>398A</td>
</tr>
<tr>
<td>315.106</td>
<td>new</td>
</tr>
<tr>
<td>315.151</td>
<td>233(a)</td>
</tr>
<tr>
<td>315.152</td>
<td>233(b), (c), (d)</td>
</tr>
<tr>
<td>315.153</td>
<td>233(e)</td>
</tr>
<tr>
<td>315.201</td>
<td>238(a)</td>
</tr>
<tr>
<td>315.202</td>
<td>238(b), (f)</td>
</tr>
<tr>
<td>315.203</td>
<td>238(c), (d), (e)</td>
</tr>
<tr>
<td>315.204</td>
<td>238(g)</td>
</tr>
<tr>
<td>315.205</td>
<td>238(h), (l)</td>
</tr>
<tr>
<td>315.251</td>
<td>329(a)</td>
</tr>
<tr>
<td>315.252</td>
<td>329(b), (c)</td>
</tr>
<tr>
<td>315.253</td>
<td>329(c)</td>
</tr>
<tr>
<td>315.301</td>
<td>239</td>
</tr>
<tr>
<td>315.302</td>
<td>239</td>
</tr>
<tr>
<td>315.303</td>
<td>239</td>
</tr>
<tr>
<td>315.351</td>
<td>145(q), 154A(l)</td>
</tr>
<tr>
<td>315.352</td>
<td>36(a)</td>
</tr>
<tr>
<td>315.353</td>
<td>36(a)</td>
</tr>
<tr>
<td>315.354</td>
<td>36(a)</td>
</tr>
<tr>
<td>315.355</td>
<td>36(b)</td>
</tr>
<tr>
<td>352.001</td>
<td>241(b)</td>
</tr>
<tr>
<td>352.002</td>
<td>241(a)</td>
</tr>
<tr>
<td>352.003</td>
<td>241(a)</td>
</tr>
<tr>
<td>352.004</td>
<td>241(a)</td>
</tr>
<tr>
<td>352.051</td>
<td>242</td>
</tr>
<tr>
<td>352.052</td>
<td>243</td>
</tr>
<tr>
<td>352.053</td>
<td>244</td>
</tr>
<tr>
<td>353.001</td>
<td>42(c)</td>
</tr>
<tr>
<td>353.051</td>
<td>271</td>
</tr>
<tr>
<td>353.052</td>
<td>272</td>
</tr>
<tr>
<td>353.053</td>
<td>273</td>
</tr>
<tr>
<td>353.054</td>
<td>275</td>
</tr>
<tr>
<td>353.055</td>
<td>274</td>
</tr>
<tr>
<td>353.056</td>
<td>274</td>
</tr>
<tr>
<td>353.101</td>
<td>286, 288</td>
</tr>
<tr>
<td>353.102</td>
<td>287</td>
</tr>
<tr>
<td>353.103</td>
<td>289</td>
</tr>
<tr>
<td>353.104</td>
<td>290</td>
</tr>
<tr>
<td>353.105</td>
<td>291</td>
</tr>
<tr>
<td>353.106</td>
<td>292</td>
</tr>
<tr>
<td>353.107</td>
<td>292, 293</td>
</tr>
<tr>
<td>353.151</td>
<td>277</td>
</tr>
<tr>
<td>353.152</td>
<td>278</td>
</tr>
<tr>
<td>353.153</td>
<td>279</td>
</tr>
<tr>
<td>353.154</td>
<td>280</td>
</tr>
<tr>
<td>353.155</td>
<td>281</td>
</tr>
<tr>
<td>354.001</td>
<td>143</td>
</tr>
<tr>
<td>354.051</td>
<td>262</td>
</tr>
<tr>
<td>354.052</td>
<td>263</td>
</tr>
<tr>
<td>354.053</td>
<td>264</td>
</tr>
<tr>
<td>354.054</td>
<td>265</td>
</tr>
<tr>
<td>354.055</td>
<td>266</td>
</tr>
<tr>
<td>354.056</td>
<td>267</td>
</tr>
<tr>
<td>354.057</td>
<td>268</td>
</tr>
<tr>
<td>354.058</td>
<td>269</td>
</tr>
<tr>
<td>355.001</td>
<td>298(a)</td>
</tr>
<tr>
<td>355.002</td>
<td>308</td>
</tr>
<tr>
<td>355.003</td>
<td>307</td>
</tr>
<tr>
<td>355.004</td>
<td>301</td>
</tr>
<tr>
<td>355.005</td>
<td>304</td>
</tr>
<tr>
<td>Estates Code</td>
<td>Probate Code</td>
</tr>
<tr>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>355.006</td>
<td>303</td>
</tr>
<tr>
<td>355.007</td>
<td>302</td>
</tr>
<tr>
<td>355.008</td>
<td>299</td>
</tr>
<tr>
<td>355.051</td>
<td>309</td>
</tr>
<tr>
<td>355.052</td>
<td>310</td>
</tr>
<tr>
<td>355.053</td>
<td>311</td>
</tr>
<tr>
<td>355.054</td>
<td>312(a)</td>
</tr>
<tr>
<td>355.055</td>
<td>312(b)</td>
</tr>
<tr>
<td>355.056</td>
<td>312(c)</td>
</tr>
<tr>
<td>355.057</td>
<td>312(d)</td>
</tr>
<tr>
<td>355.058</td>
<td>312(e)</td>
</tr>
<tr>
<td>355.059</td>
<td>301</td>
</tr>
<tr>
<td>355.060</td>
<td>298(a)</td>
</tr>
<tr>
<td>355.061</td>
<td>298(b)</td>
</tr>
<tr>
<td>355.062</td>
<td>303</td>
</tr>
<tr>
<td>355.063</td>
<td>318</td>
</tr>
<tr>
<td>355.064</td>
<td>313</td>
</tr>
<tr>
<td>355.065</td>
<td>314</td>
</tr>
<tr>
<td>355.066</td>
<td>313</td>
</tr>
<tr>
<td>355.101</td>
<td>319</td>
</tr>
<tr>
<td>355.102</td>
<td>322</td>
</tr>
<tr>
<td>355.103</td>
<td>320(a)</td>
</tr>
<tr>
<td>355.104</td>
<td>320(b)</td>
</tr>
<tr>
<td>355.105</td>
<td>320(c)</td>
</tr>
<tr>
<td>355.106</td>
<td>320(d)</td>
</tr>
<tr>
<td>355.107</td>
<td>326</td>
</tr>
<tr>
<td>355.108</td>
<td>321</td>
</tr>
<tr>
<td>355.109</td>
<td>3228</td>
</tr>
<tr>
<td>355.110</td>
<td>320A</td>
</tr>
<tr>
<td>355.111</td>
<td>315</td>
</tr>
<tr>
<td>355.112</td>
<td>323</td>
</tr>
<tr>
<td>355.113</td>
<td>328</td>
</tr>
<tr>
<td>355.151</td>
<td>306(a)</td>
</tr>
<tr>
<td>355.152</td>
<td>306(b)</td>
</tr>
<tr>
<td>355.153</td>
<td>306(c), (c-1)</td>
</tr>
<tr>
<td>355.154</td>
<td>306(d)</td>
</tr>
<tr>
<td>355.155</td>
<td>306(e)</td>
</tr>
<tr>
<td>355.1551</td>
<td>new</td>
</tr>
<tr>
<td>355.156</td>
<td>306(f)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>355.157</td>
<td>306(g)</td>
</tr>
<tr>
<td>355.158</td>
<td>306(h), (i)(1), (j)</td>
</tr>
<tr>
<td>355.159</td>
<td>306(i)(2)</td>
</tr>
<tr>
<td>355.160</td>
<td>306(k)</td>
</tr>
<tr>
<td>355.201</td>
<td>317</td>
</tr>
<tr>
<td>355.202</td>
<td>316</td>
</tr>
<tr>
<td>355.203</td>
<td>324</td>
</tr>
<tr>
<td>356.001</td>
<td>331</td>
</tr>
<tr>
<td>356.002</td>
<td>332</td>
</tr>
<tr>
<td>356.015</td>
<td>333</td>
</tr>
<tr>
<td>356.101</td>
<td>334</td>
</tr>
<tr>
<td>356.102</td>
<td>334</td>
</tr>
<tr>
<td>356.103</td>
<td>336</td>
</tr>
<tr>
<td>356.104</td>
<td>337</td>
</tr>
<tr>
<td>356.105</td>
<td>339</td>
</tr>
<tr>
<td>356.151</td>
<td>335</td>
</tr>
<tr>
<td>356.152</td>
<td>335</td>
</tr>
<tr>
<td>356.153</td>
<td>335</td>
</tr>
<tr>
<td>356.154</td>
<td>335</td>
</tr>
<tr>
<td>356.155</td>
<td>335</td>
</tr>
<tr>
<td>356.201</td>
<td>338</td>
</tr>
<tr>
<td>356.202</td>
<td>338</td>
</tr>
<tr>
<td>356.203</td>
<td>338</td>
</tr>
<tr>
<td>356.251</td>
<td>341</td>
</tr>
<tr>
<td>356.252</td>
<td>342</td>
</tr>
<tr>
<td>356.253</td>
<td>344</td>
</tr>
<tr>
<td>356.254</td>
<td>345</td>
</tr>
<tr>
<td>356.255</td>
<td>345A</td>
</tr>
<tr>
<td>356.256</td>
<td>346</td>
</tr>
<tr>
<td>356.257</td>
<td>340</td>
</tr>
<tr>
<td>356.301</td>
<td>348(a)</td>
</tr>
<tr>
<td>356.302</td>
<td>348(a)</td>
</tr>
<tr>
<td>356.351</td>
<td>348(b)</td>
</tr>
<tr>
<td>356.352</td>
<td>348(b)</td>
</tr>
<tr>
<td>356.353</td>
<td>348(b)</td>
</tr>
<tr>
<td>356.401</td>
<td>349(a)</td>
</tr>
<tr>
<td>356.402</td>
<td>349(b)</td>
</tr>
<tr>
<td>356.403</td>
<td>349(c)</td>
</tr>
<tr>
<td>356.404</td>
<td>349(d)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>356.405</td>
<td>349(e)</td>
</tr>
<tr>
<td>356.451</td>
<td>350</td>
</tr>
<tr>
<td>356.501</td>
<td>351</td>
</tr>
<tr>
<td>356.502</td>
<td>351</td>
</tr>
<tr>
<td>356.551</td>
<td>353</td>
</tr>
<tr>
<td>356.552</td>
<td>355</td>
</tr>
<tr>
<td>356.553</td>
<td>354</td>
</tr>
<tr>
<td>356.554</td>
<td>354</td>
</tr>
<tr>
<td>356.555</td>
<td>354</td>
</tr>
<tr>
<td>356.556</td>
<td>355</td>
</tr>
<tr>
<td>356.557</td>
<td>356</td>
</tr>
<tr>
<td>356.558</td>
<td>357</td>
</tr>
<tr>
<td>356.559</td>
<td>358</td>
</tr>
<tr>
<td>356.601</td>
<td>347</td>
</tr>
<tr>
<td>356.602</td>
<td>347</td>
</tr>
<tr>
<td>356.651</td>
<td>352(a)</td>
</tr>
<tr>
<td>356.652</td>
<td>352(b)</td>
</tr>
<tr>
<td>356.653</td>
<td>352(c)</td>
</tr>
<tr>
<td>356.654</td>
<td>352(d)</td>
</tr>
<tr>
<td>356.655</td>
<td>352(e)</td>
</tr>
<tr>
<td>357.001</td>
<td>359, 360</td>
</tr>
<tr>
<td>357.002</td>
<td>361</td>
</tr>
<tr>
<td>357.003</td>
<td>363</td>
</tr>
<tr>
<td>357.004</td>
<td>364</td>
</tr>
<tr>
<td>357.005</td>
<td>362</td>
</tr>
<tr>
<td>357.051</td>
<td>365</td>
</tr>
<tr>
<td>357.052</td>
<td>366</td>
</tr>
<tr>
<td>358.001</td>
<td>367(a); new</td>
</tr>
<tr>
<td>358.051</td>
<td>367(b), (c)</td>
</tr>
<tr>
<td>358.052</td>
<td>367(c)</td>
</tr>
<tr>
<td>358.053</td>
<td>367(c)</td>
</tr>
<tr>
<td>358.054</td>
<td>367(c)</td>
</tr>
<tr>
<td>358.055</td>
<td>367(c)</td>
</tr>
<tr>
<td>358.056</td>
<td>367(c)</td>
</tr>
<tr>
<td>358.057</td>
<td>367(c)</td>
</tr>
<tr>
<td>358.058</td>
<td>367(c)</td>
</tr>
<tr>
<td>358.059</td>
<td>367(c)</td>
</tr>
<tr>
<td>358.060</td>
<td>367(c)</td>
</tr>
<tr>
<td>Estates Code</td>
<td>Probate Code</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------</td>
</tr>
<tr>
<td>358.102</td>
<td>368(b)</td>
</tr>
<tr>
<td>358.151</td>
<td>369(a), (b)</td>
</tr>
<tr>
<td>358.152</td>
<td>369(b)</td>
</tr>
<tr>
<td>358.153</td>
<td>369(b)</td>
</tr>
<tr>
<td>358.154</td>
<td>369(b)</td>
</tr>
<tr>
<td>358.155</td>
<td>369(b)</td>
</tr>
<tr>
<td>358.201</td>
<td>370</td>
</tr>
<tr>
<td>358.251</td>
<td>371</td>
</tr>
<tr>
<td>358.252</td>
<td>371</td>
</tr>
<tr>
<td>358.253</td>
<td>371</td>
</tr>
<tr>
<td>358.254</td>
<td>371</td>
</tr>
<tr>
<td>359.001</td>
<td>399(a)</td>
</tr>
<tr>
<td>359.002</td>
<td>399(b)</td>
</tr>
<tr>
<td>359.003</td>
<td>399(c)</td>
</tr>
<tr>
<td>359.004</td>
<td>399(c)</td>
</tr>
<tr>
<td>359.005</td>
<td>399(d)</td>
</tr>
<tr>
<td>359.006</td>
<td>402</td>
</tr>
<tr>
<td>359.051</td>
<td>401(a), (b), (c), (d)</td>
</tr>
<tr>
<td>359.052</td>
<td>401(e)</td>
</tr>
<tr>
<td>359.053</td>
<td>401(e)</td>
</tr>
<tr>
<td>359.054</td>
<td>401(e)</td>
</tr>
<tr>
<td>359.101</td>
<td>400</td>
</tr>
<tr>
<td>359.102</td>
<td>403</td>
</tr>
<tr>
<td>360.001</td>
<td>373(a), (b)</td>
</tr>
<tr>
<td>360.002</td>
<td>373(c)</td>
</tr>
<tr>
<td>360.051</td>
<td>374</td>
</tr>
<tr>
<td>360.052</td>
<td>375</td>
</tr>
<tr>
<td>360.101</td>
<td>377</td>
</tr>
<tr>
<td>360.102</td>
<td>378</td>
</tr>
<tr>
<td>360.103</td>
<td>387</td>
</tr>
<tr>
<td>360.151</td>
<td>380(a)</td>
</tr>
<tr>
<td>360.152</td>
<td>380(b)</td>
</tr>
<tr>
<td>360.153</td>
<td>380(c)</td>
</tr>
<tr>
<td>360.154</td>
<td>380(d)</td>
</tr>
<tr>
<td>360.155</td>
<td>380(e)</td>
</tr>
<tr>
<td>360.156</td>
<td>380(f)</td>
</tr>
<tr>
<td>360.157</td>
<td>380(g)</td>
</tr>
<tr>
<td>360.201</td>
<td>381(a)</td>
</tr>
<tr>
<td>360.202</td>
<td>381(b), (c)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>360.203</td>
<td>381(d)</td>
</tr>
<tr>
<td>360.251</td>
<td>379</td>
</tr>
<tr>
<td>360.252</td>
<td>382</td>
</tr>
<tr>
<td>360.253</td>
<td>385</td>
</tr>
<tr>
<td>360.254</td>
<td>386</td>
</tr>
<tr>
<td>360.301</td>
<td>384</td>
</tr>
<tr>
<td>361.001</td>
<td>221(a)</td>
</tr>
<tr>
<td>361.002</td>
<td>221(b)</td>
</tr>
<tr>
<td>361.003</td>
<td>221(c)</td>
</tr>
<tr>
<td>361.004</td>
<td>221(d)</td>
</tr>
<tr>
<td>361.005</td>
<td>221(e), (f)</td>
</tr>
<tr>
<td>361.051</td>
<td>222(a),(1)</td>
</tr>
<tr>
<td>361.052</td>
<td>222(b)</td>
</tr>
<tr>
<td>361.053</td>
<td>222(c)</td>
</tr>
<tr>
<td>361.054</td>
<td>222(a),(2), 222A</td>
</tr>
<tr>
<td>361.101</td>
<td>220(f)</td>
</tr>
<tr>
<td>361.102</td>
<td>220(a)</td>
</tr>
<tr>
<td>361.103</td>
<td>220(b)</td>
</tr>
<tr>
<td>361.104</td>
<td>220(c)</td>
</tr>
<tr>
<td>361.105</td>
<td>220(d)</td>
</tr>
<tr>
<td>361.106</td>
<td>220(e)</td>
</tr>
<tr>
<td>361.151</td>
<td>220(g)</td>
</tr>
<tr>
<td>361.152</td>
<td>223</td>
</tr>
<tr>
<td>361.153</td>
<td>224, 225</td>
</tr>
<tr>
<td>361.154</td>
<td>226</td>
</tr>
<tr>
<td>361.155</td>
<td>227</td>
</tr>
<tr>
<td>362.001</td>
<td>404</td>
</tr>
<tr>
<td>362.002</td>
<td>92</td>
</tr>
<tr>
<td>362.003</td>
<td>405</td>
</tr>
<tr>
<td>362.004</td>
<td>405</td>
</tr>
<tr>
<td>362.005</td>
<td>407</td>
</tr>
<tr>
<td>362.006</td>
<td>408(a)</td>
</tr>
<tr>
<td>362.007</td>
<td>405A</td>
</tr>
<tr>
<td>362.008</td>
<td>412</td>
</tr>
<tr>
<td>362.009</td>
<td>409</td>
</tr>
<tr>
<td>362.010</td>
<td>[repealed]</td>
</tr>
<tr>
<td>362.011</td>
<td>408(b)</td>
</tr>
<tr>
<td>362.012</td>
<td>408(c)</td>
</tr>
<tr>
<td>362.013</td>
<td>408(d)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>362.051</td>
<td>406</td>
</tr>
<tr>
<td>362.052</td>
<td>414</td>
</tr>
<tr>
<td>401.001</td>
<td>145(b), (a)</td>
</tr>
<tr>
<td>401.002</td>
<td>145(c), (d)</td>
</tr>
<tr>
<td>401.003</td>
<td>145(e), (g)</td>
</tr>
<tr>
<td>401.004</td>
<td>145(f), (i), (j), (k), (l), (m), (n)</td>
</tr>
<tr>
<td>401.005</td>
<td>145(p)</td>
</tr>
<tr>
<td>401.006</td>
<td>145A</td>
</tr>
<tr>
<td>401.007</td>
<td>145(q)</td>
</tr>
<tr>
<td>401.008</td>
<td>145(r)</td>
</tr>
<tr>
<td>402.001</td>
<td>145(h)</td>
</tr>
<tr>
<td>402.002</td>
<td>145B</td>
</tr>
<tr>
<td>402.003</td>
<td>new</td>
</tr>
<tr>
<td>402.051</td>
<td>145C(a)</td>
</tr>
<tr>
<td>402.052</td>
<td>145C(b)</td>
</tr>
<tr>
<td>402.053</td>
<td>145C(c)</td>
</tr>
<tr>
<td>402.054</td>
<td>145C(d)</td>
</tr>
<tr>
<td>403.001</td>
<td>146(a),(4)</td>
</tr>
<tr>
<td>403.051</td>
<td>146(a),(1)-(3), (a-1)</td>
</tr>
<tr>
<td>403.052</td>
<td>146(b)</td>
</tr>
<tr>
<td>403.053</td>
<td>146(b-1)</td>
</tr>
<tr>
<td>403.054</td>
<td>146(b-2)</td>
</tr>
<tr>
<td>403.055</td>
<td>146(b-3)</td>
</tr>
<tr>
<td>403.056</td>
<td>146(b-4), (b-5)</td>
</tr>
<tr>
<td>403.057</td>
<td>146(b-6)</td>
</tr>
<tr>
<td>403.058</td>
<td>146(b-7)</td>
</tr>
<tr>
<td>403.0585</td>
<td>146(c)</td>
</tr>
<tr>
<td>403.059</td>
<td>147</td>
</tr>
<tr>
<td>403.060</td>
<td>148</td>
</tr>
<tr>
<td>404.001</td>
<td>149A</td>
</tr>
<tr>
<td>404.002</td>
<td>149</td>
</tr>
<tr>
<td>404.003</td>
<td>new</td>
</tr>
<tr>
<td>404.0035</td>
<td>149C</td>
</tr>
<tr>
<td>404.0036</td>
<td>149C</td>
</tr>
<tr>
<td>404.0037</td>
<td>149C</td>
</tr>
<tr>
<td>404.004</td>
<td>154</td>
</tr>
<tr>
<td>404.005</td>
<td>154A</td>
</tr>
<tr>
<td>405.001</td>
<td>149B</td>
</tr>
<tr>
<td>405.0015</td>
<td>new</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>405.002</td>
<td>151(e)</td>
</tr>
<tr>
<td>405.003</td>
<td>149D, 149E, 149F</td>
</tr>
<tr>
<td>405.004</td>
<td>151(a)</td>
</tr>
<tr>
<td>405.005</td>
<td>151(a-1)</td>
</tr>
<tr>
<td>405.006</td>
<td>151(b)</td>
</tr>
<tr>
<td>405.007</td>
<td>151(c), (d)</td>
</tr>
<tr>
<td>405.008</td>
<td>150</td>
</tr>
<tr>
<td>405.009</td>
<td>152</td>
</tr>
<tr>
<td>405.010</td>
<td>153</td>
</tr>
<tr>
<td>405.011</td>
<td>149G</td>
</tr>
<tr>
<td>405.012</td>
<td>new</td>
</tr>
<tr>
<td>451.001</td>
<td>139</td>
</tr>
<tr>
<td>451.002</td>
<td>140</td>
</tr>
<tr>
<td>451.003</td>
<td>141</td>
</tr>
<tr>
<td>451.004</td>
<td>142</td>
</tr>
<tr>
<td>452.001</td>
<td>131A(a)</td>
</tr>
<tr>
<td>452.002</td>
<td>131A(b)</td>
</tr>
<tr>
<td>452.003</td>
<td>131A(a), (c)</td>
</tr>
<tr>
<td>452.004</td>
<td>131A(d)</td>
</tr>
<tr>
<td>452.005</td>
<td>131(e)</td>
</tr>
<tr>
<td>452.006</td>
<td>131A(f), (g), (h)</td>
</tr>
<tr>
<td>452.007</td>
<td>131A(i)</td>
</tr>
<tr>
<td>452.008</td>
<td>131A(j)</td>
</tr>
<tr>
<td>452.051</td>
<td>132(a)</td>
</tr>
<tr>
<td>452.052</td>
<td>132(b)</td>
</tr>
<tr>
<td>452.101</td>
<td>133</td>
</tr>
<tr>
<td>452.102</td>
<td>133</td>
</tr>
<tr>
<td>452.151</td>
<td>134</td>
</tr>
<tr>
<td>452.152</td>
<td>135</td>
</tr>
<tr>
<td>453.001</td>
<td>155</td>
</tr>
<tr>
<td>453.002</td>
<td>155</td>
</tr>
<tr>
<td>453.003</td>
<td>160(a), (c)</td>
</tr>
<tr>
<td>453.004</td>
<td>160(b), (c)</td>
</tr>
<tr>
<td>453.005</td>
<td>176</td>
</tr>
<tr>
<td>453.006</td>
<td>156, 168</td>
</tr>
<tr>
<td>453.007</td>
<td>168</td>
</tr>
<tr>
<td>453.008</td>
<td>168</td>
</tr>
<tr>
<td>453.009</td>
<td>177</td>
</tr>
<tr>
<td>454.001</td>
<td>72(a)</td>
</tr>
<tr>
<td>454.002</td>
<td>72(a)</td>
</tr>
<tr>
<td>454.003</td>
<td>72(b)</td>
</tr>
<tr>
<td>454.004</td>
<td>72(a)</td>
</tr>
<tr>
<td>454.051</td>
<td>72(a)</td>
</tr>
<tr>
<td>454.052</td>
<td>72(a)</td>
</tr>
<tr>
<td>455.001</td>
<td>new</td>
</tr>
<tr>
<td>455.002</td>
<td>new</td>
</tr>
<tr>
<td>455.003</td>
<td>new</td>
</tr>
<tr>
<td>455.004</td>
<td>new</td>
</tr>
<tr>
<td>455.005</td>
<td>new</td>
</tr>
<tr>
<td>455.006</td>
<td>new</td>
</tr>
<tr>
<td>455.007</td>
<td>new</td>
</tr>
<tr>
<td>455.008</td>
<td>new</td>
</tr>
<tr>
<td>455.009</td>
<td>new</td>
</tr>
<tr>
<td>455.010</td>
<td>new</td>
</tr>
<tr>
<td>455.011</td>
<td>new</td>
</tr>
<tr>
<td>455.012</td>
<td>new</td>
</tr>
<tr>
<td>456.001</td>
<td>new</td>
</tr>
<tr>
<td>456.002</td>
<td>new</td>
</tr>
<tr>
<td>456.003</td>
<td>new</td>
</tr>
<tr>
<td>456.004</td>
<td>new</td>
</tr>
<tr>
<td>456.005</td>
<td>new</td>
</tr>
<tr>
<td>501.001</td>
<td>95(a)</td>
</tr>
<tr>
<td>501.002</td>
<td>95(b)(1), (2), (c)</td>
</tr>
<tr>
<td>501.003</td>
<td>95(b)(1), (2)</td>
</tr>
<tr>
<td>501.004</td>
<td>95(d)(1), (2)</td>
</tr>
<tr>
<td>501.005</td>
<td>95(d)(1), (2)</td>
</tr>
<tr>
<td>501.006</td>
<td>105</td>
</tr>
<tr>
<td>501.007</td>
<td>95(e)</td>
</tr>
<tr>
<td>501.008</td>
<td>95(f)</td>
</tr>
<tr>
<td>502.001</td>
<td>103</td>
</tr>
<tr>
<td>502.002</td>
<td>104</td>
</tr>
<tr>
<td>503.001</td>
<td>96, 97</td>
</tr>
<tr>
<td>503.002</td>
<td>95(c)</td>
</tr>
<tr>
<td>503.003</td>
<td>96</td>
</tr>
<tr>
<td>503.051</td>
<td>98</td>
</tr>
<tr>
<td>503.052</td>
<td>99</td>
</tr>
<tr>
<td>504.001</td>
<td>100(a)</td>
</tr>
<tr>
<td>504.002</td>
<td>100(b)</td>
</tr>
<tr>
<td>504.003</td>
<td>95(d)(2), 100(c)</td>
</tr>
<tr>
<td>504.004</td>
<td>100(b)</td>
</tr>
<tr>
<td>504.051</td>
<td>101</td>
</tr>
<tr>
<td>504.052</td>
<td>101</td>
</tr>
<tr>
<td>504.053</td>
<td>102</td>
</tr>
<tr>
<td>505.001</td>
<td>105A(a)</td>
</tr>
<tr>
<td>505.002</td>
<td>105A(c), (d)</td>
</tr>
<tr>
<td>505.003</td>
<td>105A(a)</td>
</tr>
<tr>
<td>505.004</td>
<td>105A(b)</td>
</tr>
<tr>
<td>505.005</td>
<td>105A(b)</td>
</tr>
<tr>
<td>505.006</td>
<td>105A(e)</td>
</tr>
<tr>
<td>505.051</td>
<td>106</td>
</tr>
<tr>
<td>505.052</td>
<td>95(c), 107</td>
</tr>
<tr>
<td>505.101</td>
<td>107A(a), (b)</td>
</tr>
<tr>
<td>505.102</td>
<td>107A(c)</td>
</tr>
<tr>
<td>505.103</td>
<td>107A(d)</td>
</tr>
<tr>
<td>551.001</td>
<td>427</td>
</tr>
<tr>
<td>551.002</td>
<td>427</td>
</tr>
<tr>
<td>551.003</td>
<td>427</td>
</tr>
<tr>
<td>551.004</td>
<td>428</td>
</tr>
<tr>
<td>551.005</td>
<td>430</td>
</tr>
<tr>
<td>551.051</td>
<td>433(a)</td>
</tr>
<tr>
<td>551.052</td>
<td>repealed 433(a), (b), (c)</td>
</tr>
<tr>
<td>551.053</td>
<td>repealed 433(c)</td>
</tr>
<tr>
<td>551.054</td>
<td>repealed 433(d)</td>
</tr>
<tr>
<td>551.055</td>
<td>repealed 433(b)</td>
</tr>
<tr>
<td>551.101</td>
<td>429</td>
</tr>
<tr>
<td>551.102</td>
<td>431</td>
</tr>
<tr>
<td>551.103</td>
<td>432</td>
</tr>
<tr>
<td>751.001</td>
<td>481</td>
</tr>
<tr>
<td>751.0015</td>
<td>new</td>
</tr>
<tr>
<td>751.002</td>
<td>482</td>
</tr>
<tr>
<td>751.00201</td>
<td>new</td>
</tr>
<tr>
<td>751.0021</td>
<td>489</td>
</tr>
<tr>
<td>751.0022</td>
<td>new</td>
</tr>
</tbody>
</table>
## Conversion Chart – Estates Code to Probate Code

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>751.0023</td>
<td>new</td>
</tr>
<tr>
<td>751.0024</td>
<td>new</td>
</tr>
<tr>
<td>751.003</td>
<td>506</td>
</tr>
<tr>
<td>751.004</td>
<td>[repealed]</td>
</tr>
<tr>
<td>751.005</td>
<td>489B(i)</td>
</tr>
<tr>
<td>751.006</td>
<td>489B(j)</td>
</tr>
<tr>
<td>751.007</td>
<td>new</td>
</tr>
<tr>
<td>751.021</td>
<td>new</td>
</tr>
<tr>
<td>751.022</td>
<td>new</td>
</tr>
<tr>
<td>751.023</td>
<td>new</td>
</tr>
<tr>
<td>751.024</td>
<td>new</td>
</tr>
<tr>
<td>751.031</td>
<td>new</td>
</tr>
<tr>
<td>751.032</td>
<td>new</td>
</tr>
<tr>
<td>751.033</td>
<td>new</td>
</tr>
<tr>
<td>751.034</td>
<td>new</td>
</tr>
<tr>
<td>751.051</td>
<td>484</td>
</tr>
<tr>
<td>751.052</td>
<td>[transferred]</td>
</tr>
<tr>
<td>751.053</td>
<td>[repealed]</td>
</tr>
<tr>
<td>751.054</td>
<td>[repealed in part]</td>
</tr>
<tr>
<td>751.055</td>
<td>[repealed in part]</td>
</tr>
<tr>
<td>751.056</td>
<td>[repealed]</td>
</tr>
<tr>
<td>751.057</td>
<td>487A</td>
</tr>
<tr>
<td>751.058</td>
<td>[repealed]</td>
</tr>
<tr>
<td>751.101</td>
<td>489B(a)</td>
</tr>
<tr>
<td>751.102</td>
<td>489B(b)</td>
</tr>
<tr>
<td>751.103</td>
<td>489B(c), (f)</td>
</tr>
<tr>
<td>751.104</td>
<td>489B(d), (e)</td>
</tr>
<tr>
<td>751.105</td>
<td>489B(g)</td>
</tr>
<tr>
<td>751.106</td>
<td>489B(h)</td>
</tr>
<tr>
<td>751.151</td>
<td>489</td>
</tr>
<tr>
<td>751.121</td>
<td>new</td>
</tr>
<tr>
<td>751.122</td>
<td>new</td>
</tr>
<tr>
<td>751.131</td>
<td>new</td>
</tr>
<tr>
<td>751.132</td>
<td>new</td>
</tr>
<tr>
<td>751.133</td>
<td>485</td>
</tr>
<tr>
<td>751.134</td>
<td>new</td>
</tr>
<tr>
<td>751.135</td>
<td>new</td>
</tr>
<tr>
<td>751.151</td>
<td>489</td>
</tr>
<tr>
<td>751.201</td>
<td>new</td>
</tr>
<tr>
<td>751.202</td>
<td>new</td>
</tr>
<tr>
<td>751.203</td>
<td>new</td>
</tr>
<tr>
<td>751.204</td>
<td>new</td>
</tr>
<tr>
<td>751.205</td>
<td>new</td>
</tr>
<tr>
<td>751.206</td>
<td>new</td>
</tr>
<tr>
<td>751.207</td>
<td>new</td>
</tr>
<tr>
<td>751.208</td>
<td>new</td>
</tr>
<tr>
<td>751.209</td>
<td>new</td>
</tr>
<tr>
<td>751.210</td>
<td>new</td>
</tr>
<tr>
<td>751.211</td>
<td>new</td>
</tr>
<tr>
<td>751.212</td>
<td>new</td>
</tr>
<tr>
<td>751.213</td>
<td>new</td>
</tr>
<tr>
<td>751.251</td>
<td>new</td>
</tr>
<tr>
<td>752.001</td>
<td>490(a)</td>
</tr>
<tr>
<td>752.002</td>
<td>490(a)</td>
</tr>
<tr>
<td>752.003</td>
<td>490(a)</td>
</tr>
<tr>
<td>752.004</td>
<td>490(b)</td>
</tr>
<tr>
<td>752.051</td>
<td>490(a)</td>
</tr>
<tr>
<td>752.052</td>
<td>new</td>
</tr>
<tr>
<td>752.101</td>
<td>491</td>
</tr>
<tr>
<td>752.102</td>
<td>492</td>
</tr>
<tr>
<td>752.103</td>
<td>493</td>
</tr>
<tr>
<td>752.104</td>
<td>494</td>
</tr>
<tr>
<td>752.105</td>
<td>495</td>
</tr>
<tr>
<td>752.106</td>
<td>496</td>
</tr>
<tr>
<td>752.107</td>
<td>497</td>
</tr>
<tr>
<td>752.108</td>
<td>498</td>
</tr>
<tr>
<td>752.109</td>
<td>499</td>
</tr>
<tr>
<td>752.110</td>
<td>500</td>
</tr>
<tr>
<td>752.111</td>
<td>501</td>
</tr>
<tr>
<td>752.112</td>
<td>502</td>
</tr>
<tr>
<td>752.113</td>
<td>503</td>
</tr>
<tr>
<td>752.114</td>
<td>504</td>
</tr>
<tr>
<td>752.1145</td>
<td>new</td>
</tr>
<tr>
<td>752.115</td>
<td>505</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>753.001</td>
<td>new</td>
</tr>
<tr>
<td>753.002</td>
<td>new</td>
</tr>
<tr>
<td>1001.001</td>
<td>602</td>
</tr>
<tr>
<td>1001.002</td>
<td>603(a)</td>
</tr>
<tr>
<td>1001.003</td>
<td>603(b)</td>
</tr>
<tr>
<td>1002.001</td>
<td>601</td>
</tr>
<tr>
<td>1002.0015</td>
<td>new</td>
</tr>
<tr>
<td>1002.002</td>
<td>601(1)</td>
</tr>
<tr>
<td>1002.003</td>
<td>601(2)</td>
</tr>
<tr>
<td>1002.004</td>
<td>601(3)</td>
</tr>
<tr>
<td>1002.005</td>
<td>601(4)</td>
</tr>
<tr>
<td>1002.006</td>
<td>601(5)</td>
</tr>
<tr>
<td>1002.007</td>
<td>601(6)</td>
</tr>
<tr>
<td>1002.008</td>
<td>601(8), (29)</td>
</tr>
<tr>
<td>1002.009</td>
<td>601(7)</td>
</tr>
<tr>
<td>1002.010</td>
<td>601(9)</td>
</tr>
<tr>
<td>1002.011</td>
<td>601(10)</td>
</tr>
<tr>
<td>1002.012</td>
<td>601(11)</td>
</tr>
<tr>
<td>1002.013</td>
<td>601(12)</td>
</tr>
<tr>
<td>1002.014</td>
<td>601(12-a)</td>
</tr>
<tr>
<td>1002.015</td>
<td>601(25)</td>
</tr>
<tr>
<td>1002.016</td>
<td>601(13)</td>
</tr>
<tr>
<td>1002.017</td>
<td>601(14)</td>
</tr>
<tr>
<td>1002.018</td>
<td>601(15)</td>
</tr>
<tr>
<td>1002.019</td>
<td>601(16)</td>
</tr>
<tr>
<td>1002.020</td>
<td>601(18)</td>
</tr>
<tr>
<td>1002.021</td>
<td>601(19)</td>
</tr>
<tr>
<td>1002.022</td>
<td>601(20)</td>
</tr>
<tr>
<td>1002.023</td>
<td>601(21)</td>
</tr>
<tr>
<td>1002.024</td>
<td>601(22)</td>
</tr>
<tr>
<td>1002.025</td>
<td>601(24)</td>
</tr>
<tr>
<td>1002.026</td>
<td>601(27)</td>
</tr>
<tr>
<td>1002.0265</td>
<td>new</td>
</tr>
<tr>
<td>1002.027</td>
<td>601(28)</td>
</tr>
<tr>
<td>1002.028</td>
<td>601(23)</td>
</tr>
<tr>
<td>1002.029</td>
<td>601(30)</td>
</tr>
<tr>
<td>1002.030</td>
<td>601(31)</td>
</tr>
<tr>
<td>1002.031</td>
<td>new</td>
</tr>
<tr>
<td>1021.001</td>
<td>606A</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
## Conversion Chart – Estates Code to Probate Code

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1022.001</td>
<td>605</td>
</tr>
<tr>
<td>1022.002</td>
<td>605, 607A</td>
</tr>
<tr>
<td>1022.003</td>
<td>607B</td>
</tr>
<tr>
<td>1022.004</td>
<td>607C</td>
</tr>
<tr>
<td>1022.005</td>
<td>607D</td>
</tr>
<tr>
<td>1022.006</td>
<td>607E</td>
</tr>
<tr>
<td>1022.007</td>
<td>608</td>
</tr>
<tr>
<td>1022.008</td>
<td>609</td>
</tr>
<tr>
<td>1023.001</td>
<td>610</td>
</tr>
<tr>
<td>1023.002</td>
<td>611</td>
</tr>
<tr>
<td>1023.003</td>
<td>612</td>
</tr>
<tr>
<td>1023.004</td>
<td>613</td>
</tr>
<tr>
<td>1023.005</td>
<td>614</td>
</tr>
<tr>
<td>1023.006</td>
<td>615</td>
</tr>
<tr>
<td>1023.007</td>
<td>616</td>
</tr>
<tr>
<td>1023.008</td>
<td>617</td>
</tr>
<tr>
<td>1023.009</td>
<td>618</td>
</tr>
<tr>
<td>1023.010</td>
<td>619</td>
</tr>
<tr>
<td>1023.011</td>
<td>new</td>
</tr>
<tr>
<td>1051.001</td>
<td>632(a), (b)</td>
</tr>
<tr>
<td>1051.002</td>
<td>632(c)</td>
</tr>
<tr>
<td>1051.003</td>
<td>632(c)</td>
</tr>
<tr>
<td>1051.051</td>
<td>632(f)(1)</td>
</tr>
<tr>
<td>1051.052</td>
<td>632(f)(4)</td>
</tr>
<tr>
<td>1051.053</td>
<td>632(f)(2)</td>
</tr>
<tr>
<td>1051.054</td>
<td>632(f)(3)</td>
</tr>
<tr>
<td>1051.055</td>
<td>634</td>
</tr>
<tr>
<td>1051.056</td>
<td>632(e)</td>
</tr>
<tr>
<td>1051.101</td>
<td>633(a), (g)</td>
</tr>
<tr>
<td>1051.102</td>
<td>633(b)</td>
</tr>
<tr>
<td>1051.103</td>
<td>633(c)</td>
</tr>
<tr>
<td>1051.104</td>
<td>633(d), (d-1), (f)</td>
</tr>
<tr>
<td>1051.105</td>
<td>633(e)</td>
</tr>
<tr>
<td>1051.106</td>
<td>633(f)</td>
</tr>
<tr>
<td>1051.151</td>
<td>632(f)(1)</td>
</tr>
<tr>
<td>1051.152</td>
<td>632(h)</td>
</tr>
<tr>
<td>1051.153</td>
<td>632(j)</td>
</tr>
<tr>
<td>1051.154</td>
<td>632(g)</td>
</tr>
<tr>
<td>1051.201</td>
<td>632(d)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1051.251</td>
<td>635</td>
</tr>
<tr>
<td>1051.252</td>
<td>632(j)</td>
</tr>
<tr>
<td>1051.253</td>
<td>649</td>
</tr>
<tr>
<td>1052.001</td>
<td>623(a)</td>
</tr>
<tr>
<td>1052.002</td>
<td>624</td>
</tr>
<tr>
<td>1052.003</td>
<td>626</td>
</tr>
<tr>
<td>1052.004</td>
<td>627</td>
</tr>
<tr>
<td>1052.051</td>
<td>621, 623(b)</td>
</tr>
<tr>
<td>1052.052</td>
<td>625</td>
</tr>
<tr>
<td>1052.053</td>
<td>627A</td>
</tr>
<tr>
<td>1053.001</td>
<td>651</td>
</tr>
<tr>
<td>1053.051</td>
<td>622(a)</td>
</tr>
<tr>
<td>1053.052</td>
<td>622(b), (c)</td>
</tr>
<tr>
<td>1053.053</td>
<td>new</td>
</tr>
<tr>
<td>1053.054</td>
<td>new</td>
</tr>
<tr>
<td>1053.101</td>
<td>629</td>
</tr>
<tr>
<td>1053.102</td>
<td>630</td>
</tr>
<tr>
<td>1053.103</td>
<td>650</td>
</tr>
<tr>
<td>1053.104</td>
<td>new</td>
</tr>
<tr>
<td>1053.105</td>
<td>new</td>
</tr>
<tr>
<td>1054.001</td>
<td>646(a)</td>
</tr>
<tr>
<td>1054.002</td>
<td>646(e)</td>
</tr>
<tr>
<td>1054.003</td>
<td>646(a)</td>
</tr>
<tr>
<td>1054.004</td>
<td>647</td>
</tr>
<tr>
<td>1054.005</td>
<td>646(d)</td>
</tr>
<tr>
<td>1054.006</td>
<td>new</td>
</tr>
<tr>
<td>1054.007</td>
<td>new</td>
</tr>
<tr>
<td>1054.051</td>
<td>645(a)</td>
</tr>
<tr>
<td>1054.052</td>
<td>645(e)</td>
</tr>
<tr>
<td>1054.053</td>
<td>645(f)</td>
</tr>
<tr>
<td>1054.054</td>
<td>645(c)</td>
</tr>
<tr>
<td>1054.055</td>
<td>645(b), (d)</td>
</tr>
<tr>
<td>1054.056</td>
<td>645A</td>
</tr>
<tr>
<td>1054.101</td>
<td>648(f)</td>
</tr>
<tr>
<td>1054.102</td>
<td>648(a)</td>
</tr>
<tr>
<td>1054.103</td>
<td>648(b)</td>
</tr>
<tr>
<td>1054.104</td>
<td>648(c), (d)</td>
</tr>
<tr>
<td>1054.105</td>
<td>648(a), (e)</td>
</tr>
<tr>
<td>1054.151</td>
<td>648A(a)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1054.152</td>
<td>648A(b)</td>
</tr>
<tr>
<td>1054.153</td>
<td>648A(c)</td>
</tr>
<tr>
<td>1054.154</td>
<td>648A(d)</td>
</tr>
<tr>
<td>1054.155</td>
<td>new</td>
</tr>
<tr>
<td>1054.156</td>
<td>new</td>
</tr>
<tr>
<td>1054.201</td>
<td>646(b), 647A(a), (b)</td>
</tr>
<tr>
<td>1054.202</td>
<td>647A(c), (e)</td>
</tr>
<tr>
<td>1054.203</td>
<td>646(c), 647A(d)</td>
</tr>
<tr>
<td>1055.001</td>
<td>642</td>
</tr>
<tr>
<td>1055.002</td>
<td>641</td>
</tr>
<tr>
<td>1055.003</td>
<td>new</td>
</tr>
<tr>
<td>1055.051</td>
<td>644</td>
</tr>
<tr>
<td>1055.052</td>
<td>643</td>
</tr>
<tr>
<td>1055.053</td>
<td>652</td>
</tr>
<tr>
<td>1055.101</td>
<td>649</td>
</tr>
<tr>
<td>1055.102</td>
<td>628</td>
</tr>
<tr>
<td>1055.151</td>
<td>new</td>
</tr>
<tr>
<td>1055.152</td>
<td>new</td>
</tr>
<tr>
<td>1056.001</td>
<td>653</td>
</tr>
<tr>
<td>1056.051</td>
<td>654</td>
</tr>
<tr>
<td>1056.052</td>
<td>654</td>
</tr>
<tr>
<td>1056.101</td>
<td>657</td>
</tr>
<tr>
<td>1056.102</td>
<td>657</td>
</tr>
<tr>
<td>1057.001</td>
<td>760A</td>
</tr>
<tr>
<td>1057.002</td>
<td>760B</td>
</tr>
<tr>
<td>1101.001</td>
<td>682</td>
</tr>
<tr>
<td>1101.002</td>
<td>new</td>
</tr>
<tr>
<td>1101.003</td>
<td>new</td>
</tr>
<tr>
<td>1101.051</td>
<td>685(a), (c)</td>
</tr>
<tr>
<td>1101.052</td>
<td>685(b)</td>
</tr>
<tr>
<td>1101.053</td>
<td>686</td>
</tr>
<tr>
<td>1101.100</td>
<td>new</td>
</tr>
<tr>
<td>1101.101</td>
<td>684(a), (b), (c)</td>
</tr>
<tr>
<td>1101.1011</td>
<td>new</td>
</tr>
<tr>
<td>1101.102</td>
<td>684(c)</td>
</tr>
<tr>
<td>1101.103</td>
<td>687(a), (b)</td>
</tr>
<tr>
<td>1101.104</td>
<td>687(c)</td>
</tr>
<tr>
<td>1101.105</td>
<td>602</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
## Conversion Chart – Estates Code to Probate Code

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1101.106</td>
<td>684(e)</td>
</tr>
<tr>
<td>1101.151</td>
<td>693(a)</td>
</tr>
<tr>
<td>1101.152</td>
<td>693(b)</td>
</tr>
<tr>
<td>1101.153</td>
<td>693(c), (d), (e)</td>
</tr>
<tr>
<td>1101.154</td>
<td>684(d)</td>
</tr>
<tr>
<td>1101.155</td>
<td>692</td>
</tr>
<tr>
<td>1101.156</td>
<td>new</td>
</tr>
<tr>
<td>1102.001</td>
<td>683(a)</td>
</tr>
<tr>
<td>1102.002</td>
<td>683(b)</td>
</tr>
<tr>
<td>1102.003</td>
<td>683A</td>
</tr>
<tr>
<td>1102.004</td>
<td>683(a)</td>
</tr>
<tr>
<td>1102.005</td>
<td>683(c)</td>
</tr>
<tr>
<td>1102.006</td>
<td>new</td>
</tr>
<tr>
<td>1103.001</td>
<td>682A(a)</td>
</tr>
<tr>
<td>1103.002</td>
<td>682A(a-1), (a-2)</td>
</tr>
<tr>
<td>1103.003</td>
<td>682A(a)</td>
</tr>
<tr>
<td>1103.004</td>
<td>682A(b)</td>
</tr>
<tr>
<td>1104.001</td>
<td>690</td>
</tr>
<tr>
<td>1104.002</td>
<td>689</td>
</tr>
<tr>
<td>1104.003</td>
<td>new</td>
</tr>
<tr>
<td>1104.051</td>
<td>676(b)</td>
</tr>
<tr>
<td>1104.052</td>
<td>676(c)</td>
</tr>
<tr>
<td>1104.053</td>
<td>676(d), (e), (f)</td>
</tr>
<tr>
<td>1104.054</td>
<td>676(a), 680</td>
</tr>
<tr>
<td>1104.101</td>
<td>677(a)</td>
</tr>
<tr>
<td>1104.102</td>
<td>677(a)</td>
</tr>
<tr>
<td>1104.103</td>
<td>677(b), (c), (d)</td>
</tr>
<tr>
<td>1104.151</td>
<td>677A(h), 677B(a)</td>
</tr>
<tr>
<td>1104.152</td>
<td>677A(a), (b), (c)</td>
</tr>
<tr>
<td>1104.153</td>
<td>677A(g)</td>
</tr>
<tr>
<td>1104.154</td>
<td>677A(i), (j)</td>
</tr>
<tr>
<td>1104.155</td>
<td>677B(c)</td>
</tr>
<tr>
<td>1104.156</td>
<td>677A(d)</td>
</tr>
<tr>
<td>1104.157</td>
<td>677B(b), (e), (f)</td>
</tr>
<tr>
<td>1104.158</td>
<td>677B(d)</td>
</tr>
<tr>
<td>1104.159</td>
<td>677A(f)</td>
</tr>
<tr>
<td>1104.160</td>
<td>677A(e)</td>
</tr>
<tr>
<td>1104.201</td>
<td>679(j)</td>
</tr>
<tr>
<td>1104.202</td>
<td>679A(a)</td>
</tr>
<tr>
<td>1104.203</td>
<td>679(a), (b), (f)</td>
</tr>
<tr>
<td>1104.204</td>
<td>679(a), (c), (d)</td>
</tr>
<tr>
<td>1104.205</td>
<td>679(i)</td>
</tr>
<tr>
<td>1104.206</td>
<td>679(k), (l)</td>
</tr>
<tr>
<td>1104.207</td>
<td>679A(c)</td>
</tr>
<tr>
<td>1104.208</td>
<td>679A(b), (e), (f)</td>
</tr>
<tr>
<td>1104.209</td>
<td>679A(d)</td>
</tr>
<tr>
<td>1104.210</td>
<td>679(g)</td>
</tr>
<tr>
<td>1104.211</td>
<td>679(h)</td>
</tr>
<tr>
<td>1104.212</td>
<td>679(f)</td>
</tr>
<tr>
<td>1104.251</td>
<td>696A, 697B(a)</td>
</tr>
<tr>
<td>1104.252</td>
<td>697(e)</td>
</tr>
<tr>
<td>1104.253</td>
<td>696B</td>
</tr>
<tr>
<td>1104.254</td>
<td>697B(d)</td>
</tr>
<tr>
<td>1104.255</td>
<td>697B(b)</td>
</tr>
<tr>
<td>1104.256</td>
<td>697B(c)</td>
</tr>
<tr>
<td>1104.257</td>
<td>697A(a)</td>
</tr>
<tr>
<td>1104.258</td>
<td>697A(b)</td>
</tr>
<tr>
<td>1104.301</td>
<td>696</td>
</tr>
<tr>
<td>1104.302</td>
<td>697(a)</td>
</tr>
<tr>
<td>1104.303</td>
<td>697A(a), (b)</td>
</tr>
<tr>
<td>1104.304</td>
<td>697(c)</td>
</tr>
<tr>
<td>1104.305</td>
<td>697(d)</td>
</tr>
<tr>
<td>1104.306</td>
<td>697(e)</td>
</tr>
<tr>
<td>1104.351</td>
<td>681</td>
</tr>
<tr>
<td>1104.352</td>
<td>681</td>
</tr>
<tr>
<td>1104.353</td>
<td>678, 681</td>
</tr>
<tr>
<td>1104.354</td>
<td>681</td>
</tr>
<tr>
<td>1104.355</td>
<td>681</td>
</tr>
<tr>
<td>1104.356</td>
<td>681</td>
</tr>
<tr>
<td>1104.357</td>
<td>681</td>
</tr>
<tr>
<td>1104.358</td>
<td>new</td>
</tr>
<tr>
<td>1104.359</td>
<td>new</td>
</tr>
<tr>
<td>1104.401</td>
<td>new</td>
</tr>
<tr>
<td>1104.402</td>
<td>698(a), (e)</td>
</tr>
<tr>
<td>1104.403</td>
<td>698(a-5)</td>
</tr>
<tr>
<td>1104.404</td>
<td>698(a-6)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1104.405</td>
<td>698(b)</td>
</tr>
<tr>
<td>1104.406</td>
<td>698(a-1), (a-2), (a-3)</td>
</tr>
<tr>
<td>1104.407</td>
<td>698(a-4)</td>
</tr>
<tr>
<td>1104.408</td>
<td>698(b-1)</td>
</tr>
<tr>
<td>1104.409</td>
<td>698(c)</td>
</tr>
<tr>
<td>1104.410</td>
<td>698(c-1)</td>
</tr>
<tr>
<td>1104.411</td>
<td>698(d)</td>
</tr>
<tr>
<td>1104.412</td>
<td>698(f)</td>
</tr>
<tr>
<td>1105.001</td>
<td>new</td>
</tr>
<tr>
<td>1105.002</td>
<td>699</td>
</tr>
<tr>
<td>1105.003</td>
<td>701, 703(a)</td>
</tr>
<tr>
<td>1105.051</td>
<td>700</td>
</tr>
<tr>
<td>1105.052</td>
<td>701</td>
</tr>
<tr>
<td>1105.101</td>
<td>702</td>
</tr>
<tr>
<td>1105.102</td>
<td>702A</td>
</tr>
<tr>
<td>1105.103</td>
<td>722, 723, 724, 725</td>
</tr>
<tr>
<td>1105.104</td>
<td>706</td>
</tr>
<tr>
<td>1105.105</td>
<td>707</td>
</tr>
<tr>
<td>1105.106</td>
<td>708</td>
</tr>
<tr>
<td>1105.107</td>
<td>708A</td>
</tr>
<tr>
<td>1105.108</td>
<td>705</td>
</tr>
<tr>
<td>1105.109</td>
<td>704</td>
</tr>
<tr>
<td>1105.110</td>
<td>705</td>
</tr>
<tr>
<td>1105.111</td>
<td>721</td>
</tr>
<tr>
<td>1105.112</td>
<td>726</td>
</tr>
<tr>
<td>1105.151</td>
<td>703(a)</td>
</tr>
<tr>
<td>1105.152</td>
<td>703(b), (s)</td>
</tr>
<tr>
<td>1105.153</td>
<td>703(c)</td>
</tr>
<tr>
<td>1105.154</td>
<td>703(d), (q)</td>
</tr>
<tr>
<td>1105.155</td>
<td>703(e)</td>
</tr>
<tr>
<td>1105.156</td>
<td>703(f)</td>
</tr>
<tr>
<td>1105.157</td>
<td>703(g), (h), (i), (j), (k)</td>
</tr>
<tr>
<td>1105.158</td>
<td>703(l)</td>
</tr>
<tr>
<td>1105.159</td>
<td>703(m)</td>
</tr>
<tr>
<td>1105.160</td>
<td>703(n), (p)</td>
</tr>
<tr>
<td>1105.161</td>
<td>703(o)</td>
</tr>
<tr>
<td>1105.162</td>
<td>703(p)</td>
</tr>
<tr>
<td>1105.163</td>
<td>703(r)</td>
</tr>
<tr>
<td>Estates Code</td>
<td>Probate Code</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td>1105.201</td>
<td>709(a)</td>
</tr>
<tr>
<td>1105.202</td>
<td>709(b), 710</td>
</tr>
<tr>
<td>1105.203</td>
<td>709(c)</td>
</tr>
<tr>
<td>1105.204</td>
<td>719, 720</td>
</tr>
<tr>
<td>1105.251</td>
<td>711, 712</td>
</tr>
<tr>
<td>1105.252</td>
<td>713, 714(a)</td>
</tr>
<tr>
<td>1105.253</td>
<td>714(b)</td>
</tr>
<tr>
<td>1105.254</td>
<td>715</td>
</tr>
<tr>
<td>1105.255</td>
<td>716</td>
</tr>
<tr>
<td>1105.256</td>
<td>718</td>
</tr>
<tr>
<td>1105.257</td>
<td>717</td>
</tr>
<tr>
<td>1106.001</td>
<td>659(a)</td>
</tr>
<tr>
<td>1106.002</td>
<td>659(b)</td>
</tr>
<tr>
<td>1106.003</td>
<td>659(c), (d)</td>
</tr>
<tr>
<td>1106.004</td>
<td>661</td>
</tr>
<tr>
<td>1106.005</td>
<td>660</td>
</tr>
<tr>
<td>1106.006</td>
<td>663</td>
</tr>
<tr>
<td>1151.001</td>
<td>675</td>
</tr>
<tr>
<td>1151.002</td>
<td>662</td>
</tr>
<tr>
<td>1151.003</td>
<td>778</td>
</tr>
<tr>
<td>1151.004</td>
<td>769</td>
</tr>
<tr>
<td>1151.005</td>
<td>new</td>
</tr>
<tr>
<td>1151.051</td>
<td>767</td>
</tr>
<tr>
<td>1151.052</td>
<td>770(a)</td>
</tr>
<tr>
<td>1151.0525</td>
<td>new</td>
</tr>
<tr>
<td>1151.053</td>
<td>770(b), (c), (d)</td>
</tr>
<tr>
<td>1151.054</td>
<td>770A</td>
</tr>
<tr>
<td>1151.055</td>
<td>new</td>
</tr>
<tr>
<td>1151.056</td>
<td>new</td>
</tr>
<tr>
<td>1151.101</td>
<td>768</td>
</tr>
<tr>
<td>1151.102</td>
<td>774(a)</td>
</tr>
<tr>
<td>1151.103</td>
<td>774(b)</td>
</tr>
<tr>
<td>1151.104</td>
<td>773</td>
</tr>
<tr>
<td>1151.105</td>
<td>772</td>
</tr>
<tr>
<td>1151.151</td>
<td>768</td>
</tr>
<tr>
<td>1151.152</td>
<td>771</td>
</tr>
<tr>
<td>1151.153</td>
<td>775</td>
</tr>
<tr>
<td>1151.154</td>
<td>780</td>
</tr>
<tr>
<td>1151.155</td>
<td>779</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1151.201</td>
<td>781(a)</td>
</tr>
<tr>
<td>1151.202</td>
<td>781(b), (c)</td>
</tr>
<tr>
<td>1151.203</td>
<td>781(c)</td>
</tr>
<tr>
<td>1151.251</td>
<td>782(a)</td>
</tr>
<tr>
<td>1151.252</td>
<td>782(b)</td>
</tr>
<tr>
<td>1151.301</td>
<td>636</td>
</tr>
<tr>
<td>1151.351</td>
<td>new</td>
</tr>
<tr>
<td>1152.001</td>
<td>655</td>
</tr>
<tr>
<td>1152.002</td>
<td>656</td>
</tr>
<tr>
<td>1153.001</td>
<td>783(a), (c)</td>
</tr>
<tr>
<td>1153.002</td>
<td>783(b)</td>
</tr>
<tr>
<td>1153.003</td>
<td>784(a), (b), (c), (d)</td>
</tr>
<tr>
<td>1153.004</td>
<td>784(e)</td>
</tr>
<tr>
<td>1153.005</td>
<td>785</td>
</tr>
<tr>
<td>1154.001</td>
<td>727</td>
</tr>
<tr>
<td>1154.002</td>
<td>732</td>
</tr>
<tr>
<td>1154.003</td>
<td>728</td>
</tr>
<tr>
<td>1154.051</td>
<td>729</td>
</tr>
<tr>
<td>1154.052</td>
<td>730</td>
</tr>
<tr>
<td>1154.053</td>
<td>731</td>
</tr>
<tr>
<td>1154.054</td>
<td>733</td>
</tr>
<tr>
<td>1154.055</td>
<td>738</td>
</tr>
<tr>
<td>1154.101</td>
<td>734</td>
</tr>
<tr>
<td>1154.102</td>
<td>735</td>
</tr>
<tr>
<td>1154.103</td>
<td>736</td>
</tr>
<tr>
<td>1154.104</td>
<td>737</td>
</tr>
<tr>
<td>1154.151</td>
<td>739</td>
</tr>
<tr>
<td>1155.001</td>
<td>665(h)</td>
</tr>
<tr>
<td>1155.002</td>
<td>665(a), (g)</td>
</tr>
<tr>
<td>1155.003</td>
<td>665(b)</td>
</tr>
<tr>
<td>1155.004</td>
<td>665(a-1)</td>
</tr>
<tr>
<td>1155.005</td>
<td>665(f)</td>
</tr>
<tr>
<td>1155.006</td>
<td>665(c), (d)</td>
</tr>
<tr>
<td>1155.007</td>
<td>665(d), (d-1)</td>
</tr>
<tr>
<td>1155.008</td>
<td>665(e)</td>
</tr>
<tr>
<td>1155.051</td>
<td>[repealed]</td>
</tr>
<tr>
<td>1155.052</td>
<td>665A</td>
</tr>
<tr>
<td>1155.053</td>
<td>665(c)(a), (b), (c)</td>
</tr>
<tr>
<td>1155.054</td>
<td>665A; 665B</td>
</tr>
<tr>
<td>1155.101</td>
<td>666</td>
</tr>
<tr>
<td>1155.102</td>
<td>665C(d)</td>
</tr>
<tr>
<td>1155.103</td>
<td>667</td>
</tr>
<tr>
<td>1155.151</td>
<td>669</td>
</tr>
<tr>
<td>1155.152</td>
<td>668</td>
</tr>
<tr>
<td>1155.155</td>
<td>670(a)</td>
</tr>
<tr>
<td>1155.202</td>
<td>670(b), (c)</td>
</tr>
<tr>
<td>1156.001</td>
<td>776(a), (a-1)</td>
</tr>
<tr>
<td>1156.002</td>
<td>776(a-2)</td>
</tr>
<tr>
<td>1156.003</td>
<td>776(a-2), (a-3)</td>
</tr>
<tr>
<td>1156.004</td>
<td>776(b)</td>
</tr>
<tr>
<td>1156.051</td>
<td>777</td>
</tr>
<tr>
<td>1156.052</td>
<td>776A</td>
</tr>
<tr>
<td>1157.001</td>
<td>786(a)</td>
</tr>
<tr>
<td>1157.002</td>
<td>795</td>
</tr>
<tr>
<td>1157.003</td>
<td>794</td>
</tr>
<tr>
<td>1157.004</td>
<td>788</td>
</tr>
<tr>
<td>1157.005</td>
<td>791</td>
</tr>
<tr>
<td>1157.006</td>
<td>790</td>
</tr>
<tr>
<td>1157.007</td>
<td>789</td>
</tr>
<tr>
<td>1157.008</td>
<td>787</td>
</tr>
<tr>
<td>1157.051</td>
<td>796</td>
</tr>
<tr>
<td>1157.052</td>
<td>797</td>
</tr>
<tr>
<td>1157.053</td>
<td>798</td>
</tr>
<tr>
<td>1157.054</td>
<td>799(a)</td>
</tr>
<tr>
<td>1157.055</td>
<td>799(b)</td>
</tr>
<tr>
<td>1157.056</td>
<td>799(c)</td>
</tr>
<tr>
<td>1157.057</td>
<td>799(d)</td>
</tr>
<tr>
<td>1157.058</td>
<td>799(e)</td>
</tr>
<tr>
<td>1157.059</td>
<td>788</td>
</tr>
<tr>
<td>1157.060</td>
<td>786(a)</td>
</tr>
<tr>
<td>1157.061</td>
<td>786(b)</td>
</tr>
<tr>
<td>1157.062</td>
<td>790</td>
</tr>
<tr>
<td>1157.063</td>
<td>800</td>
</tr>
<tr>
<td>1157.064</td>
<td>801</td>
</tr>
<tr>
<td>1157.065</td>
<td>800</td>
</tr>
<tr>
<td>1157.101</td>
<td>804</td>
</tr>
<tr>
<td>1157.102</td>
<td>792</td>
</tr>
<tr>
<td>-------------</td>
<td>---------------</td>
</tr>
<tr>
<td>1157.103</td>
<td>805(a), (b)</td>
</tr>
<tr>
<td>1157.104</td>
<td>808</td>
</tr>
<tr>
<td>1157.105</td>
<td>805(c)</td>
</tr>
<tr>
<td>1157.106</td>
<td>806</td>
</tr>
<tr>
<td>1157.107</td>
<td>802</td>
</tr>
<tr>
<td>1157.108</td>
<td>809</td>
</tr>
<tr>
<td>1157.151</td>
<td>793(a), (b)</td>
</tr>
<tr>
<td>1157.152</td>
<td>793(c)</td>
</tr>
<tr>
<td>1157.153</td>
<td>793(d)</td>
</tr>
<tr>
<td>1157.201</td>
<td>803</td>
</tr>
<tr>
<td>1157.202</td>
<td>807</td>
</tr>
<tr>
<td>1158.001</td>
<td>811</td>
</tr>
<tr>
<td>1158.051</td>
<td>812</td>
</tr>
<tr>
<td>1158.101</td>
<td>813</td>
</tr>
<tr>
<td>1158.102</td>
<td>813</td>
</tr>
<tr>
<td>1158.103</td>
<td>815</td>
</tr>
<tr>
<td>1158.104</td>
<td>816</td>
</tr>
<tr>
<td>1158.105</td>
<td>818</td>
</tr>
<tr>
<td>1158.151</td>
<td>814(a), (b)</td>
</tr>
<tr>
<td>1158.152</td>
<td>814(b)</td>
</tr>
<tr>
<td>1158.153</td>
<td>814(c)</td>
</tr>
<tr>
<td>1158.154</td>
<td>814(c)</td>
</tr>
<tr>
<td>1158.155</td>
<td>814(c)</td>
</tr>
<tr>
<td>1158.201</td>
<td>817</td>
</tr>
<tr>
<td>1158.202</td>
<td>817</td>
</tr>
<tr>
<td>1158.203</td>
<td>817</td>
</tr>
<tr>
<td>1158.251</td>
<td>820</td>
</tr>
<tr>
<td>1158.252</td>
<td>821</td>
</tr>
<tr>
<td>1158.253</td>
<td>823</td>
</tr>
<tr>
<td>1158.254</td>
<td>824</td>
</tr>
<tr>
<td>1158.255</td>
<td>824A</td>
</tr>
<tr>
<td>1158.256</td>
<td>825</td>
</tr>
<tr>
<td>1158.257</td>
<td>819</td>
</tr>
<tr>
<td>1158.301</td>
<td>827(a)</td>
</tr>
<tr>
<td>1158.302</td>
<td>827(a)</td>
</tr>
<tr>
<td>1158.351</td>
<td>827(b)</td>
</tr>
<tr>
<td>1158.352</td>
<td>827(b)</td>
</tr>
<tr>
<td>1158.353</td>
<td>827(b)</td>
</tr>
<tr>
<td>1158.401</td>
<td>828(a)</td>
</tr>
</tbody>
</table>
### Conversion Chart – Estates Code to Probate Code

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1161.153</td>
<td>860(c)</td>
</tr>
<tr>
<td>1161.201</td>
<td>858(h)</td>
</tr>
<tr>
<td>1161.202</td>
<td>858(a), (b)</td>
</tr>
<tr>
<td>1161.203</td>
<td>858(a), (d), (e), (f), 861</td>
</tr>
<tr>
<td>1161.204</td>
<td>858(g), 862</td>
</tr>
<tr>
<td>1161.205</td>
<td>858(c)</td>
</tr>
<tr>
<td>1162.001</td>
<td>865(a)</td>
</tr>
<tr>
<td>1162.002</td>
<td>865(b), (d)</td>
</tr>
<tr>
<td>1162.003</td>
<td>865(e)</td>
</tr>
<tr>
<td>1162.004</td>
<td>865(f)</td>
</tr>
<tr>
<td>1162.005</td>
<td>865A(a), (b)</td>
</tr>
<tr>
<td>1162.006</td>
<td>865A(c), (d)</td>
</tr>
<tr>
<td>1162.007</td>
<td>865A(d), (e), (g)</td>
</tr>
<tr>
<td>1162.008</td>
<td>865A, 865A(f)</td>
</tr>
<tr>
<td>1162.051</td>
<td>866(a)</td>
</tr>
<tr>
<td>1162.052</td>
<td>866(b)</td>
</tr>
<tr>
<td>1162.053</td>
<td>866(c)</td>
</tr>
<tr>
<td>1163.001</td>
<td>741(a)</td>
</tr>
<tr>
<td>1163.002</td>
<td>741(b)</td>
</tr>
<tr>
<td>1163.003</td>
<td>741(c)</td>
</tr>
<tr>
<td>1163.004</td>
<td>741(c), (d)</td>
</tr>
<tr>
<td>1163.005</td>
<td>741(e), (f)</td>
</tr>
<tr>
<td>1163.006</td>
<td>741(g)</td>
</tr>
<tr>
<td>1163.051</td>
<td>742(a), (b), (c), (d), (e)</td>
</tr>
<tr>
<td>1163.052</td>
<td>742(f)</td>
</tr>
<tr>
<td>1163.053</td>
<td>742(f)</td>
</tr>
<tr>
<td>1163.054</td>
<td>742(f)</td>
</tr>
<tr>
<td>1163.101</td>
<td>743(a), (b), (g)</td>
</tr>
<tr>
<td>1163.1011</td>
<td>new</td>
</tr>
<tr>
<td>1163.102</td>
<td>743(g), (h), (i)</td>
</tr>
<tr>
<td>1163.103</td>
<td>743(c)</td>
</tr>
<tr>
<td>1163.104</td>
<td>743(d), (e), (f)</td>
</tr>
<tr>
<td>1163.105</td>
<td>743(j)</td>
</tr>
<tr>
<td>1163.151</td>
<td>744</td>
</tr>
<tr>
<td>1164.001</td>
<td>673</td>
</tr>
<tr>
<td>1164.002</td>
<td>674</td>
</tr>
<tr>
<td>1201.001</td>
<td>671(a)</td>
</tr>
<tr>
<td>1201.002</td>
<td>671(b), (c), (d)</td>
</tr>
<tr>
<td>1201.003</td>
<td>671(d)</td>
</tr>
<tr>
<td>1201.004</td>
<td>671(e)</td>
</tr>
<tr>
<td>1201.051</td>
<td>672(e)</td>
</tr>
<tr>
<td>1201.052</td>
<td>672(a)</td>
</tr>
<tr>
<td>1201.053</td>
<td>672(b), (c)</td>
</tr>
<tr>
<td>1201.054</td>
<td>672(d)</td>
</tr>
<tr>
<td>1202.001</td>
<td>694</td>
</tr>
<tr>
<td>1202.002</td>
<td>676(g), 677(e)</td>
</tr>
<tr>
<td>1202.003</td>
<td>new</td>
</tr>
<tr>
<td>1202.051</td>
<td>694A(a)</td>
</tr>
<tr>
<td>1202.052</td>
<td>694B</td>
</tr>
<tr>
<td>1202.053</td>
<td>694A(d)</td>
</tr>
<tr>
<td>1202.054</td>
<td>694A(b), (c)</td>
</tr>
<tr>
<td>1202.055</td>
<td>694A(e)</td>
</tr>
<tr>
<td>1202.101</td>
<td>694C(a), (b)</td>
</tr>
<tr>
<td>1202.102</td>
<td>694C(c), 694L</td>
</tr>
<tr>
<td>1202.103</td>
<td>694K</td>
</tr>
<tr>
<td>1202.104</td>
<td>694J</td>
</tr>
<tr>
<td>1202.105</td>
<td>694L</td>
</tr>
<tr>
<td>1202.106</td>
<td>694M</td>
</tr>
<tr>
<td>1202.151</td>
<td>694D</td>
</tr>
<tr>
<td>1202.152</td>
<td>694E</td>
</tr>
<tr>
<td>1202.153</td>
<td>694F</td>
</tr>
<tr>
<td>1202.154</td>
<td>694G</td>
</tr>
<tr>
<td>1202.155</td>
<td>694H</td>
</tr>
<tr>
<td>1202.156</td>
<td>694I</td>
</tr>
<tr>
<td>1202.157</td>
<td>new</td>
</tr>
<tr>
<td>1203.001</td>
<td>760(a)</td>
</tr>
<tr>
<td>1203.002</td>
<td>760(b)</td>
</tr>
<tr>
<td>1203.003</td>
<td>760(g)</td>
</tr>
<tr>
<td>1203.004</td>
<td>760(c)</td>
</tr>
<tr>
<td>1203.005</td>
<td>760(d)</td>
</tr>
<tr>
<td>1203.006</td>
<td>760(e), (f)</td>
</tr>
<tr>
<td>1203.007</td>
<td>760(f)</td>
</tr>
<tr>
<td>1203.008</td>
<td>760(g)</td>
</tr>
<tr>
<td>1203.009</td>
<td>760(h)</td>
</tr>
<tr>
<td>1203.051</td>
<td>761(a)</td>
</tr>
<tr>
<td>1203.052</td>
<td>761(b), 762</td>
</tr>
<tr>
<td>1203.053</td>
<td>761(d)</td>
</tr>
<tr>
<td>1203.054</td>
<td>761(e)</td>
</tr>
<tr>
<td>1203.055</td>
<td>761(f)</td>
</tr>
<tr>
<td>1203.056</td>
<td>761(g)</td>
</tr>
<tr>
<td>1203.057</td>
<td>new</td>
</tr>
<tr>
<td>1203.058</td>
<td>759(g)</td>
</tr>
<tr>
<td>1203.059</td>
<td>759(h)</td>
</tr>
<tr>
<td>1203.101</td>
<td>695(a), 759(a), 760(b), 761(f)</td>
</tr>
<tr>
<td>1203.102</td>
<td>695(b)</td>
</tr>
<tr>
<td>1203.103</td>
<td>759(d)</td>
</tr>
<tr>
<td>1203.104</td>
<td>759(e)</td>
</tr>
<tr>
<td>1203.106</td>
<td>759(h)</td>
</tr>
<tr>
<td>1203.107</td>
<td>695(c), (d), (e)</td>
</tr>
<tr>
<td>1203.151</td>
<td>695A(a), (a-1)</td>
</tr>
<tr>
<td>1203.152</td>
<td>695A(b)</td>
</tr>
<tr>
<td>1203.153</td>
<td>695A(c)</td>
</tr>
<tr>
<td>1203.201</td>
<td>759(g)</td>
</tr>
<tr>
<td>1203.202</td>
<td>695(b), 763, 764</td>
</tr>
<tr>
<td>1203.203</td>
<td>765</td>
</tr>
<tr>
<td>1204.001</td>
<td>745</td>
</tr>
<tr>
<td>1204.002</td>
<td>755</td>
</tr>
<tr>
<td>1204.051</td>
<td>746</td>
</tr>
<tr>
<td>1204.052</td>
<td>748</td>
</tr>
<tr>
<td>1204.053</td>
<td>754</td>
</tr>
<tr>
<td>1204.101</td>
<td>749</td>
</tr>
<tr>
<td>1204.102</td>
<td>749</td>
</tr>
<tr>
<td>1204.103</td>
<td>756</td>
</tr>
<tr>
<td>1204.104</td>
<td>757</td>
</tr>
<tr>
<td>1204.105</td>
<td>751</td>
</tr>
<tr>
<td>1204.106</td>
<td>752(a)</td>
</tr>
<tr>
<td>1204.107</td>
<td>753</td>
</tr>
<tr>
<td>1204.108</td>
<td>747</td>
</tr>
<tr>
<td>1204.109</td>
<td>752(b)</td>
</tr>
<tr>
<td>1204.151</td>
<td>752(c)</td>
</tr>
<tr>
<td>1204.152</td>
<td>752(d)</td>
</tr>
<tr>
<td>1204.201</td>
<td>750</td>
</tr>
<tr>
<td>1204.202</td>
<td>758</td>
</tr>
<tr>
<td>1251.001</td>
<td>875(a), (b)</td>
</tr>
<tr>
<td>1251.002</td>
<td>874</td>
</tr>
<tr>
<td>1251.003</td>
<td>875(c)</td>
</tr>
<tr>
<td>1251.004</td>
<td>875(d)</td>
</tr>
<tr>
<td>1251.005</td>
<td>875(e)</td>
</tr>
<tr>
<td>1251.006</td>
<td>875(f), (1), (2), (3), (4)</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1251.007</td>
<td>875(f)(5)</td>
</tr>
<tr>
<td>1251.008</td>
<td>875(f)(1)</td>
</tr>
<tr>
<td>1251.009</td>
<td>875(f)(6)</td>
</tr>
<tr>
<td>1251.010</td>
<td>875(g)</td>
</tr>
<tr>
<td>1251.011</td>
<td>875(j)</td>
</tr>
<tr>
<td>1251.012</td>
<td>875(g)</td>
</tr>
<tr>
<td>1251.013</td>
<td>875(i)</td>
</tr>
<tr>
<td>1251.051</td>
<td>875(k)</td>
</tr>
<tr>
<td>1251.052</td>
<td>875(l)</td>
</tr>
<tr>
<td>1251.101</td>
<td>876</td>
</tr>
<tr>
<td>1251.102</td>
<td>877</td>
</tr>
<tr>
<td>1251.151</td>
<td>875(h)</td>
</tr>
<tr>
<td>1251.152</td>
<td>878, 879</td>
</tr>
<tr>
<td>1251.153</td>
<td>879</td>
</tr>
<tr>
<td>1252.001</td>
<td>882</td>
</tr>
<tr>
<td>1252.002</td>
<td>882</td>
</tr>
<tr>
<td>1252.003</td>
<td>882</td>
</tr>
<tr>
<td>1252.051</td>
<td>881(a), (b)</td>
</tr>
<tr>
<td>1252.052</td>
<td>881(c)</td>
</tr>
<tr>
<td>1252.053</td>
<td>881(d)</td>
</tr>
<tr>
<td>1252.054</td>
<td>881(e)</td>
</tr>
<tr>
<td>1252.055</td>
<td>881A</td>
</tr>
<tr>
<td>1253.001</td>
<td>891(a)</td>
</tr>
<tr>
<td>1253.002</td>
<td>891(b)</td>
</tr>
<tr>
<td>1253.003</td>
<td>891(c), (d)</td>
</tr>
<tr>
<td>1253.051</td>
<td>892(a)</td>
</tr>
<tr>
<td>1253.0515</td>
<td>new</td>
</tr>
<tr>
<td>1253.052</td>
<td>892(b)</td>
</tr>
<tr>
<td>1253.053</td>
<td>892(d), (e), (f), (g)</td>
</tr>
<tr>
<td>1253.054</td>
<td>repealed</td>
</tr>
<tr>
<td>1253.055</td>
<td>892(c)</td>
</tr>
<tr>
<td>1253.101</td>
<td>892(h)</td>
</tr>
<tr>
<td>1253.102</td>
<td>894(a)</td>
</tr>
<tr>
<td>1253.103</td>
<td>894(b), (d)</td>
</tr>
<tr>
<td>1253.151</td>
<td>895(a)</td>
</tr>
<tr>
<td>1253.152</td>
<td>895(b)</td>
</tr>
<tr>
<td>1301.001</td>
<td>new</td>
</tr>
<tr>
<td>1301.002</td>
<td>8698</td>
</tr>
<tr>
<td>1301.051</td>
<td>867(a-1)</td>
</tr>
<tr>
<td>1301.0511</td>
<td>new</td>
</tr>
<tr>
<td>1301.052</td>
<td>867(b-2), 867A</td>
</tr>
<tr>
<td>1301.053</td>
<td>867(b), (f)</td>
</tr>
<tr>
<td>1301.054</td>
<td>867(b-1), (b-3), (f)</td>
</tr>
<tr>
<td>1301.055</td>
<td>867(b-4)</td>
</tr>
<tr>
<td>1301.056</td>
<td>867(f)</td>
</tr>
<tr>
<td>1301.057</td>
<td>867(a), (b-5), (c), (d), (e)</td>
</tr>
<tr>
<td>1301.058</td>
<td>868(a), 868B</td>
</tr>
<tr>
<td>1301.101</td>
<td>868(a), (d)</td>
</tr>
<tr>
<td>1301.102</td>
<td>868(b), (e)</td>
</tr>
<tr>
<td>1301.103</td>
<td>868(c)</td>
</tr>
<tr>
<td>1301.151</td>
<td>869C</td>
</tr>
<tr>
<td>1301.152</td>
<td>868A</td>
</tr>
<tr>
<td>1301.153</td>
<td>868(f)</td>
</tr>
<tr>
<td>1301.1535</td>
<td>870A</td>
</tr>
<tr>
<td>1301.154</td>
<td>871</td>
</tr>
<tr>
<td>1301.155</td>
<td>869A</td>
</tr>
<tr>
<td>1301.156</td>
<td>872</td>
</tr>
<tr>
<td>1301.201</td>
<td>869</td>
</tr>
<tr>
<td>1301.202</td>
<td>868C</td>
</tr>
<tr>
<td>1301.203</td>
<td>870</td>
</tr>
<tr>
<td>1301.204</td>
<td>873</td>
</tr>
<tr>
<td>1302.001</td>
<td>910</td>
</tr>
<tr>
<td>1302.002</td>
<td>911</td>
</tr>
<tr>
<td>1302.003</td>
<td>912</td>
</tr>
<tr>
<td>1302.004</td>
<td>913</td>
</tr>
<tr>
<td>1302.005</td>
<td>914</td>
</tr>
<tr>
<td>1302.006</td>
<td>916</td>
</tr>
<tr>
<td>1302.007</td>
<td>915</td>
</tr>
<tr>
<td>1351.001</td>
<td>889(a)</td>
</tr>
<tr>
<td>1351.002</td>
<td>889(b)</td>
</tr>
<tr>
<td>1351.003</td>
<td>889(c), (d)</td>
</tr>
<tr>
<td>1351.004</td>
<td>889(e)</td>
</tr>
<tr>
<td>1351.005</td>
<td>889(f)</td>
</tr>
<tr>
<td>1351.006</td>
<td>889(a)</td>
</tr>
<tr>
<td>1351.051</td>
<td>890(a)</td>
</tr>
<tr>
<td>1351.052</td>
<td>890(b)</td>
</tr>
<tr>
<td>1351.053</td>
<td>890(b), (c); new</td>
</tr>
<tr>
<td>1351.054</td>
<td>890(d), (e)</td>
</tr>
<tr>
<td>1351.055</td>
<td>890(f)</td>
</tr>
<tr>
<td>1351.056</td>
<td>890(g)</td>
</tr>
<tr>
<td>1351.057</td>
<td>890(b)</td>
</tr>
<tr>
<td>1352.001</td>
<td>889A(a), 890A(a)</td>
</tr>
<tr>
<td>1352.051</td>
<td>889A(b)</td>
</tr>
<tr>
<td>1352.052</td>
<td>889A(b), (j)</td>
</tr>
<tr>
<td>1352.053</td>
<td>889A(c)</td>
</tr>
<tr>
<td>1352.054</td>
<td>889A(d), (f)</td>
</tr>
<tr>
<td>1352.055</td>
<td>889A(e), (h), (i)</td>
</tr>
<tr>
<td>1352.056</td>
<td>889A(b)</td>
</tr>
<tr>
<td>1352.057</td>
<td>889A(g)</td>
</tr>
<tr>
<td>1352.058</td>
<td>889A(g)</td>
</tr>
<tr>
<td>1352.059</td>
<td>889A(k)</td>
</tr>
<tr>
<td>1352.101</td>
<td>890A(b), (c)</td>
</tr>
<tr>
<td>1352.102</td>
<td>890A(c)</td>
</tr>
<tr>
<td>1352.103</td>
<td>890A(d)</td>
</tr>
<tr>
<td>1352.104</td>
<td>890A(e), (g), (h)</td>
</tr>
<tr>
<td>1352.105</td>
<td>890A(f), (j)</td>
</tr>
<tr>
<td>1352.106</td>
<td>890A(i)</td>
</tr>
<tr>
<td>1352.107</td>
<td>890A(k)</td>
</tr>
<tr>
<td>1353.001</td>
<td>883(e), (f)</td>
</tr>
<tr>
<td>1353.002</td>
<td>883(a), (b)</td>
</tr>
<tr>
<td>1353.003</td>
<td>883(a), (b)</td>
</tr>
<tr>
<td>1353.004</td>
<td>883(c), (g)</td>
</tr>
<tr>
<td>1353.005</td>
<td>883(d), (g)</td>
</tr>
<tr>
<td>1353.006</td>
<td>883(h)</td>
</tr>
<tr>
<td>1353.051</td>
<td>883B(a), (c)</td>
</tr>
<tr>
<td>1353.052</td>
<td>883B(b), (d), (e)</td>
</tr>
<tr>
<td>1353.053</td>
<td>884A</td>
</tr>
<tr>
<td>1353.054</td>
<td>884</td>
</tr>
<tr>
<td>1353.101</td>
<td>883C(a)</td>
</tr>
<tr>
<td>1353.102</td>
<td>883C(a), (b), (c)</td>
</tr>
<tr>
<td>1353.103</td>
<td>883A</td>
</tr>
<tr>
<td>1353.151</td>
<td>883D</td>
</tr>
<tr>
<td>Estates Code</td>
<td>Probate Code</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------</td>
</tr>
<tr>
<td>1354.001</td>
<td>885(a)</td>
</tr>
<tr>
<td>1354.002</td>
<td>885(a)</td>
</tr>
<tr>
<td>1354.003</td>
<td>885(a)</td>
</tr>
<tr>
<td>1354.004</td>
<td>885(b)</td>
</tr>
<tr>
<td>1354.005</td>
<td>885(c)</td>
</tr>
<tr>
<td>1354.006</td>
<td>885(d)</td>
</tr>
<tr>
<td>1354.007</td>
<td>885(e)</td>
</tr>
<tr>
<td>1354.008</td>
<td>885(f)</td>
</tr>
<tr>
<td>1354.009</td>
<td>885(g)</td>
</tr>
<tr>
<td>1355.001</td>
<td>887(a)</td>
</tr>
<tr>
<td>1355.002</td>
<td>887(e)</td>
</tr>
<tr>
<td>1355.051</td>
<td>887(a)</td>
</tr>
<tr>
<td>1355.052</td>
<td>887(b)</td>
</tr>
<tr>
<td>1355.101</td>
<td>new</td>
</tr>
<tr>
<td>1355.102</td>
<td>887(c)</td>
</tr>
<tr>
<td>1355.103</td>
<td>887(c)</td>
</tr>
<tr>
<td>1355.104</td>
<td>887(d)</td>
</tr>
<tr>
<td>1355.105</td>
<td>887(f)</td>
</tr>
<tr>
<td>1355.151</td>
<td>887(g)</td>
</tr>
<tr>
<td>1355.152</td>
<td>887(g)</td>
</tr>
<tr>
<td>1355.153</td>
<td>887(g)</td>
</tr>
<tr>
<td>1355.154</td>
<td>887(g)</td>
</tr>
<tr>
<td>1356.001</td>
<td>901, 904(a)</td>
</tr>
<tr>
<td>1356.002</td>
<td>902</td>
</tr>
<tr>
<td>1356.051</td>
<td>903(a), (b), (c)</td>
</tr>
<tr>
<td>1356.052</td>
<td>903(a)</td>
</tr>
<tr>
<td>1356.053</td>
<td>903(e)</td>
</tr>
<tr>
<td>1356.054</td>
<td>904(b)</td>
</tr>
<tr>
<td>1356.055</td>
<td>903(d)</td>
</tr>
<tr>
<td>1356.056</td>
<td>905</td>
</tr>
<tr>
<td>1357.001</td>
<td>new</td>
</tr>
<tr>
<td>1357.002</td>
<td>new</td>
</tr>
<tr>
<td>1357.003</td>
<td>new</td>
</tr>
<tr>
<td>1357.051</td>
<td>new</td>
</tr>
<tr>
<td>1357.052</td>
<td>new</td>
</tr>
<tr>
<td>1357.053</td>
<td>new</td>
</tr>
<tr>
<td>1357.054</td>
<td>new</td>
</tr>
<tr>
<td>1357.055</td>
<td>new</td>
</tr>
<tr>
<td>1357.056</td>
<td>new</td>
</tr>
<tr>
<td>1357.101</td>
<td>new</td>
</tr>
<tr>
<td>1357.102</td>
<td>new</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estates Code</th>
<th>Probate Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001.001</td>
<td>new</td>
</tr>
<tr>
<td>2001.002</td>
<td>new</td>
</tr>
<tr>
<td>2001.003</td>
<td>new</td>
</tr>
<tr>
<td>2001.004</td>
<td>new</td>
</tr>
<tr>
<td>2001.005</td>
<td>new</td>
</tr>
<tr>
<td>2001.051</td>
<td>new</td>
</tr>
<tr>
<td>2001.052</td>
<td>new</td>
</tr>
<tr>
<td>2001.053</td>
<td>new</td>
</tr>
<tr>
<td>2001.101</td>
<td>new</td>
</tr>
<tr>
<td>2001.102</td>
<td>new</td>
</tr>
<tr>
<td>2001.131</td>
<td>new</td>
</tr>
<tr>
<td>2001.132</td>
<td>new</td>
</tr>
<tr>
<td>2001.151</td>
<td>new</td>
</tr>
<tr>
<td>2001.152</td>
<td>new</td>
</tr>
<tr>
<td>2001.153</td>
<td>new</td>
</tr>
<tr>
<td>2001.171</td>
<td>new</td>
</tr>
<tr>
<td>2001.201</td>
<td>new</td>
</tr>
<tr>
<td>2001.202</td>
<td>new</td>
</tr>
<tr>
<td>2001.231</td>
<td>new</td>
</tr>
<tr>
<td>2001.232</td>
<td>new</td>
</tr>
</tbody>
</table>

Electronic copy available at: https://ssrn.com/abstract=4537861
The 2009 Legislature began the process of codifying the current Probate Code into the new Estates Code. It is interesting to note that although called a "Code," the Probate Code was not a true "code" because it was enacted in 1955 which was before the 1963 Legislature began the process of codifying Texas law into 27 codes. The codification process was supposed to be nonsubstantive. See Acts 2009, 81st Leg., ch. 680, § 11, eff. Jan. 1, 2014.

The portion of the Estates Code passed by the 2009 Legislature focused on intestacy, wills, and estate administration. The guardianship and durable power of attorney provisions were added in 2011. The 2011 Legislature also made changes to the previously enacted portions of the Estates Code to be consistent with Probate Code amendments. The 2013 Legislature fixed problems with the two initial recodifications as well as making substantive changes.

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

TITLE 1. GENERAL PROVISIONS
Chapter 21. Purpose and Construction
Chapter 22. Definitions

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE A. SCOPE, JURISDICTION, VENUE, AND COURTS
Chapter 32. Jurisdiction
Chapter 33. Venue
Chapter 34. Matters Relating to Certain Other Types of Proceedings

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

SUBTITLE C. PASSAGE OF TITLE AND DISTRIBUTION OF DECEDENTS’ PROPERTY IN GENERAL
Chapter 101. Estate Assets in General
Chapter 102. Probate Assets: Decedent’s Homestead
Chapter 111. Nonprobate Assets in General
Chapter 112. Community Property with Right of Survivorship
Chapter 113. Multiple-Party Accounts
Chapter 121. Survival Requirements
Chapter 122. Disclaimers and Assignments
Chapter 123. Dissolution of Marriage
Chapter 124. Valuation and Taxation of Estate Property

SUBTITLE D. PROCEEDINGS BEFORE ADMINISTRATION OF ESTATE
Chapter 151. Examination of Documents and Safe Deposit Boxes
Chapter 152. Emergency Intervention

SUBTITLE E. INTESTATE SUCCESSION
Chapter 201. Descent and Distribution
Chapter 202. Determination of Heirship
Chapter 203. Nonjudicial Evidence of Heirship
Chapter 204. Genetic Testing in Proceedings to Declare Heirship
Chapter 205. Small Estate Affidavit

SUBTITLE F. WILLS
Chapter 251. Fundamental Requirements and Provisions Relating to Wills
Chapter 252. Safekeeping and Custody of Wills
Chapter 253. Change and Revocation of Wills
Chapter 254. Certain Provisions in, and Contracts Relating to, Wills
Chapter 255. Construction and Interpretation of Wills
Chapter 256. Probate of Will Generally
Chapter 257. Probate of Will As Muniment of Title
Chapter 258. Citations and Notices Relating to Probate of Will

SUBTITLE G. INITIAL APPOINTMENT OF PERSONAL REPRESENTATIVE AND OPENING OF ADMINISTRATION
Chapter 301. Application for Letters Testamentary or of Administration
Chapter 303. Citations and Notices in General on Opening of Administration

Electronic copy available at: https://ssrn.com/abstract=4537861
Chapter 304. Persons Who May Serve As Personal Representatives
Chapter 305. Qualification of Personal Representatives
Chapter 306. Granting and Issuance of Letters
Chapter 307. Validity of Certain Acts of Executors and Administrators
Chapter 308. Notice to Beneficiaries and Claimants
Chapter 309. Inventory, Appraisement, and List of Claims
Chapter 310. Allocation of Estate Income and Expenses

SUBTITLE H. CONTINUATION OF ADMINISTRATION

Chapter 351. Powers and Duties of Personal Representatives in General
Chapter 352. Compensation and Expenses of Personal Representatives and Others
Chapter 353. Exempt Property and Family Allowance
Chapter 354. Summary Proceedings for, or Withdrawal from Administration of, Certain Estates
Chapter 355. Presentment and Payment of Claims
Chapter 356. Sale of Estate Property
Chapter 357. Renting Estate Property
Chapter 358. Matters Relating to Mineral Properties
Chapter 359. Annual Account and Other Exhibits and Reports
Chapter 360. Partition and Distribution of Estate
Chapter 361. Death, Resignation, or Removal of Personal Representatives; Appointment of Successors
Chapter 362. Closing Administration of Estate

SUBTITLE I. INDEPENDENT ADMINISTRATION

Chapter 401. Creation
Chapter 402. Administration
Chapter 403. Exemptions and Allowances; Claims
Chapter 404. Accountings, Successors, and Other Remedies
Chapter 405. Closing and Distributions

SUBTITLE J. ADDITIONAL MATTERS RELATING TO THE ADMINISTRATION OF CERTAIN ESTATES

Chapter 451. Order of No Administration
Chapter 452. Temporary Administration of Estates
Chapter 453. Administration of Community Property
Chapter 454. Administration of Estate of Person Presumed Dead
Chapter 455. Public Probate Administrator

SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND FIDUCIARIES

Chapter 501. Ancillary Probate of Foreign Will
Chapter 502. Original Probate of Foreign Will
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

SUBTITLE L. PAYMENT OF ESTATES INTO TREASURY

Chapter 551. Payment of Certain Estates to State

SUBTITLE P. DURABLE POWERS OF ATTORNEY

Chapter 751. General Provisions Regarding Durable Powers of Attorney
Chapter 752. Statutory Durable Power of Attorney

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE A. GENERAL PROVISIONS

Chapter 1001. Purpose and Construction
Chapter 1002. Definitions

SUBTITLE B. SCOPE, JURISDICTION, AND VENUE

Chapter 1021. General Provisions
Chapter 1022. Jurisdiction
Chapter 1023. Venue

SUBTITLE C. PROCEDURAL MATTERS

Chapter 1051. Notices and Process in Guardianship Proceedings in General
Chapter 1052. Filing and Recordkeeping
Chapter 1053. Other Court Duties and Procedures
Chapter 1054. Court Officers and Court-Appointed Persons
Chapter 1055. Trial and Hearing Matters
Chapter 1056. Execution, Attachment, and Bill of Review
Chapter 1057. Change and Resignation of Resident Agent of Guardian for Service of Process

SUBTITLE D. CREATION OF GUARDIANSHIP

Chapter 1101. General Procedure to Appoint Guardian
Chapter 1102.  Court-Initiated Procedure to Appoint Guardian
Chapter 1103.  Procedure to Appoint Guardian for Certain Minors Requiring Guardianships As Adults
Chapter 1104.  Selection of and Eligibility to Serve As Guardian
Chapter 1105.  Qualification of Guardians
Chapter 1106.  Letters of Guardianship

SUBTITLE E. ADMINISTRATION OF GUARDIANSHIP
Chapter 1151.  Rights, Powers, and Duties Under Guardianship
Chapter 1152.  Guardianship Pending Appeal of Appointment
Chapter 1153.  Notice to Claimants
Chapter 1154.  Inventory, Appraisement, and List of Claims
Chapter 1155.  Compensation, Expenses, and Court Costs
Chapter 1156.  Education and Maintenance Allowances Paid from Ward’s Estate
Chapter 1157.  Presentment and Payment of Claims
Chapter 1158.  Sale or Partition of Ward’s Property
Chapter 1159.  Renting Estate Property
Chapter 1160.  Matters Relating to Mineral Properties
Chapter 1161.  Investments and Loans of Estates of Wards
Chapter 1162.  Tax-Motivated and Charitable and Nonprofit Gifts
Chapter 1163.  Annual Account and Other Exhibits and Reports
Chapter 1164.  Liability of Guardian or Guardianship Program

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF GUARDIANSHIP
Chapter 1201.  Evaluation of Guardianship
Chapter 1202.  Modification or Termination of Guardianship
Chapter 1203.  Resignation, Removal, or Death of Guardian; Appointment of Successor
Chapter 1204.  Final Settlement, Accounting, and Discharge

SUBTITLE G. SPECIAL TYPES OF GUARDIANSHIPS
Chapter 1251.  Temporary Guardianships
Chapter 1252.  Guardianships for Nonresident Wards
Chapter 1253.  Interstate Guardianships

SUBTITLE H. COURT-AUTHORIZED TRUSTS AND ACCOUNTS
Chapter 1301.  Management Trusts
Chapter 1302.  Pooled Trust Subaccounts

SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND ALTERNATIVES TO GUARDIANSHIP
Chapter 1351.  Sale of Property of Certain Incapacitated Persons
Chapter 1352.  Mortgage of Minor’s Interest in Residence Homestead
Chapter 1353.  Management and Control of Incapacitated Spouse’s Property
Chapter 1354.  Receivership for Estates of Certain Incapacitated Persons
Chapter 1355.  Payment of Certain Claims Without Guardianship
Chapter 1356.  Court Approval of Certain Arts and Entertainment, Advertisement, and Sports Contracts
Chapter 1357.  Supported Decision-Making Agreement Act

TITLE 4. DIGITAL ASSETS
Chapter 2001. Texas Revised Uniform Fiduciary Access to Digital Assets Act

TITLE 1. GENERAL PROVISIONS
Chapter 21. Purpose and Construction
§ 21.001. Purpose of Code
§ 21.002. Construction
§ 21.003. Statutory References
§ 21.004. Effect of Division of Law
§ 21.005. Applicability of Certain Laws
§ 21.006. Applicability to Probate Proceedings

§ 21.001. Purpose of Code
(a) This code is enacted as a part of the state’s continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state’s general and permanent statute law without substantive change.
(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code 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.

New.

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

(b) This code and the Texas Probate Code, as amended, shall be considered one continuous statute, and for the purposes of any instrument that refers to the Texas Probate Code, this code shall be considered an amendment to the Texas Probate Code.

New.

§ 21.003. Statutory References
A reference in a law other than in this code to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of that statute.

New.

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

Derived from Probate Code § 2(a).

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

§ 21.005. Applicability of Certain Laws
Chapter 132, Civil Practice and Remedies Code, does not apply to Subchapter C, Chapter 251.

New.

§ 21.006. Applicability to Probate Proceedings
The procedure prescribed by Title 2 governs all probate proceedings.

Derived from Probate Code § 2(a).

Chapter 22. Definitions
§ 22.001. Applicability of Definitions
§ 22.002. Authorized Corporate Surety
§ 22.003. Charitable Organization
§ 22.004. Child
§ 22.005. Claims
§ 22.006. Corporate Fiduciary
§ 22.007. Court; County Court, Probate Court, and Statutory Probate Court
§ 22.008. Devise
§ 22.009. Devisee
§ 22.010. Distribuee
§ 22.011. Docket
§ 22.012. Estate
§ 22.013. Exempt Property
§ 22.014. Governmental Agency of the State
§ 22.015. Heir
§ 22.016. Incapacitated Person
§ 22.017. Independent Executor
§ 22.018. Interested Person; Person Interested
§ 22.019. Judge
§ 22.020. Legacy
§ 22.021. Legatee
§ 22.022. Minor
§ 22.024. Mortgage; Lien
§ 22.025. Net Estate
§ 22.026. Next of Kin
§ 22.027. Person
§ 22.028. Personal Property
§ 22.029. Probate Matter; Probate Proceedings; Proceeding in Probate; Proceedings for Probate
§ 22.0295. Qualified Delivery Method
§ 22.030. Real Property
§ 22.031. Representative; Personal Representative
§ 22.032. Surety
§ 22.033. Ward
§ 22.034. Will

Statutes in Context
Chapter 22.001

The definitions in Chapter 22 apply to the entire Estates Code except as otherwise provided by Title 3 which governs guardianships.

Some terms are defined contrary to their traditional meanings. For example, the term “devise,” which usually refers to a gift of real property in a will, is defined to encompass gifts of both real and personal property in § 22.008. Likewise, “legacy,” which normally refers to a gift of money (personal property) in a will, is deemed to include gifts of real property as well by § 22.020.

“Heirs” include anyone who is entitled to property under intestate succession under § 22.015. The surviving spouse is considered an heir even though at common law, the surviving spouse was not an heir (not a blood relative). A person who takes under a will is not properly called an heir.

The term “will” is defined in § 22.034 to include a variety of testamentary instruments including codicils and instruments which do not actually make at-death distributions of property such as documents which merely appoint an executor or guardian, revoke another will, or direct how property may not be distributed.

Courts will sometimes ignore the plain language of the definitions. For example, in Heien v. Crabtree, 369 S.W.2d 28 (Tex. 1963), the Texas Supreme Court refused to treat a child who was adopted by estoppel as a “child” under the Probate Code equivalent of § 22.004 despite the language of the definition stating that the term includes a child adopted "by acts of estoppel." The 2017 amended this provision to make it clear that children adopted by estoppel fit within the definition.

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

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

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

Derived from Probate Code § 3.


§ 22.002. Authorized Corporate Surety

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

Derived from Probate Code § 3(a).


§ 22.003. Charitable Organization

“Charitable organization” means:
(1) a nonprofit corporation, trust, community chest, fund, foundation, or other entity that is:
(A) exempt from federal income tax under Section 501(A), Internal Revenue Code of 1986, by being described by Section 501(c)(3) of that code; and
(B) organized and operated exclusively for:
(i) religious, charitable, scientific, educational, or literary purposes;
(ii) testing for public safety;
(iii) preventing cruelty to children or animals; or
(iv) promoting amateur sports competition; or
(2) any other entity that is organized and operated exclusively for the purposes listed in Section 501(c)(3), Internal Revenue Code of 1986.

Derived from Probate Code § 3(kk).


§ 22.004. Child

(a) “Child” includes an adopted child, regardless of whether the adoption occurred through:
(1) an existing or former statutory procedure; or
(2) an equitable adoption 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.
Derived from Probate Code § 3(b).

§ 22.005. Claims
“Claims” includes:
(1) liabilities of a decedent that survive the decedent’s death, including taxes, regardless of whether the liabilities arise in contract or tort or otherwise;
(2) funeral expenses;
(3) the expense of a tombstone;
(4) expenses of administration;
(5) estate and inheritance taxes; and
(6) debts due such estates.
Derived from Probate Code § 3(c).

§ 22.006. Corporate Fiduciary
“Corporate fiduciary” means a financial institution, as defined by Section 201.101, Finance Code, that:
(1) is existing or engaged in business under the laws of this state, another state, or the United States;
(2) has trust powers; and
(3) is authorized by law to act under the order or appointment of a court of record, without giving bond, as receiver, trustee, executor, administrator, or, although the financial institution does not have general depository powers, depository for any money paid into the court, or to become sole guarantor or surety in or on any bond required to be given under the laws of this state.
Derived from Probate Code § 3(d).

§ 22.007. Court; County Court, Probate Court, and Statutory Probate Court
(a) “Court” means and includes:
(1) a county court in the exercise of its probate jurisdiction;
(2) a court created by statute and authorized to exercise original probate jurisdiction; and
(3) a district court exercising original probate jurisdiction in a contested matter.
(b) The terms “county court” and “probate court” are synonymous and mean:
(1) a county court in the exercise of its probate jurisdiction;
(2) a court created by statute and authorized to exercise original probate jurisdiction; and
(3) a district court exercising probate jurisdiction in a contested matter.
(c) “Statutory probate court” means a court created by statute and designated as a statutory probate court under Chapter 25, Government Code. For purposes of this code, the term does not include a county court at law exercising probate jurisdiction unless the court is designated a statutory probate court under Chapter 25, Government Code.
Derived from Probate Code §§ 3(e), (g), (ii).

§ 22.008. Devise
“Devise”:
(1) used as a noun, includes a testamentary disposition of real property, personal property, or both; and
(2) used as a verb, means to dispose of real property, personal property, or both, by will.
Derived from Probate Code § 3(h).

§ 22.009. Devisee
“Devisee” includes a legatee.
Derived from Probate Code § 3(i).

§ 22.010. Distributee
“Distributee” means a person who is entitled to a part of the estate of a decedent under a lawful will or the statutes of descent and distribution.
Derived from Probate Code § 3(j).

§ 22.011. Docket
“Docket” means the probate docket.
Derived from Probate Code § 3(k).

§ 22.012. Estate
“Estate” means a decedent’s property, as that property:
(1) exists originally and as the property changes in form by sale, reinvestment, or otherwise;
(2) is augmented by any accretions and other additions to the property, including any property to be distributed to the decedent’s representative by the trustee of a trust that terminates on the decedent’s death, and substitutions for the property; and
(3) is diminished by any decreases in or distributions from the property.
Derived from Probate Code § 3(l).
§ 22.013. Exempt Property

“Exempt property” means the property in a decedent’s estate that is exempt from execution or forced sale by the constitution or laws of this state, and any allowance paid instead of that property.
Derived from Probate Code § 3(m).

§ 22.014. Governmental Agency of the State

“Governmental agency of the state” means:
(1) a municipality;
(2) a county;
(3) a public school district;
(4) a special-purpose district or authority;
(5) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education, as defined by Section 61.003, Education Code;
(6) the legislature or a legislative agency;
(7) the supreme court, the court of criminal appeals, a court of appeals, or a district, county, or justice of the peace court;
(8) a judicial agency having statewide jurisdiction; and
(9) the State Bar of Texas.
Derived from Probate Code § 3(o).

§ 22.015. Heir

“Heir” means a person who is entitled under the statutes of descent and distribution to a part of the estate of a decedent who dies intestate. The term includes the decedent’s surviving spouse.
Derived from Probate Code § 3(p).

§ 22.016. Incapacitated Person

A person is “incapacitated” if the person:
(1) is a minor;
(2) is an adult who, because of a physical or mental condition, is substantially unable to:
   (A) provide food, clothing, or shelter for himself or herself;
   (B) care for the person’s own physical health; or
   (C) manage the person’s own financial affairs; or
(3) must have a guardian appointed for the person to receive funds due the person from a governmental source.
Derived from Probate Code § 3(q).

§ 22.017. Independent Executor

“Independent executor” means the personal representative of an estate under independent administration as provided by Chapter 401 and Section 402.001. The term includes an independent administrator.
Derived from Probate Code § 3(q).

§ 22.018. Interested Person; Person Interested

“Interested person” or “person interested” means:
(1) an heir, devisee, spouse, creditor, or any other having a property right in or claim against an estate being administered; and
(2) anyone interested in the welfare of an incapacitated person, including a minor.
Derived from Probate Code § 3(r).

§ 22.019. Judge

“Judge” means the presiding judge of any court having original jurisdiction over probate proceedings, regardless of whether the court is:
(1) a county court in the exercise of its probate jurisdiction;
(2) a court created by statute and authorized to exercise probate jurisdiction; or
(3) a district court exercising probate jurisdiction in a contested matter.
Derived from Probate Code § 3(f).

§ 22.020. Legacy

“Legacy” includes a gift or devise of real or personal property made by a will.
Derived from Probate Code § 3(s).

§ 22.021. Legatee

“Legatee” includes a person who is entitled to a legacy under a will.
Derived from Probate Code § 3(s).

§ 22.022. Minor

“Minor” means a person younger than 18 years of age who:
(1) has never been married; and
(2) has not had the disabilities of minority removed for general purposes.
Derived from Probate Code § 3(t).
§ 22.024. Mortgage; Lien

“Mortgage” and “lien” include:
(1) a deed of trust;
(2) a vendor’s lien, a mechanic’s, materialman’s, or laborer’s lien, an attachment or garnishment lien, and a federal or state tax lien;
(3) a chattel mortgage;
(4) a judgment; and
(5) a pledge by hypothecation.

Derived from Probate Code § 3(v).

§ 22.025. Net Estate

“Net estate” means a decedent’s property excluding:
(1) homestead rights;
(2) exempt property;
(3) the family allowance; and
(4) an enforceable claim against the decedent’s estate.

Derived from Probate Code § 3(w).

§ 22.026. Next of Kin

“Next of kin” includes:
(1) an adopted child or the adopted child’s descendants; and
(2) the adoptive parent of the adopted child.

Derived from Probate Code § 3(jj).

§ 22.027. Person

(a) “Person” includes a natural person and a corporation.
(b) Except as otherwise provided by this code, the definition of “person” assigned by Section 311.005, Government Code, does not apply to any provision in this code.

Derived from Probate Code § 3(x).

§ 22.028. Personal Property

“Personal property” includes an interest in:
(1) goods;
(2) money;
(3) a chose in action;
(4) an evidence of debt; and
(5) a real chattel.

Derived from Probate Code § 3(z).

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

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

Derived from Probate Code § 3(bb).

Statutes in Context

§ 22.0295. Qualified Delivery Method

“Qualified delivery method” means delivery by:
(1) hand delivery by courier, with courier’s proof of delivery receipt;
(2) certified or registered mail, return receipt requested, with return receipt; or
(3) a private delivery service designated as a designated delivery service by the United States Secretary of the Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.

New.
Added by Acts 2023, 88th Leg., ch. 205, § 1, eff. Sept. 1, 2023.

§ 22.030. Real Property

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

Derived from Probate Code § 3(dd).

§ 22.031. Representative; Personal Representative

(a) “Representative” and “personal representative” include:
(1) an executor and independent executor;
(2) an administrator, independent administrator, and temporary administrator; and
(3) a successor to an executor or administrator listed in Subdivision (1) or (2).
(b) The inclusion of an independent executor in Subsection (a) may not be construed to subject an independent executor to the control of the courts in...
probate matters with respect to settlement of estates, except as expressly provided by law.
Derived from Probate Code § 3(aa).

§ 22.032. Surety
“The Surety” includes a personal surety and a corporate surety.
Derived from Probate Code § 3(oe).

§ 22.033. Ward
“The Ward” means a person for whom a guardian has been appointed.
Derived from Probate Code § 3(mm).

§ 22.034. Will
“The Will” includes:
(1) a codicil; and
(2) a testamentary instrument that merely:
(A) appoints an executor or guardian;
(B) directs how property may not be disposed of; or
(C) revokes another will.
Derived from Probate Code § 3(ff).

TITLE 2. ESTATES OF DECEDENTS;
DURABLE POWERS OF ATTORNEY

SUBTITLE A. SCOPE, JURISDICTION,
VENUE, AND COURTS


§ 31.001. Scope of “Probate Proceeding” for Purposes of Code

§ 31.002. Matters Related to Probate Proceeding

(a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
(1) an action against a personal representative or former personal representative arising out of the representative’s performance of the duties of a personal representative;
(2) an action against a surety of a personal representative or former personal representative;
(3) a claim brought by a personal representative on behalf of an estate;
(4) an action brought against a personal representative in the representative’s capacity as personal representative;
(5) an action for trial of title to real property that is estate property, including the enforcement of a lien against the property; and
(6) an action for trial of the right of property that is estate property.

(b) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes:
(1) all matters and actions described in Subsection (a);
(2) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and
(3) the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.

(c) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes:
(1) all matters and actions described in Subsections (a) and (b); and
(2) any cause of action in which a personal representative of an estate pending in the statutory probate court is a party in the representative’s capacity as personal representative.
Chapter 32. Jurisdiction

§ 32.001. General Probate Court Jurisdiction; Appeals

(4) A final order issued by a probate court is appealable to the court of appeals. § 32.001(c). In Crowson v. Wakeham, 897 S.W.2d 779 (Tex. 1995), the Supreme Court of Texas held that an order in a probate case is final for appellate purposes when (1) a statute declares that a specified phase of the probate proceedings are final and appealable, (2) the order disposes of all issues in the phase of the proceeding for which it was brought, or (3) a particular order is made final by a severance order meeting the usual severance criteria.

In Kankonde v. Mankan, No. 08-20-00052-CV, 2020 WL 5105806 (Tex. App.—El Paso Aug. 31, 2020, no pet.), the appellate court dismissed an appeal for want of prosecution because the appellants, a decedent's estate and a corporation, did not obtain an attorney to pursue the appeal. The court explained that "a non-attorney cannot litigate an appeal on behalf of an estate or a corporate entity." The decedent's wife was not an attorney and thus the appellate brief she filed was of no legal effect.

§ 32.002. Original Jurisdiction for Probate Proceedings

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

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

§ 32.003. Jurisdiction of Contested Probate Proceeding

(3) A final order (but not an interlocutory order) of any court exercising probate jurisdiction is appealable to the court of appeals. § 32.001(c). In Crowson v. Wakeham, 897 S.W.2d 779 (Tex. 1995), the Supreme Court of Texas held that an order in a probate case is final for appellate purposes when (1) a statute declares that a specified phase of the probate proceedings are final and appealable, (2) the order disposes of all issues in the phase of the proceeding for which it was brought, or (3) a particular order is made final by a severance order meeting the usual severance criteria.

In Kankonde v. Mankan, No. 08-20-00052-CV, 2020 WL 5105806 (Tex. App.—El Paso Aug. 31, 2020, no pet.), the appellate court dismissed an appeal for want of prosecution because the appellants, a decedent's estate and a corporation, did not obtain an attorney to pursue the appeal. The court explained that "a non-attorney cannot litigate an appeal on behalf of an estate or a corporate entity." The decedent's wife was not an attorney and thus the appellate brief she filed was of no legal effect.

§ 32.004. Jurisdiction of Contested Probate Proceeding

(a) All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.

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

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

§ 32.005. Exclusive Jurisdiction of Probate Proceeding

(1) A final order (but not an interlocutory order) of any court exercising probate jurisdiction is appealable to the court of appeals. § 32.001(c). In Crowson v. Wakeham, 897 S.W.2d 779 (Tex. 1995), the Supreme Court of Texas held that an order in a probate case is final for appellate purposes when (1) a statute declares that a specified phase of the probate proceedings are final and appealable, (2) the order disposes of all issues in the phase of the proceeding for which it was brought, or (3) a particular order is made final by a severance order meeting the usual severance criteria.

In Kankonde v. Mankan, No. 08-20-00052-CV, 2020 WL 5105806 (Tex. App.—El Paso Aug. 31, 2020, no pet.), the appellate court dismissed an appeal for want of prosecution because the appellants, a decedent's estate and a corporation, did not obtain an attorney to pursue the appeal. The court explained that "a non-attorney cannot litigate an appeal on behalf of an estate or a corporate entity." The decedent's wife was not an attorney and thus the appellate brief she filed was of no legal effect.

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

If the action is brought in a constitutional county court in a county with no statutory probate court or statutory court exercising probate jurisdiction and a dispute arises, the parties may demand that the action be transferred to the district court or request the assignment of a statutory probate court judge. § 32.003. After resolving the specific dispute, the district court or the statutory probate court judge will normally return the case to the constitutional county court. The statutory probate court may, however, handle the entire case upon request of the parties or the constitutional county court judge.

If the estate is probated in a constitutional county court in a county with a statutory court exercising probate jurisdiction (not a statutory probate court), then the parties may demand a transfer to the statutory court. § 32.004. If the entire action is transferred, then the statutory court hears the rest of the case. However, if only the contested matter is transferred, then upon resolution of the contested matter, the county court at law returns the case to the constitutional county court.

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

A final order (but not an interlocutory order) of any court exercising probate jurisdiction is appealable to the court of appeals. § 32.001(c). In Crowson v. Wakeham, 897 S.W.2d 779 (Tex. 1995), the Supreme Court of Texas held that an order in a probate case is final for appellate purposes when (1) a statute declares that a specified phase of the probate proceedings are final and appealable, (2) the order disposes of all issues in the phase of the proceeding for which it was brought, or (3) a particular order is made final by a severance order meeting the usual severance criteria.

In Kankonde v. Mankan, No. 08-20-00052-CV, 2020 WL 5105806 (Tex. App.—El Paso Aug. 31, 2020, no pet.), the appellate court dismissed an appeal for want of prosecution because the appellants, a decedent's estate and a corporation, did not obtain an attorney to pursue the appeal. The court explained that "a non-attorney cannot litigate an appeal on behalf of an estate or a corporate entity." The decedent's wife was not an attorney and thus the appellate brief she filed was of no legal effect.
(d) The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

Derived from Probate Code § 4A.


§ 32.002. Original Jurisdiction for Probate Proceedings

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of probate proceedings.

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

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

Derived from Probate Code § 4C.


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

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

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

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

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

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

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

(d) Notwithstanding any other law, a transfer of a contested matter in a probate proceeding to a district court under any authority other than the authority provided by this section:

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

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

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

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

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

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

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

Derived from Probate Code § 4D.


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

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

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

Derived from Probate Code § 4E.


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

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. A cause of action related to the probate proceeding must be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 32.007 or with the jurisdiction of any other court.

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

Derived from Probate Code § 4F.


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

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

(1) an action by or against a trustee;

(2) an action involving an inter vivos trust, testamentary trust, or charitable trust;

(3) an action by or against an agent or former agent under a power of attorney arising out of the agent’s performance of the duties of an agent; and

(4) an action to determine the validity of a power of attorney or to determine an agent’s rights, powers, or duties under a power of attorney.

Derived from Probate Code § 4G


§ 32.007. Concurrent Jurisdiction with District Court

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

(1) a personal injury, survival, or wrongful death action by or against a person in the person’s capacity as a personal representative;

(2) an action by or against a trustee;

(3) an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001, Property Code;

(4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;

(5) an action against an agent or former agent under a power of attorney arising out of the agent’s performance of the duties of an agent; and

(6) an action to determine the validity of a power of attorney or to determine an agent’s rights, powers, or duties under a power of attorney.

Derived from Probate Code § 4H.


Chapter 33. Venue

Subchapter A. Venue for Certain Proceedings
§ 33.001. Probate of Wills and Granting of Letters Testamentary and of Administration.
§ 33.002. Action Related to Probate Proceeding in Statutory Probate Court.
§ 33.003. Certain Actions Involving Personal Representative.
§ 33.004. Heirship Proceedings.
§ 33.005. Certain Actions Involving Breach of Fiduciary Duty.

Subchapter B. Determination of Venue
§ 33.051. Commencement of Proceeding.
§ 33.052. Concurrent Venue.
§ 33.053. Probate Proceedings in More Than One County.
§ 33.054. Jurisdiction to Determine Venue.
§ 33.055. Protection for Certain Purchasers.

Subchapter C. Transfer of Probate Proceeding
§ 33.101. Transfer to Other County in Which Venue is Proper.
§ 33.102. Transfer for Want of Venue.
§ 33.103. Transfer for Convenience.
§ 33.104. Validation of Previous Proceedings.
§ 33.105. Transfer of Probate Proceeding Record.

Subchapter A. Venue for Certain Proceedings

The venue rules provided in § 33.001, as applied to probating wills and opening testate and intestate administrations, trump the normal venue rules found in the Rules of Civil Procedure. Proper venue is based on the decedent’s domicile at death.

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

If the decedent dies in Texas but has no place of residence in Texas, the appropriate venue is either in the county (1) where the decedent’s principal property is located, or (2) where the decedent died. The county in which the application for probate is filed first has priority under Estate Code § 33.052.

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

Section 33.004 governs venue in heirship proceedings.

§ 33.001. Probate of Wills and Granting of Letters Testamentary and of Administration
(a) Venue for a probate proceeding to admit a will to probate or for the granting of letters testamentary or of administration is:
   (1) in the county in which the decedent resided, if the decedent had a domicile or fixed place of residence in this state; or
   (2) with respect to a decedent who did not have a domicile or fixed place of residence in this state:
      (a) if the decedent died in this state, in the county in which:
          (i) the decedent’s principal estate was located at the time of the decedent’s death; or
          (ii) the decedent died; or
      (B) if the decedent died outside of this state:
          (i) in any county in this state in which the decedent’s nearest of kin reside; or
          (ii) if there is no next of kin of the decedent in this state, in the county in which the decedent’s principal estate was located at the time of the decedent’s death.

(b) For purposes of this section:
   (1) the decedent’s next of kin:
      (A) is the decedent’s surviving spouse, or if there is no surviving spouse, other relatives of the decedent within the third degree by consanguinity; and
      (B) includes a person who legally adopted the decedent or has been legally adopted by the decedent and that person’s descendants; and

   (2) the decedent’s nearest of kin is determined in accordance with order of descent, with the decedent’s next of kin who is nearest in order of descent first, and so on.

Derived from Probate Code § 6.

§ 33.002. Action Related to Probate Proceeding in Statutory Probate Court
Except as provided by Section 33.003, venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent’s estate is pending.

Derived from Probate Code § 6A.
§ 33.003. Certain Actions Involving Personal Representative
Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damage is determined under Section 15.007, Civil Practice and Remedies Code.
Derived from Probate Code § 6B.

§ 33.004. Heirship Proceedings
(a) Venue for a proceeding to determine a decedent’s heirs is in:
(1) the court of the county in which a proceeding admitting the decedent’s will to probate or administering the decedent’s estate was most recently pending; or
(2) the court of the county in which venue would be proper for commencement of an administration of the decedent’s estate under Section 33.001 if:
(A) no will of the decedent has been admitted to probate in this state and no administration of the decedent’s estate has been granted in this state; or
(B) the proceeding is commenced by the trustee of a trust holding assets for the benefit of the decedent.
(b) Notwithstanding Subsection (a) and Section 33.001, if there is no administration pending of the estate of a deceased ward who died intestate, venue for a proceeding to determine the deceased ward’s heirs is in the probate court in which the guardianship proceedings with respect to the ward’s estate were pending on the date of the ward’s death. A proceeding described by this subsection may not be brought as part of the guardianship proceedings with respect to the ward’s estate, but rather must be filed as a separate cause in which the court may determine the heirs’ respective shares and interests in the estate as provided by the laws of this state.
Derived from Probate Code § 6C.

§ 33.005. Certain Actions Involving Breach of Fiduciary Duty
Notwithstanding any other provision of this chapter, venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under Section 123.005, Property Code.
Derived from Probate Code § 6D.

Subchapter B. Determination of Venue

§ 33.051. Commencement of Proceeding
For purposes of this subchapter, a probate proceeding is considered commenced on the filing of an application for the proceeding that avers facts sufficient to confer venue on the court in which the application is filed.
Derived from Probate Code § 8(a).

§ 33.052. Concurrent Venue
(a) If applications for probate proceedings involving the same estate are filed in two or more courts having concurrent venue, the court in which a proceeding involving the estate was first commenced has and retains jurisdiction of the proceeding to the exclusion of the other court or courts in which a proceeding involving the same estate was commenced.
(b) The first commenced probate proceeding extends to all of the decedent’s property, including the decedent’s estate property.
Derived from Probate Code § 8(b).

§ 33.053. Probate Proceedings in More Than One County
If probate proceedings involving the same estate are commenced in more than one county, each proceeding commenced in a county other than the county in which a proceeding was first commenced is stayed until the court in which the proceeding was first commenced makes a final determination of venue.
Derived from Probate Code § 8(c).

§ 33.054. Jurisdiction to Determine Venue
(a) Subject to Sections 33.052 and 33.053, a court in which an application for a probate proceeding is filed has jurisdiction to determine venue for the proceeding and for any matter related to the proceeding.
(b) A court’s determination under this section is not subject to collateral attack.
Derived from Probate Code § 8(d).

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

Derived from Probate Code § 8(a).


Subchapter C. Transfer of Probate Proceeding

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

If probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 determines that venue is proper in another county, the court clerk shall transmit the file for the proceeding in accordance with the procedures provided by Section 33.105 (make and retain a copy of the entire file in electronic or paper form) to the court in the county in which venue is proper. The court to which the file is transmitted shall conduct the proceeding in the same manner as if the proceeding had originally been commenced in that county.

Derived from Probate Code §§ 8(c)(1), 8A(a).


§ 33.102. Transfer for Want of Venue

(a) If it appears to the court at any time before the final order in a probate proceeding is rendered that the court does not have priority of venue over the proceeding, the court shall, on the application of an interested person, transfer the proceeding to the proper county by transmitting the file for the proceeding in accordance with the procedures provided by Section 33.105 to the court in that county in electronic or paper form.

(1) the original file in the case; and
(2) certified copies of all entries that have been made in the judge’s probate docket in the proceeding.

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

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

Derived from Probate Code §§ 8(c)(2), 8A(b).


§ 33.103. Transfer for Convenience

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

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

(b) The clerk of the court from which the probate proceeding described by Subsection (a) is transferred shall transmit the file for the proceeding in accordance with the procedures provided by Section 33.105 to the court to which the proceeding is transferred:

(1) the original file in the proceeding; and
(2) a certified copy of the index.

(c) The transmission under Subsection (b) of the original file and the certified copy of the index may be in electronic or paper form, except that an original will filed in the probate proceeding, if any, must be delivered to the court to which the proceeding is transferred.

Derived from Probate Code §§ 8(c)(1), 8A(a).


§ 33.104. Validation of Previous Proceedings

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

Derived from Probate Code §§ 8(d), 8B.


§ 33.105. Transfer of Probate Proceeding Record

(a) If a probate proceeding is transferred to a court in another county under this chapter, the clerk of the transferring court shall send to the clerk of the court to which the proceeding is transferred:

(1) a transfer certificate and index of transferred documents;
(2) a copy of each final order;
(3) a copy of the order of transfer signed by the transferring court;
(4) a copy of the original papers filed in the transferring court, including a copy of any will;
§ 34.001. Transfer to Statutory Probate Court of
Proceeding Related to Probate Proceeding.
(a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge’s court from a district, county, or statutory court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.
(b) Notwithstanding any other provision of this subtitle, Title 1, Chapter 51, 52, 53, 54, 55, or 151, or Section 351.001, 351.002, 351.053, 351.352, 351.353, 351.354, or 351.355, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

§ 34.002. Actions to Collect Delinquent Property Taxes.
(a) This section applies only to a decedent’s estate that:
(1) is being administered in a pending probate proceeding;
(2) owns or claims an interest in property against which a taxing unit has imposed ad valorem taxes that are delinquent; and
(3) is not being administered as an independent administration under Chapter 401 and Section 402.001.
(b) Notwithstanding any provision of this code to the contrary, if the probate proceedings are pending in a foreign jurisdiction or in a county other than the county in which the taxes were imposed, a suit to foreclose the lien securing payment of the taxes or to enforce personal liability for the taxes must be brought under Section 33.41, Tax Code, in a court of competent jurisdiction in the county in which the taxes were imposed.
(c) If the probate proceedings have been pending for four years or less in the county in which the taxes were imposed, the taxing unit may present a claim for the delinquent taxes against the estate to the personal representative of the estate in the probate proceedings.
(d) If the taxing unit presents a claim against the estate under Subsection (c):
(1) the claim of the taxing unit is subject to each applicable provision in Subchapter A, Chapter 124, Subchapter B, Chapter 308, Subchapter F, Chapter 351, and Chapters 355 and 356 that relates to a claim or the enforcement of a claim in a probate proceeding; and
(2) the taxing unit may not bring a suit in any other court to foreclose the lien securing payment of the taxes or to enforce personal liability for the delinquent taxes before the first day after the fourth anniversary of the date the application for the probate proceeding was filed.
(e) To foreclose the lien securing payment of the delinquent taxes, the taxing unit must bring a suit under Section 33.41, Tax Code, in a court of competent jurisdiction for the county in which the taxes were imposed if:
(1) the probate proceedings have been pending in that county for more than four years; and
(2) the taxing unit did not present a delinquent tax claim under Subsection (c) against the estate in the probate proceeding.
In a suit brought under Subsection (e), the taxing unit:

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

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

Derived from Probate Code § 5C.


**SUBTITLE B. PROCEDURAL MATTERS**

Chapter 51. Notices and Process in Probate Proceedings in General

Subchapter A. Issuance and Form of Notice or Process

§ 51.001. Issuance of Notice or Process in General

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

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

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

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

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

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


§ 51.002. Direction of Writ or Other Process

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

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

Derived from Probate Code § 33(c).


§ 51.003. Contents of Citation or Notice

(a) A citation or notice must:

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

(2) be dated;

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

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

(5) describe generally the nature of the proceeding or matter to which the citation or notice relates;
§ 51.052. Service by Mail or Private Delivery

(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 a qualified delivery method [registered or certified mail] and shall serve the citation or notice by sending [mailing] the original citation or notice by a qualified delivery method [registered or certified mail].

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

(d) The county clerk or personal representative, as applicable, shall send [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 or other proof of delivery 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 a qualified delivery method [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, the date of deposit with delivery service, or the date of delivery by the courier, as applicable.

(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 sent [mailed] and the date of the mailing, date of deposit with a private delivery service, or date of delivery by courier, as applicable, shall be filed and recorded. A returned receipt or proof of delivery 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 a qualified delivery method [mail] is returned undelivered, a new citation or notice shall be issued. Service of the new citation or notice must be made by posting.

Derived from Probate Code § 33(f)(4).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014, Heading and subsecs. (b), (c), (d), (e), (f), and (g) amended by Acts 2023, 88th Leg., ch. 205, §§ 2 & 3, eff. Sept. 1, 2023.

§ 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...
§ 51.054. Service by Publication

(a) Except as provided by Section 17.032, Civil Practice and Remedies Code, citation or notice to a person to be served by publication shall be published one time on the public information Internet website maintained as required by Section 72.034, Government Code, and 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 method of service prescribed by this section applies when a personal representative is required or permitted to post a notice. The notice must be:

(1) issued in the name of the representative;
(2) addressed and delivered to, and posted and returned by, the appropriate officer; and
(3) filed with the county clerk.

Derived from Probate Code § 33(f)(2).

§ 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 a qualified delivery method [registered or certified mail].

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

(1) another party to the proceeding;
(2) the attorney of record for another party to the proceeding;
(3) the appropriate sheriff or constable; or
(4) any other person competent to testify.

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

(1) the written statement of an attorney of record showing service;
(2) the return of the officer showing service; and
(3) the affidavit of any other person showing service.

Derived from Probate Code § 34.

§ 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 sending [mailing] the original citation or notice to:

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

Derived from Probate Code § 33(e).

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

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

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

(1) be endorsed on or attached to the citation or notice;
(2) state the date and place of service;
(3) certify that a copy of the citation or notice was delivered to the person directed to be served;
(4) be subscribed and sworn to before, and under the hand and official seal of, an officer authorized by the laws of this state to take an affidavit; and
(5) be returned to the county clerk who issued the citation or notice.

Derived from Probate Code § 33(f)(1).


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

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

(1) a sheriff or constable posts a copy of the citation or notice at the location or locations prescribed by this title; and
(2) the posting occurs on a day preceding the return day of service specified in the citation or notice that provides sufficient time for the period the citation or notice must be posted to expire before the specified return day.

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

Derived from Probate Code § 33(h).


§ 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 a qualified delivery method [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, deposited with a private delivery service, or delivered by courier, as applicable, and the date of the mailing or deposit with the delivery service or the date of the courier delivery, as applicable; and
   (B) the return receipt or other proof of delivery receipt attached to the certificate or affidavit, as applicable, if the sending [mailing]

was by a qualified delivery method [registered or certified mail] and a receipt is available [has been returned], and
(4) if the service is made by publication:
   (A) a statement:
      (i) made by the Office of Court Administration of the Texas Judicial System or an employee of the office;
      (ii) that contains or to which is attached a copy of the published citation or notice; and
      (iii) that states the date of publication on the public information Internet website maintained as required by Section 72.034, Government Code[—as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019]; and
   (B) an affidavit:
      (i) made by the publisher of the newspaper in which the citation or notice was published or an employee of the publisher;
      (ii) that contains or to which is attached a copy of the published citation or notice; and
      (iii) that states the date of publication printed on the newspaper in which the citation or notice was published.

Derived from Probate Code § 33(i).


§ 51.104. Return to Court

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

Derived from Probate Code § 33(g).


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

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

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

(1) an interested person requests that action;
(2) a specific method is not provided by this title for giving the citation or notice; or
(3) a specific method is not provided by this title for the service and return of citation or notice; or
(4) a provision relating to a matter described by Subdivision (2) or (3) is inadequate.

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

Derived from Probate Code § 33(d).


Subchapter E. Additional Notice Provisions

§ 51.201. Waiver of Notice of Hearing

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

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

(c) A consul or other representative of a foreign government whose appearance has been entered as provided by law on behalf of a person residing in a foreign country may waive notice under Subsection (a) on the person’s behalf as provided by that subsection.

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

Derived from Probate Code § 35.


§ 51.202. Request for Notice of Filing of Pleading

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

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

Derived from Probate Code § 35.


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

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

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

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

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

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

Derived from Probate Code § 22.


Chapter 52. Filing and Recordkeeping

Subchapter A. Recordkeeping Requirements

§ 52.001. Probate Docket

§ 52.002. Claim Docket

§ 52.003. Probate Fee Book

§ 52.004. Alternate Recordkeeping

Subchapter B. Files; Index

§ 52.051. Filing Procedures

§ 52.052. Case Files

§ 52.053. Index

Chapter 52. Filing and Recordkeeping

Subchapter A. Recordkeeping Requirements

§ 52.001. Probate Docket

(a) The county clerk shall maintain a record book titled “Judge’s Probate Docket” and shall record in the book:

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

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

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

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

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

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


Electronic copy available at: https://ssrn.com/abstract=4537861
§ 52.002. Claim Docket
(a) The county clerk shall maintain a record book titled “Claim Docket” and shall record in the book each claim that is presented against an estate for the court’s approval.
(b) The county clerk shall assign one or more pages of the record book to each estate.
(c) The claim docket must be ruled in 16 columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. The county clerk shall record for each claim, in the order claims are filed, the following information in the respective columns, beginning with the first or marginal column:
1. the name of the claimant;
2. the amount of the claim;
3. the date of the claim;
4. the date the claim is filed;
5. the date the claim is due;
6. the date the claim begins bearing interest;
7. the interest rate;
8. the date the claim is allowed by the executor or administrator, if applicable;
9. the amount allowed by the executor or administrator, if applicable;
10. the date the claim is rejected, if applicable;
11. the date the claim is approved, if applicable;
12. the amount approved for the claim, if applicable;
13. the date the claim is disapproved, if applicable;
14. the class to which the claim belongs;
15. the date the claim is established by a judgment of a court, if applicable; and
16. the amount of the judgment established under Subdivision (15), if applicable.

Derived from Probate Code § 14.

§ 52.003. Probate Fee Book
(a) The county clerk shall maintain a record book titled “Probate Fee Book” and shall record in the book each item of cost that accrues to the officers of the court and any witness fees.
(b) Each record entry must include:
1. the party to whom the cost or fee is due;
2. the date the cost or fee accrued;
3. the estate or party liable for the cost or fee; and
4. the date the cost or fee is paid.

Derived from Probate Code § 16.

§ 52.004. Alternate Recordkeeping
Instead of maintaining the record books described by Sections 52.001, 52.002, and 52.003, the county clerk may maintain the information described by those sections relating to a person’s or estate’s probate proceedings:
1. on a computer file;
2. on microfilm;
3. in the form of a digitized optical image; or
4. in another similar form of data compilation.

Derived from Probate Code § 17.

Subchapter B. Files; Index

§ 52.051. Filing Procedures
(a) An application for a probate proceeding, complaint, petition, or other paper permitted or required by law to be filed with a court in a probate matter must be filed with the county clerk of the appropriate county.
(b) Each paper filed in an estate must be given the docket number assigned to the estate.
(c) On receipt of a paper described by Subsection (a), the county clerk shall:
1. file the paper; and
2. endorse on the paper:
   (A) the date the paper is filed;
   (B) the docket number; and
   (C) the clerk’s official signature.

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

§ 52.052. Case Files
(a) The county clerk shall maintain a case file for the estate of each decedent for which a probate proceeding has been filed.
(b) Each case file must contain each order, judgment, and proceeding of the court and any other probate filing with the court, including each:
1. application for the probate of a will;
2. application for the granting of administration;
3. citation and notice, whether published or posted, including the return on the citation or notice;
4. will and the testimony on which the will is admitted to probate;
5. bond and official oath;
6. inventory, appraisement, and list of claims;
6-a affidavit in lieu of the inventory, appraisement, and list of claims;
7. exhibit and account;
8. report of renting;
9. application for sale or partition of real estate;
10. report of sale;
11. report of the commissioners of partition;
12. application for authority to execute a lease for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money; and
13. report of lending or investing money.

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

Derived from Probate Code § 15.
§ 52.053. Index

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

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

Derived from Probate Code § 17A.


Chapter 53. Other Court Duties and Procedures

Subchapter A. Enforcement of Orders

§ 53.001. Enforcement of Judge’s Orders

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

Derived from Probate Code § 24.


Subchapter B. Costs and Security

§ 53.051. Applicability of Certain Laws

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

Derived from Probate Code § 12(a).


§ 53.052. Security for Certain Costs

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

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

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

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


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

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

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

(1) a fee for or associated with the filing of the decedent’s will for probate; and

(2) a fee for any service rendered by the probate court regarding the administration of the decedent’s estate.

Derived from Probate Code § 11A.

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

(a) In this section:
   (1) “Eligible decedent” means an individual listed in Section 615.003, Government Code.
   (2) “Line of duty” and “personal injury” have the meanings assigned by Section 615.021(e), Government Code.

(b) Notwithstanding any other law, the clerk of a court may not charge, or collect from, the estate of an eligible decedent any of the following fees if the decedent died as a result of a personal injury sustained in the line of duty in the individual’s position as described by Section 615.003, Government Code:
   (1) a fee for or associated with the filing of the decedent’s will for probate; and
   (2) a fee for any service rendered by the court regarding the administration of the decedent’s estate.

Derived from Probate Code § 11B.
Added by Acts 2011, 82nd Leg., ch. 614, § 2.01, eff. Jan. 1, 2014.

Subchapter C. Procedures for Probate Matters

§ 53.101. Calling of Dockets

The judge in whose court probate proceedings are pending, at times determined by the judge, shall:
   (1) call the estates of decedents in the estates’ regular order on both the probate and claim dockets; and
   (2) issue orders as necessary.

Derived from Probate Code § 19.

§ 53.102. Setting of Certain Hearings by Clerk

(a) If a judge is unable to designate the time and place for hearing a probate matter pending in the judge’s court because the judge is absent from the county seat or is on vacation, disqualified, ill, or deceased, the county clerk of the county in which the matter is pending may:
   (1) designate the time and place for hearing;
   (2) enter the setting on the judge’s docket; and
   (3) certify on the docket the reason that the judge is not acting to set the hearing.

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

Derived from Probate Code § 34A.

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

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

Derived from Probate Code § 23.

§ 53.104. Appointment of Attorneys Ad Litem

(a) Except as provided by Section 202.009(b), the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of any person, including:
   (1) a person who has a legal disability under state or federal law;
   (2) a nonresident;
   (3) an unborn or unascertained person;
   (4) an unknown heir;
   (5) a missing heir; or
   (6) an unknown or missing person for whom cash is deposited into the court’s registry under Section 362.011.

(b) An attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court. The court shall:
   (1) tax the compensation as costs in the probate proceeding and order the compensation to be paid out of the estate or by any party at any time during the proceeding; or
   (2) for an attorney ad litem appointed under Subsection (a)(6), order that the compensation be paid from the cash on deposit in the court’s registry as provided by Section 362.011.

Derived from Probate Code § 34A.

§ 53.106. Executions in Probate Matters

(a) An execution in a probate matter must be:
   (1) directed “to any sheriff or any constable within the State of Texas”;
   (2) attested and signed by the clerk officially under court seal; and
   (3) made returnable in 60 days.
(b) A proceeding under an execution described by Subsection (a) is governed, to the extent applicable, by the laws regulating a proceeding under an execution issued by a district court.

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

Derived from Probate Code § 25.


The following do not apply to probate proceedings:

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

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

New.

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

Chapter 54. Pleadings and Evidence in General

Subchapter A. Pleadings

§ 54.001. Effect of Filing or Contesting Pleading

§ 54.002. Defect in Pleading

Subchapter B. Evidence

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

§ 54.052. Use of Certain Records as Evidence

Chapter 54. Pleadings and Evidence in General

Subchapter A. Pleadings

Statutes in Context

§ 54.001


§ 54.001. Effect of Filing or Contesting Pleading

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

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

Derived from Probate Code § 10C.


§ 54.002. Defect in Pleading

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

Derived from Probate Code § 9.


Subchapter B. Evidence

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

Except as provided by Section 51.203, the Texas Rules of Evidence apply in a proceeding arising under this title to the extent practicable.

Derived from Probate Code § 22.


§ 54.052. Use of Certain Records as Evidence

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

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

(2) certified copies or reproductions of the records.

Derived from Probate Code § 18.


Chapter 55. Complaints and Contests

Subchapter A. Contest of Proceedings in Probate Court

§ 55.001. Opposition in Probate Proceeding

§ 55.002. Trial By Jury

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

§ 55.051. Definition

§ 55.052. Necessary Party
§ 55.053. Service of Process

Subchapter C. Mental Capacity of Decedent
§ 55.101. Entitlement to Production of Communications and Records
§ 55.102. Release of Records

Subchapter D. Attachment of Estate Property
§ 55.151. Order for Issuance of Writ of Attachment
§ 55.152. Bond

Subchapter E. Specific Performance of Agreement to Transfer Title
§ 55.201. Complaint and Citation
§ 55.202. Hearing and Order
§ 55.203. Conveyance

Subchapter F. Bill of Review
§ 55.251. Revision and Correction of Order in Probate Proceeding
§ 55.252. Injunction

Chapter 55. Complaints and Contests
Subchapter A. Contest of Proceedings in Probate Court

Statutes in Context
§ 55.001
An individual may have a strong motivation to have a testator’s will deemed invalid and ineffective to dispose of the testator’s property. First, this person could be an heir who would receive more under intestacy than the will. Or, second, this person could be a beneficiary of a prior will who would receive a smaller gift under the more recent will.

A person must have a pecuniary interest in the estate to contest the proceedings. Logan v. Thomason, 202 S.W.2d 212, 215 (Tex. 1947) (“An interest resting on sentiment or sympathy, or any other basis other than gain or loss of money or its equivalent, is insufficient.”). See also Estates Code § 22.018 defining “interested person.”

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

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

Derived from Probate Code § 10.

Statutes in Context
§ 55.002

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

Derived from Probate Code § 21.

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

§ 55.051. Definition
In this subchapter, “institution of higher education” has the meaning assigned by Section 61.003, Education Code.

Derived from Probate Code § 10A(a).

Statutes in Context
§ 55.052
Unlike many states, Texas law does not expressly require that the beneficiaries of a will be given notice or made a party to a will contest action except for certain schools and charities as provided in § 55.052. See Wojcik v. Wesolick, 97 S.W.3d 335 (Tex. App. — Houston [14th Dist.] 2003, no pet.), but see, Kotz v. Kotz, 613 S.W.2d 760, 761 (Tex. Civ. App. — Beaumont 1981, no writ), and Jennings v. Srp, 521 S.W.2d 326, 328-29 (Tex. Civ. App. — Corpus Christi 1975, no writ).
§ 55.052. Necessary Party

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

Derived from Probate Code § 10A(a).


§ 55.053. Service of Process

(a) For a will contest, the party contesting the will shall serve an institution or organization that is a necessary party to the contest under Section 55.052 in the manner provided by this title for service on other parties.

(b) For a will construction suit, the party bringing the suit shall serve an institution or organization that is a necessary party to the suit under Section 55.052 in the manner provided by this title for service on other parties.

Derived from Probate Code § 10A(b).


Subchapter C. Mental Capacity of Decedent

Statutes in Context

§ 55.101

The ability of litigants to obtain evidence of a decedent’s testamentary capacity was greatly enhanced by the legislature’s enactment of the Probate Code predecessor to Estates Code § 55.101 in 1997. This section provides that a party to a will contest, or a proceeding in which a party relies on the mental or testamentary capacity of a decedent as part of the party’s claim or defense, is entitled to production of all communications or records that are relevant to the decedent’s condition.

§ 55.102. Release of Records

On receipt of a subpoena for communications or records described by Section 55.101 and a file-stamped copy of the will contest or proceeding described by that section, the appropriate physician, hospital, medical facility, custodian of records, or other person in possession of the communications or records shall release the communications or records to the requesting party without further authorization.

Derived from Probate Code § 10B.


Subchapter D. Attachment of Estate Property

§ 55.151. Order for Issuance of Writ of Attachment

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

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

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

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

Derived from Probate Code § 26.


§ 55.152. Bond

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

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

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

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

Derived from Probate Code § 26.


Subchapter E. Specific Performance of Agreement to Transfer Title

§ 55.201. Complaint and Citation

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

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

(2) have the personal representative of the estate cited to appear on a date stated in the citation and
§ 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.

§ 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.

Subchapter F. Bill of Review

The Supreme Court of Texas held that this statutory bill of review procedure abrogates the equitable bill of review in the probate context. Valdez v. Hollenbeck, 465 S.W.3d 217 (Tex. 2015).

§ 55.251. Revision and Correction of Order or Judgment in Probate Proceeding
(a) An interested person may, by a bill of review filed in the court in which the probate proceedings were held, have an order or judgment rendered by the court revised and corrected on a showing of error in the order or judgment, as applicable.
(b) A bill of review to revise and correct an order or judgment may not be filed more than two years after the date of the order or judgment, as applicable.

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

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

Statutes in Context
§ 56.001
A nonresident of Texas may serve as a personal representative only if the nonresident appoints a resident agent to accept service of process in all actions or proceedings with respect to the estate. See § 304.003(c). Section 56.001 provides guidance for how the personal representative may change the resident agent.

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

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

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

Derived from Probate Code § 221A.


§ 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 a qualified delivery method [certified mail, return receipt requested], a copy of a resignation statement filed under Subsection (a) to:

1. the personal representative at the address most recently known by the resident agent; and
2. each party in the case or the party’s attorney or other designated representative of record.

(c) The resignation of a resident agent takes effect on the date the court enters an order accepting the resignation. A court may not enter an order accepting the resignation unless the resident agent complies with this section.

Derived from Probate Code § 221B.


SUBTITLE C. PASSAGE OF TITLE AND DISTRIBUTION OF DECEDEENTS’ PROPERTY IN GENERAL

Chapter 101. Estate Assets in General

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

§ 101.001. Passage of Estate on Decedent’s Death

Title to the decedent’s property passes to the heirs or beneficiaries immediately upon the decedent’s death regardless of the length of time occupied by the administration process. See Welder v. Hitchcock, 617 S.W.2d 294 (Tex. Civ. App. — Corpus Christi 1981, writ ref’d n.r.e.) (declaring that “there is no shorter interval of time than between the death of a decedent and the vesting of his estate in his heirs”). This title is, however, subject to the claims of the decedent’s creditors under § 101.051.

§ 101.001. Passage of Estate on Decedent’s Death

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

1. all of the person’s estate that is devised by the will vests immediately in the devisees;
2. all powers of appointment granted in the will vest immediately in the donees of those powers; and
3. all of the person’s estate that is not devised by the will vests immediately in the person’s heirs at law.

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

Derived from Probate Code § 37.


Statutes in Context

§ 101.002. Effect of Joint Ownership of Property

A joint tenancy is a type of concurrent property ownership. A joint tenant’s rights end at death in favor of the surviving joint tenants. Thus, when a
if a personal representative is appointed, that person has a superior right to possess all of the decedent's probate assets owned at the time of death. It may be difficult for the personal representative to collect this property because family members often take the decedent's property, especially personal property in the decedent's home, shortly after death despite having no authority to do so.

§ 101.003. Possession of Estate by Personal Representative

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

Derived from Probate Code § 37.


Subchapter C. Provision of Certain Information on Death

§ 111.101. Definitions.

In this subchapter:
(1) “Contracting third party” has the meaning assigned by Section 111.051.
(2) “Deceased party” means a deceased:
   (A) party to a multiple-party account governed by Chapter 113;
   (B) owner of property subject to a possible nontestamentary transfer as described by Section 111.051(1); or
   (C) insured under an insurance contract.

§ 111.102. Provision of Information to Personal Representative of Deceased Party

To the extent not prohibited by federal or other state law, a contracting third party shall, on request, provide to the personal representative of a deceased party's estate all information the contracting third party would have provided to the deceased party as of the date of the deceased party's death, if the deceased party had requested the information, without regard to whether the deceased party's estate has an interest in the multiple-party account, the property subject to a possible nontestamentary transfer, or the insurance contract.

Statutes in Context
§ 102.003

A homestead is “the dwelling house constituting the family residence, together with the land on which it is situated and the appurtenances connected therewith.” Farrington v. First Nat'l Bank of Bellville, 753 S.W.2d 248 (Tex. App. — Houston [1st Dist.] 1988, writ denied). Homesteads are classified by property type as either a rural homestead or an urban homestead, and the size of the exemption varies depending on this classification. See Statutes in Context to Texas Constitution Article XVI, § 51.

The source of the tremendous protection granted to Texas homesteads is Article XVI, § 50 of the Texas Constitution. This section establishes the protection without dollar value limitation and then lists exceptions, that is, situations in which the homestead is not protected. See Statutes in Context to Texas Constitution Article XVI, § 50.

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

§ 102.004. Liability of Homestead for Debts

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

Electronic copy available at: https://ssrn.com/abstract=4537861
(1) purchase money for the homestead;
(2) taxes due on the homestead;
(3) work and material used in constructing improvements on the homestead if the requirements of Section 50(a)(5), Article XVI, Texas Constitution, are met;
(4) an owelty of partition imposed against the entirety of the property by a court order or written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
(5) the refinance of a lien against the homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the decedent;
(6) an extension of credit on the homestead if the requirements of Section 50(a)(6), Article XVI, Texas Constitution, are met; or
(7) a reverse mortgage.

Derived from Probate Code § 270.


§ 102.005. Prohibitions on Partition of Homestead

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

(1) during the lifetime of the surviving spouse for as long as the surviving spouse elects to use or occupy the property as a homestead; or
(2) during the period the guardian of the decedent’s minor children is permitted to use and occupy the homestead under a court order.

Derived from Probate Code § 284.


§ 102.006. Circumstances Under Which Partition of Homestead is Authorized

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

(1) the surviving spouse dies, sells his or her interest in the homestead, or elects to no longer use or occupy the property as a homestead; or
(2) the court no longer permits the guardian of the minor children to use and occupy the property as a homestead.

Derived from Probate Code § 285.


Chapter 111. Nonprobate Assets in General

Subchapter A. Right of Survivorship Agreements Between Joint Tenants

§ 111.001. Right of Survivorship Agreements Authorized

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

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

Derived from Probate Code § 46(a).


§ 111.002. Agreements Concerning Community Property

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

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

Derived from Probate Code § 46(b).


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

Statutes in Context

§§ 111.051 – 111.053

Sections 111.051 – 111.053 authorize a wide range of arrangements which provide for payment or
§ 111.051. Definitions
In this subchapter:

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

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

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

(1-a) “Employees’ trust” means:

(A) a trust that forms a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C. Section 401 (1986));

(B) a pension trust under Chapter 111, Property Code; and

(C) an employer-sponsored benefit plan or program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.

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

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

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

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

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

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

(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 nontestamental.

Derived from Probate Code § 450(a).


§ 111.053. Creditor’s Rights Not Limited

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

Derived from Probate Code § 450(b).


Statutes in Context
§ 111.054

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

§ 111.054. Application of State Law to Certain Nontestamentary Transfers

(a) This section applies if more than 50 percent of the:
(1) assets in an account at a financial institution, in a retirement account, or in another similar arrangement are owned, immediately before a possible nontestamentary transfer of the assets, by one or more persons domiciled in this state; or
(2) interests under an insurance contract, annuity contract, beneficiary designation, or other similar arrangement are owned, immediately before a possible nontestamentary transfer of the interests, by one or more persons domiciled in this state.

(b) Notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, Texas law applies to determine:
(1) whether a nontestamentary transfer of assets or interests described by Subsection (a) has occurred; and
(2) the ownership of the assets or interests following a possible nontestamentary transfer.

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

(d) Subsections (a), (b), and (c) do not apply to an obligation:
(1) owed by a party to the contracting third party; or
(2) owed by the contracting third party to a party.

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

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

Chapter 112. Community Property With Right of Survivorship

Subchapter A. General Provisions

§ 112.001. Definition of Community Property Survivorship Agreement

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

Subchapter B. Community Property Survivorship Agreements

§ 112.051. Agreement for Right of Survivorship in Community Property

§ 112.052. Form of Agreement

§ 112.053. Adjudication Not Required

§ 112.054. Revocation of Agreement

Subchapter C. Adjudication to Prove Community Property Survivorship Agreement

§ 112.101. Application Authorized

§ 112.102. Proof Required by Court

§ 112.103. Method of Proof of Signatures

§ 112.104. Court Action; Issuance of Order

§ 112.105. Effect of Order

§ 112.106. Custody of Adjudicated Agreement

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

§ 112.151. Ownership of Property During Marriage; Management Rights

§ 112.152. Nontestamentary Nature of Transfers Under Agreement

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

§ 112.201. Definition of Certified Copy

§ 112.202. Actual Knowledge or Notice of Agreement

§ 112.203. Personal Representative Without Actual Knowledge of Agreement

§ 112.204. Third-Party Purchaser Without Notice of Agreement

§ 112.205. Debtors and Other Persons Without Notice of Agreement

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

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

§ 112.208. Rights of Surviving Spouse Against Creditors

Subchapter F. Rights Of Creditors

§ 112.251. Multiple-Party Accounts

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

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

Chapter 112. Community Property with Right of Survivorship
Subchapter A. General Provisions

Statutes in Context
Chapter 112

Community property could not be held in survivorship form until 1987 when Article XVI, § 15 of the Texas Constitution was amended to authorize community property survivorship agreements. Chapter 112 provides guidance with respect to these agreements.

§ 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.

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

Chapter 113 applies to multiple-party accounts held by spouses with a right of survivorship to the extent that chapter is not inconsistent with this chapter.
Derived from Probate Code § 462.

Subchapter B. Community Property Survivorship Agreements

§ 112.051. Agreement for Right of Survivorship in Community Property

At any time, spouses may agree between themselves that all or part of their community property, then existing or to be acquired, becomes the property of the surviving spouse on the death of a spouse.
Derived from Probate Code § 451.

Statutes in Context
§ 112.052

A community property survivorship agreement must be (1) in writing, (2) signed by both spouses (not just the deceased spouse), and (3) contain express survivorship language.

In 2009, the Texas Supreme Court issued a disturbing opinion in the case of Holmes v. Beatty, 290 S.W.3d 852 (Tex. 2009). A husband and his wife held investment accounts with the designation “JT TEN.” The spouses signed the agreement but did not indicate whether the account had, or did not have, the survivorship feature. The court determined that holding community property as joint tenants automatically includes the survivorship feature and that the designation “JT TEN” is an acceptable abbreviation. In so deciding, the court relied on the common law under which joint tenancies carried with them the survivorship feature. However, the court disregarded long-established Texas law which requires that the survivorship be expressly stated. The 2011 Legislature amended the Probate Code predecessors to both § 113.151 and § 112.052 to make it clear that this type of designation is insufficient to create the survivorship feature.

See Estate of Lovell, No. 05-18-00690-CV, 2019 WL 3423280 (Tex. App.—Dallas July 30, 2019, no pet.) (document labeled as a will deemed sufficient as a community property survivorship agreement; court refused to elevate form over substance).

§ 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”;
   (4) “shall pass to the surviving spouse.”
(c) Notwithstanding Subsection (b), a community property survivorship agreement that otherwise meets the requirements of this chapter is effective without including any of the phrases listed in that subsection.
(d) A survivorship agreement may not be inferred from the mere fact that an account is a joint account or that an account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.
Derived from Probate Code § 452.

§ 112.053. Adjudication Not Required

A community property survivorship agreement that satisfies the requirements of this chapter is effective and enforceable without an adjudication.
Derived from Probate Code §§ 456(a), 458.

§ 112.054. Revocation of Agreement

(a) A community property survivorship agreement made in accordance with this chapter may be revoked as provided by the terms of the agreement.
(b) If a community property survivorship agreement does not provide a method of revocation, the agreement may be revoked by a written instrument:
(1) signed by both spouses; or
(2) signed by one spouse and delivered to the other spouse.

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

 Derived from Probate Code § 455.

Subchapter C. Adjudication to Prove Community Property Survivorship Agreement

§ 112.101. Application Authorized

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

(b) An application under this section must include:

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

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

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

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

§ 112.102. Proof Required by Court

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

(1) the spouse whose community property interest is at issue is deceased;
(2) the court has jurisdiction and venue;
(3) the agreement was executed with the formalities required by law;
(4) the agreement was not revoked; and
(5) citation has been served and returned in the manner and for the length of time required by this title.

 Derived from Probate Code § 456(b).

§ 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 accordance with Section 51.203 or the Texas Rules of Civil Procedure.

(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 accordance with Section 51.203 or the Texas Rules of Civil Procedure.

(c) If the surviving spouse is not competent to make an oath, the surviving spouse’s signature to the agreement may be proved in the manner provided by Subsection (a) for proof of the deceased spouse’s signature.

 Derived from Probate Code § 456(c).

§ 112.104. Court Action; Issuance of Order

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

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

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

 Derived from Probate Code § 457.

§ 112.105. Effect of Order

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

(1) owes money, has custody of any property, or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right that is subject to the terms of the agreement; or
(2) purchases from or otherwise deals with the surviving spouse for payment or transfer to the surviving spouse.

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

 Derived from Probate Code § 458.
§ 112.106. Custody of Adjudicated Agreement
    (a) An original community property survivorship agreement adjudicated under this subchapter, together
    with the order adjudging the agreement valid, shall be deposited in the office of the county clerk of the county
    in which the agreement was adjudicated and must remain at that office, except during a period when the agreement
    is moved to another location for inspection on order of the court in which the agreement was adjudicated.
    (b) If the court orders an original community property survivorship agreement adjudicated under this subchapter
    to be moved to another location for inspection, the person moving the original agreement shall give a receipt for the
    agreement and the court clerk shall make and retain a copy of the original agreement.
Derived from Probate Code § 459.

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

§ 112.151. Ownership of Property During Marriage; Management Rights
    (a) Property subject to a community property survivorship agreement remains community property
    during the marriage of the spouses.
    (b) Unless the agreement provides otherwise, a community property survivorship agreement does not
    affect the rights of the spouses concerning the management, control, and disposition of property subject
    to the agreement.
Derived from Probate Code § 453.

§ 112.152. Nontestamentary Nature of Transfers Under Agreement
    (a) Transfers at death resulting from community property survivorship agreements made in accordance
    with this chapter are effective by reason of the agreements involved and are not testamentary transfers.
    (b) Except as expressly provided otherwise by this title, transfers described by Subsection (a) are not subject
    to the provisions of this title applicable to testamentary transfers.
Derived from Probate Code § 454.

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

§ 112.201. Definition of Certified Copy
    In this subchapter, a “certified copy” means a copy of an official record or document that is:
    (1) authorized by law to be recorded or filed and actually recorded or filed in a public office; and
    (2) certified as correct in accordance with Rule 902, Texas Rules of Evidence.
Derived from Probate Code § 460(f).

§ 112.202. Actual Knowledge or Notice of Agreement
    (a) In this subchapter, a person or entity has “actual knowledge” of a community property survivorship
    agreement or the revocation of a community property survivorship agreement only if the person or entity has
    received:
        (1) written notice of the agreement or revocation; or
        (2) the original or a certified copy of the agreement or revoking instrument.
    (b) In this subchapter, a person or entity has “notice” of a community property survivorship agreement or the
    revocation of a community property survivorship agreement if:
        (1) the person or entity has actual knowledge of the agreement or revocation; or
        (2) with respect to real property, the agreement or revoking instrument is properly recorded in the
            county in which the real property is located.
Derived from Probate Code § 460(f).

§ 112.203. Personal Representative Without Actual Knowledge of Agreement
    If the personal representative of a deceased spouse’s estate has no actual knowledge of the existence of an
    agreement creating a right of survivorship in community property in the surviving spouse, the personal
    representative is not liable to the surviving spouse or any person claiming from the surviving spouse for selling,
    exchanging, distributing, or otherwise disposing of the property.
Derived from Probate Code § 460(a).

§ 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.

Electronic copy available at: https://ssrn.com/abstract=4537861
(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.

§ 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.

§ 112.251. Multiple-Party Accounts

Chapter 113 governs the rights of creditors with respect to multiple-party accounts, as defined by Section 113.004.
§ 112.252. Liabilities of Deceased Spouse Not Affected by Right of Survivorship

(a) Except as expressly provided by Section 112.251, the community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse on that spouse’s death without regard to a right of survivorship in the surviving spouse under an agreement made in accordance with this chapter.

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

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

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

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

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

Derived from Probate Code § 461.


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

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

Derived from Probate Code § 461.


Chapter 113. Multiple-Party Accounts

Subchapter A. General Provisions

§ 113.001. General Definitions
§ 113.002. Definition of Party
§ 113.003. Definition of Net Contribution
§ 113.004. Types of Accounts
§ 113.005. Authority of Financial Institutions to Enter Into Certain Accounts

Subchapter B. Uniform Account Form

§ 113.051. Establishment of Type of Account; Applicability of Certain Law
§ 113.052. Form
§ 113.053. Required Disclosure; Use of Form

§ 113.0531. Use of Form and Disclosure by Credit Unions

Subchapter C. Ownership and Operation of Accounts

§ 113.101. Effect of Certain Provisions Regarding Ownership Between Parties and Others
§ 113.102. Ownership of Joint Account During Parties’ Lifetimes
§ 113.103. Ownership of P.O.D. Account During Original Payee’s Lifetime
§ 113.104. Ownership of Trust Account During Trustee’s Lifetime
§ 113.105. Ownership of Convenience Account; Additions And Accruals
§ 113.106. Ownership and Operation of Other Account With Convenience Signer

Subchapter D. Rights of Survivorship in Accounts

§ 113.151. Establishment of Right of Survivorship in Joint Account; Ownership on Death of Party
§ 113.152. Ownership of P.O.D. Account on Death of Party
§ 113.153. Ownership of Trust Account on Death of Trustee
§ 113.154. Ownership of Convenience Account on Death of Party
§ 113.1541. Ownership of Other Account with Convenience Signer on Death of Last Surviving Party
§ 113.155. Effect of Death of Party on Certain Accounts Without Rights of Survivorship
§ 113.156. Applicability of Certain Provisions on Death of Party
§ 113.157. Written Notice to Financial Institutions Regarding Form of Account
§ 113.158. Nontestamentary Nature of Certain Transfers

Subchapter E. Protection of Financial Institutions

§ 113.201. Applicability of Subchapter
§ 113.202. Payment of Multiple-Party Account
§ 113.203. Payment of Joint Account
§ 113.204. Payment of P.O.D. Account
§ 113.205. Payment of Trust Account
§ 113.206. Payment of Convenience Account
§ 113.207. Liability for Payment From Joint Account After Death
§ 113.208. Liability for Payment From Convenience Account
§ 113.209. Discharge From Claims
§ 113.210. Set-Off to Financial Institution

Electronic copy available at: https://ssrn.com/abstract=4537861
Chapter 113. Multiple-Party Accounts

Subchapter A. General Provisions

§ 113.001. General Definitions

In this chapter:

(1) “Account” means a contract of deposit of funds or securities between a depositor and a financial institution. The term includes:

(A) an account with cash deposits, including a checking account, savings account, certificate of deposit, and share account;

(B) an account holding securities, including stocks, bonds, and mutual funds; and

(C) another or other similar arrangement.

(2) “Beneficiary” means a person or trustee of an express trust evidenced by a writing who is named in a trust account as a person for whom a party to the account is named as trustee.

(2-a) “Charitable organization” means any corporation, community chest, fund, or foundation that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(2-b) “Express trust” has the meaning assigned by Section 111.004, Property Code.

(3) “Financial institution” means an organization authorized to do business under state or federal laws relating to financial institutions. The term includes a bank or trust company, savings bank, building and loan association, savings and loan company or association, credit union, and brokerage firm that deals in the sale and purchase of stocks, bonds, and other types of securities.

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

(5) “P.O.D. payee” means a person, trustee of an express trust evidenced by a writing, or charitable organization designated on a P.O.D. account as a person to whom the account is payable on request after the death of one or more persons.

(6) “Proof of death” includes:

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

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

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

(8) “Sums on deposit” means the balance payable or transferable on a multiple-party account including cash, interest, dividends, any type of securities, including stocks, bonds, and mutual funds, and any deposit of life insurance proceeds added to the account by reason of the death of a party.

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

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

§ 113.002. Definition of Party
(a) In this chapter, “party” means a person who, by the terms of a multiple-party account, has a present right, subject to request, to payment from the account. Except as otherwise required by the context, the term includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. The term also includes a person identified as a trustee of an account for another regardless of whether a beneficiary is named. The term does not include a named beneficiary unless the beneficiary has a present right of withdrawal.
(b) A P.O.D. payee, including a charitable organization, or beneficiary of a trust account is a party only after the account becomes payable to the P.O.D. payee or beneficiary by reason of the P.O.D. payee or beneficiary surviving the original payee or trustee.

Derived from Probate Code § 436(7).


§ 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 that have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance of the account. The term also includes any deposit life insurance proceeds added to the account by reason of the death of the party whose net contribution is in question.

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

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

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

Derived from Probate Code §§ 436(4), 436(6), 444.


§ 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,” including an account designated as a transfer on death or T.O.D. account, means an account payable on request to:

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

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

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

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

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

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


§ 113.005. Authority of Financial Institutions to Enter into Certain Accounts
A financial institution may enter into a multiple-party account to the same extent that the institution may enter into a single-party account.

Derived from Probate Code § 444.


Subchapter B. Uniform Account Form

§ 113.051. Establishment of Type of Account; Applicability of Certain Law
(a) A contract of deposit that contains provisions substantially the same as in the form provided by Section 113.052 establishes the type of account selected by a party. This chapter governs an account selected under the form.
(b) A contract of deposit that does not contain provisions substantially the same as in the form provided by Section 113.052 is governed by the provisions of this chapter applicable to the type of account that most nearly conforms to the depositor’s intent. Derived from Probate Code § 439A(a).


---

**Statutes in Context**

**§ 113.052**

A financial institution may use the form provided in § 113.052 to achieve predicable results and to give the customer understandable information regarding the workings of multiple-party accounts. However, few banks actually use the suggested form.

**§ 113.052. Form**

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

**UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT SELECTION FORM NOTICE:**

The type of account you select may determine how property passes on your death. Your will may not control the disposition of funds held in some of the following accounts. You may choose to designate one or more convenience signers on an account, even if the account is not a convenience account. A designated convenience signer may make transactions on your behalf during your lifetime, but does not own the account during your lifetime. The designated convenience signer owns the account on your death only if the convenience signer is also designated as a P.O.D. payee or trust account beneficiary.

Select one of the following accounts by placing your initials next to the account selected:

___ (1) SINGLE-PARTY ACCOUNT WITHOUT "P.O.D." (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party’s estate under the party’s will or by intestacy.

   Enter the name of the party:

   Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

___ (2) SINGLE-PARTY ACCOUNT WITH "P.O.D." (PAYABLE ON DEATH) DESIGNATION. The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party’s estate.

   Enter the name of the party:

   Enter the name or names of the P.O.D. beneficiaries:

___ (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:

___ (6) CONVENIENCE ACCOUNT. The parties to the account own the account. One or more convenience signers to the account may make account transactions for a party. A convenience signer does not own the account. On the death of the last surviving party, ownership of the account passes as a part of the last surviving party’s estate under the last surviving party’s will or by intestacy. The financial institution may pay funds in the account to a convenience signer before the financial institution receives notice of the death of the last surviving party. The payment to a convenience signer does not affect the parties’ ownership of the account.

   Enter the names of the parties:
Enter the name(s) of the convenience signer(s):

________________________

(7) TRUST ACCOUNT. The parties named as trustees to the account own the account in proportion to the parties’ net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of a trustee’s estate and does not pass under the trustee’s will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees.

Enter the name or names of the trustees:

________________________
________________________
________________________
________________________

Enter the name(s) of the beneficiaries:

________________________
________________________
________________________
________________________

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

ACKNOWLEDGMENT: I acknowledge that I have read each paragraph of this form and have received disclosure of the ownership rights to the accounts listed above. I have placed my initials next to the type of account I want.

Signature

________________________
Derived from Probate Code § 439A(b).


§ 113.053. Required Disclosure: Use of Form

(a) Except as provided by Subsection (d), a financial institution shall disclose the information provided in this subchapter to a customer before the customer selects or modifies an account.

(a-1) A financial institution is considered to have disclosed the information provided in this subchapter if:

(1) the financial institution uses the form provided by Section 113.052; and

(2) the customer signs the acknowledgment provided at the end of the form.

(b) If a financial institution varies the format of the form provided by Section 113.052, the financial institution shall disclose the information provided by this subchapter separately from other account information except that the financial institution may disclose that information as part of other account documentation if the disclosures are the first items of the documentation.

(c) The financial institution shall notify the customer of the type of account the customer selected. This requirement is satisfied by providing the customer with a copy of the account opening or modification documentation, as appropriate, in paper or electronic format.

(d) If a type of multiple-party account is not available from a financial institution, the financial institution is not required to make a disclosure about that type of account.

(e) This section does not apply to:

(1) a credit union; or

(2) an account that is opened or modified by a customer who:

(A) is a legal entity, including a governmental entity; or

(B) is acting as a legal representative for another person.

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


§ 113.0531. Use of Form and Disclosure by Credit Unions

(a) A credit union is considered to have disclosed the information provided by this subchapter if the credit union uses the form provided by Section 113.052.

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

(c) If the customer receives disclosure of the ownership rights to an account and the names of the parties are indicated, a credit union 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.

New.

Added by Acts 2015, 84th Leg., ch. 85, § 2, eff. Sept. 1, 2015.

Subchapter C. Ownership and Operation of Accounts

Statutes in Context

§ 113.101

The right to withdraw funds from a multiple-party account is a separate issue from the ownership of those funds. For example, a party to a joint account may have the right to withdraw funds but does not necessarily own those funds.

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

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

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

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

Derived from Probate Code § 437.


Statutes in Context

§§ 113.102–113.104

Sections 113.102–113.104 explain who owns the funds in a multiple-party account while the original parties are all still alive.

1. Joint Account. The funds in a joint account belong to the parties in proportion to their net contributions, that is, what the party deposited, minus what the party withdrew, plus a proportionate share of the interest. See § 113.003.

2. P.O.D. Account. The funds in a P.O.D. account belong to the original payees. The P.O.D. payees have no ownership rights.

3. Trust Account. The funds in a trust account belong to the trustee and the beneficiary has no rights unless there is a contrary intent shown by the account terms or deposit agreement or there is clear and convincing evidence of an irrevocable trust.

§ 113.102. Ownership of Joint Account During Parties’ Lifetimes

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

Derived from Probate Code § 438(a).


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

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

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

Derived from Probate Code § 438(b).


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

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

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

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

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

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

Derived from Probate Code § 438(c).


Statutes in Context

§ 113.105

Section 113.105 governs convenience accounts which are used as a primitive type of agency relationship to, for example, allow someone to assist the depositor in writing checks when the depositor is unable to do so (e.g., disabled, stationed out of the country in the military, in prison, on vacation, etc.).

All funds in the account belong to the party, not the co-signer, although both the party and the co-signer have the right to withdraw the funds. When the party dies, the entire account passes into the party’s estate. The co-signer has no survivorship rights.

§ 113.106. Ownership of Convenience Account; Additions and Accruals

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

(b) A party to a convenience account is not considered to have made a gift of the deposit, or of any additions or accruals to the deposit, to a convenience signer.

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

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


Statutes in Context

§ 113.106

The 2009 Legislature enacted this provision to authorize convenience signers on accounts that are not expressly labeled as convenience accounts. A person who opens a single-party or multiple-party account that is not expressly deemed a convenience account under § 113.105 now has the option of indicating a convenience signer who has the ability to make withdrawals but does not have ownership or
survivorship rights. The Uniform Single-Party or Multiple-Party Account Form was modified to provide for convenience signers on all types of accounts.

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

(a) An account established by one or more parties at a financial institution that is not designated as a convenience account, but is instead designated as a single-party account or another type of multiple-party account, may provide that the sums on deposit may be paid or delivered to the parties or to one or more convenience signers “for the convenience of the parties.”

(b) Except as provided by Section 113.1541:

(1) the provisions of Sections 113.105, 113.206, and 113.208 apply to an account described by Subsection (a), including provisions relating to the ownership of the account during the lifetimes and on the deaths of the parties and provisions relating to the powers and duties of the financial institution at which the account is established; and

(2) any other law relating to a convenience signer applies to a convenience signer designated as provided by this section to the extent the law applies to a convenience signer on a convenience account.

Derived from Probate Code § 438B.

Subchapter D. Rights of Survivorship in Accounts

\[\text{Statutes in Context} \]

§§ 113.151 – 113.155

Sections 113.151–113.155 govern ownership of the funds in a multiple-party account when one or more of the parties dies.

1. Joint Account. The net contributions of the deceased party pass into the deceased party’s estate unless there is an express survivorship agreement. Unlike many states, the presumption in Texas is that a joint account does not have the survivorship feature. (Note that this is consistent with § 101.002.) The survivorship feature exists only if there is (a) a written agreement, (b) signed by the deceased party (if community property is involved, both spouses must sign under § 112.051 which expressly makes the deceased party’s interest survive to the surviving party.

In 2009, the Texas Supreme Court issued a disturbing opinion in the case of Holmes v. Beatty, 290 S.W.3d 852 (Tex. 2009). A husband and his wife held investment accounts with the designation “JT TEN.” The spouses signed the agreement but did not indicate whether the account had, or did not have, the survivorship feature. The court determined that holding community property as joint tenants automatically includes the survivorship feature and that the designation “JT TEN” is an acceptable abbreviation. In so deciding, the court relied on the common law under which joint tenancies carried with them the survivorship feature. However, the court disregarded long-established Texas law which requires that the survivorship be expressly stated. The 2011 Legislature amended the Probate Code predecessors to both § 113.151 and § 112.052 to make it clear that this type of designation is insufficient to create the survivorship feature.

Extrinsic evidence is not admissible to establish the survivorship feature in a suit to obtain account funds. However, such evidence may be used to show the depositor's intent in an action against the financial institution. A.G. Edwards & Sons, Inc. v. Beyer, 235 S.W.3d 704 (Tex. 2007).

The statute contains “safe harbor” language to create the survivorship feature, that is, “On the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate.” Note that a mere authorization of payment of funds to the survivor does not create the survivorship feature. The right to withdraw is not equated with ownership rights. See Stauffer v. Henderson, 801 S.W.2d 858 (Tex. 1990).

2. P.O.D. Account. The funds in a P.O.D. account belong to the surviving P.O.D. payees only after all original P.O.D. payees are dead.

3. Trust Account. The funds in a trust account belong to the surviving beneficiaries only after all trustees are dead.

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

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

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

(b) Notwithstanding any other law, an agreement is sufficient under this section to confer an absolute right of survivorship on parties to a joint account if the agreement contains a statement substantially similar to the following: “On the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate.”

(c) A survivorship agreement may not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.
(d) If there are two or more surviving parties to a joint account that is subject to a right of survivorship agreement:

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

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

Derived from Probate Code § 439(a).


§ 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 payees unless the terms of the account or deposit agreement expressly provide for survivorship between those payees.

(c) A guardian of the estate or an attorney in fact or agent of an original payee may sign a written agreement described by Subsection (a) on behalf of the original payee.

Derived from Probate Code § 438A(d).


§ 113.153. Ownership of Trust Account on Death of Trustee

(a) If the account is a trust account and there is a written agreement signed by the trustee or trustees, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to:

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

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

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

Derived from Probate Code § 438B(c).

§ 113.158. Nontestamentary Nature of Certain Transfers

Transfers resulting from the application of Sections 113.151, 113.152, 113.153, and 113.155 are effective by reason of the account contracts involved and this chapter and are not to be considered testamentary transfers or subject to the testamentary provisions of this title.

Derived from Probate Code § 441.


Subchapter E. Protection of Financial Institutions

§ 113.201. Applicability of Subchapter

This subchapter and Section 113.003(b) govern:

(1) the liability of financial institutions that make payments as provided by this subchapter; and

(2) the set-off rights of those institutions.

Derived from Probate Code § 443.


§ 113.202. Payment of Multiple-Party Account

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

Derived from Probate Code § 444.


§ 113.203. Payment of Joint Account

(a) Subject to Subsection (b), amounts in a joint account may be paid, on request, to any other party is incapacitated or deceased at the time the payment is demanded.

(b) Payment may not be made to the personal representative or heir of a deceased party unless:

(1) proofs of death are presented to the financial institution showing that the deceased party was the last surviving party; or

(2) there is no right of survivorship under Sections 113.151, 113.152, 113.153, and 113.155.

Derived from Probate Code § 445.


§ 113.204. Payment of P.O.D. Account

(a) A P.O.D. account may be paid, on request, to any original payee of the account.

(b) Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee on the presentation to the financial institution of proof of death showing that the P.O.D. payee survived each person named as an original payee.

(c) Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that the deceased original payee was the survivor of each other person named on the account as an original payee or a P.O.D. payee.

Derived from Probate Code § 446.


§ 113.205. Payment of Trust Account

(a) A trust account may be paid, on request, to any trustee.

(b) Unless a financial institution has received written notice that a beneficiary has a vested interest not dependent on the beneficiary’s surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that the deceased trustee was the survivor of each other person named on the account as a trustee or beneficiary.

(c) Payment may be made, on request, to a beneficiary if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as trustees.

Derived from Probate Code § 447.


§ 113.206. Payment of Convenience Account

Deposits to a convenience account and additions and accruals to the deposits may be paid to a party or a convenience signer.

Derived from Probate Code § 438A(f).


§ 113.207. Liability for Payment from Joint Account After Death

A financial institution that pays an amount from a joint account to a surviving party to that account in accordance with a written agreement under Section 113.151 is not liable to an heir, devisee, or beneficiary of the deceased party’s estate.

Derived from Probate Code § 445.


§ 113.208. Liability for Payment from Convenience Account

(a) A financial institution is completely released from liability for a payment made from a convenience account before the financial institution receives notice in writing signed by a party not to make the payment in accordance with the terms of the account. After receipt of the notice from a party, the financial institution may require a party to approve any further payments from the account.

(b) A financial institution that makes a payment of the sums on deposit in a convenience account to a convenience signer after the death of the last surviving party, but before the financial institution receives written
notice of the last surviving party’s death, is completely released from liability for the payment.

(c) A financial institution that makes a payment of the sums on deposit in a convenience account to the personal representative of the deceased last surviving party’s estate after the death of the last surviving party, but before a court order prohibiting payment is served on the financial institution, is, to the extent of the payment, released from liability to any person claiming a right to the funds. The personal representative’s receipt of the funds is a complete release and discharge of the financial institution.

Derived from Probate Code §§ 438A(f), (g).


§ 113.209. Discharge from Claims

(a) Payment made in accordance with Section 113.202, 113.203, 113.204, 113.205, or 113.207 discharges the financial institution from all claims for those amounts paid regardless of whether the payment is consistent with the beneficial ownership of the account between parties, P.O.D. payees, or beneficiaries, or their successors.

(b) The protection provided by Subsection (a) does not extend to payments made after a financial institution receives, from any party able to request present payment, written notice to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving the notice, the successor of a deceased party must concur in a demand for withdrawal for the financial institution to be protected under Subsection (a).

(c) No notice, other than the notice described by Subsection (b), or any other information shown to have been available to a financial institution affects the institution’s right to the protection provided by Subsection (a).

(d) The protection provided by Subsection (a) does not affect the rights of parties in disputes between the parties or the parties’ successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

Derived from Probate Code § 449.


§ 113.210. Set-Off to Financial Institution

(a) Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has, or had immediately before the party’s death, a present right of withdrawal.

(b) The amount of the account subject to set-off under this section is that proportion to which the debtor is, or was immediately before the debtor’s death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

Derived from Probate Code § 449.


Subchapter F. Rights of Creditors; Pledge of Account

§ 113.251. Pledge of Account

(a) A party to a multiple-party account may pledge the account or otherwise create a security interest in the account without the joinder of, as applicable, a P.O.D. payee, a beneficiary, a convenience signer, or any other party to a joint account, regardless of whether a right of survivorship exists.

(b) A convenience signer may not pledge or otherwise create a security interest in an account.

(c) Not later than the 30th day after the date a security interest on a multiple-party account is perfected, a secured creditor that is a financial institution with accounts insured by the Federal Deposit Insurance Corporation shall provide written notice of the pledge of the account to any other party to the account who did not create the security interest. The notice must be sent by a qualified delivery method to each other party at the last address the party provided to the depository bank.

(d) The financial institution is not required to provide the notice described by Subsection (c) to a P.O.D. payee, beneficiary, or convenience signer.

Derived from Probate Code § 442.


Statutes in Context

§ 113.252

Section 113.252 provides that funds in a multiple-party account are available to pay the debts of a deceased depositor but only as a last resort after all other estate assets are exhausted. Thus, although multiple-party accounts are considered non-probate in nature, they may still be involved in the probate process if the funds are needed to pay debts or other claims against the estate.

§ 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:

(A) amounts equal to the amounts of estate taxes and expenses charged under Subchapter A, Chapter 124, to the deceased party, P.O.D. payee, or beneficiary of the account; or

(B) if other assets of the estate are insufficient, amounts needed to pay debts, other taxes, and expenses of administration, including...
§ 113.253. No Effect on Certain Rights and Liabilities of Financial Institutions

This subchapter does not:
(1) affect the right of a financial institution to make payment on multiple-party accounts according to the terms of the account; or
(2) make the financial institution liable to the estate of a deceased party unless, before payment, the institution received written notice from the personal representative stating the amounts needed to pay debts, taxes, claims, and expenses of administration.

Derived from Probate Code § 442.


§ 114.006 Relation to Electronic Signatures in Global and National Commerce Act

Subchapter B. Authorization, Execution, and Revocation of Transfer on Death Deed

§ 114.051 Transfer of Death Deed Authorized
§ 114.052 Transfer on Death Deed Revocable
§ 114.053 Transfer on Death Deed Nontestamentary
§ 114.054 Capacity of Transferor; Use of Power of Attorney
§ 114.055 Requirements
§ 114.056 Notice, Delivery, Acceptance, or Consideration Not Required
§ 114.057 Revocation by Certain Instruments; Effect of Will or Marriage Dissolution

Subchapter C. Effect of Transfer on Death Deed; Liability of Transferred Property for Creditors’ Claims

§ 114.101 Effect of Transfer on Death Deed During Transferor’s Life
§ 114.102 Effect of Subsequent Conveyance on Transfer on Death Deed
§ 114.103 Effect of Transfer on Death Deed at Transferor’s Death
§ 114.104 Transfer on Death Deed Property Subject to Liens and Encumbrances at Transferor’s Death; Creditors’ Claims
§ 114.105 Disclaimer
§ 114.106 Liability for Creditor Claims; Allowances in Lieu of Exempt Property and Family Allowances

Statutes in Context

Chapter 114

The 2015 Legislature enacted a Texasized version of the Uniform Real Property Transfer on Death Act joining over a dozen other states that have already done so. This Act permits a property owner to designated the new owner of real property upon his or her death in a deed which is property recorded during the owner’s lifetime. Below are some of the key features of this Act:

- The property owner must have contractual capacity (not merely testamentary capacity) to execute a TOD deed.
- An agent under a power of attorney may not execute a TOD deed on behalf of the property owner.
- The beneficiary does not need to know about the TOD deed and does not need to have supplied any consideration. However, the
beneficiary may disclaim the property following the normal disclaimer procedures.

- The named beneficiary has no legal or equitable interest in the property until the beneficiary survives the property owner by 120 hours.
- The property owner may revoke the TOD deed at any time and does not need a reason for so doing.
- The property owner may not make the TOD deed irrevocable.
- The property owner’s will cannot revoke or supersede a TOD deed.
- If the property owner names his or her spouse as the beneficiary and then a court issues a final judgment of divorce, the TOD deed is revoked as long as notice of the judgment is recorded before the property owner’s death.
- The TOD deed has no legal effect during the property owner’s lifetime. For example, the property owner may transfer the property to someone other than the beneficiary even if the transferee has actual knowledge of the TOD deed as long as the transferee records his or her deed before the property owner dies.
- When the property owner dies, creditors with interests in the property are generally treated like other estate creditors.
- When the property owner dies, the property transferred by a TOD deed is subject, as a last resort, to the claims against the estate including allowances in lieu of exempt property and the family allowance.

The 2019 Legislature repealed the statutory suggested forms for creating and revoking transfer on death deeds. The Supreme Court Texas must promulgate new sample forms. Alternative forms are available at https://texaslawhelp.org/form/transfer-death-deed.

Chapter 114. Transfer on Death Deed

Subchapter A. General Provisions

§ 114.001. Short Title

This chapter may be cited as the Texas Real Property Transfer on Death Act.

New.

Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.002. Definitions

(a) In this chapter:

- “Beneficiary” means a person who receives real property under a transfer on death deed.
- “Designated beneficiary” means a person designated to receive real property in a transfer on death deed.
- “Joint owner with right of survivorship” or “joint owner” means an individual who owns real property concurrently with one or more other individuals with a right of survivorship. The term does not include a tenant in common or an owner of community property with or without a right of survivorship.
- “Person” has the meaning assigned by Section 311.005, Government Code.
- “Real property” means an interest in real property located in this state.
- “Transfer on death deed” means a deed authorized under this chapter and does not refer to any other deed that transfers an interest in real property on the death of an individual.
- “Transferor” means an individual who makes a transfer on death deed.

New.

Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015. Subsec. (b) repealed by Acts 2019, 86th Leg., ch. 337, § 3 and ch. 1141, § 47, eff. Sept. 1, 2019.

§ 114.003. Applicability

This chapter applies to a transfer on death deed executed and acknowledged on or after September 1, 2015, by a transferor who dies on or after September 1, 2015.

New.

Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.004. Nonexclusivity

This chapter does not affect any method of transferring real property otherwise permitted under the laws of this state.

New.

Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.005 Uniformity of Application and Construction

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law similar to this chapter.

New.

Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.006. Relation to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National
Subchapter B. Authorization, Execution, and Revocation of Transfer on Death Deed

§ 114.051. Transfer on Death Deed Authorized
An individual may transfer the individual’s interest in real property to one or more beneficiaries effective at the transferor’s death by a transfer on death deed.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.052. Transfer on Death Deed Revocable
A transfer on death deed is revocable regardless of whether the deed or another instrument contains a contrary provision.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.053. Transfer on Death Deed Nontestamentary
A transfer on death deed is a nontestamentary instrument.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.054. Capacity of Transferor; Use of Power of Attorney
(a) The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a contract.

(b) A transfer on death deed may not be created through use of a power of attorney.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.055. Requirements
To be effective, a transfer on death deed must:
1. except as otherwise provided in Subdivision (2), contain the essential elements and formalities of a recordable deed;
2. state that the transfer of an interest in real property to the designated beneficiary is to occur at the transferor’s death; and
3. be recorded before the transferor’s death in the deed records in the county clerk’s office of the county where the real property is located.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.056. Notice, Delivery, Acceptance, or Consideration Not Required
A transfer on death deed is effective without:
1. notice or delivery to or acceptance by the designated beneficiary during the transferor’s life; or
2. consideration.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.057. Revocation by Certain Instruments; Effect of Will or Marriage Dissolution
(a) Subject to Subsections (d) and (e), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, if the instrument:
1. is one of the following:
   (A) a subsequent transfer on death deed that revokes the preceding transfer on death deed or part of the deed expressly or by inconsistency; or
   (B) except as provided by Subsection (b), an instrument of revocation that expressly revokes the transfer on death deed or part of the deed;
2. is acknowledged by the transferor after the acknowledgment of the deed being revoked; and
3. is recorded before the transferor’s death in the deed records in the county clerk’s office of the county where the deed being revoked is recorded.

(b) A will may not revoke or supersede a transfer on death deed.

(c) If a marriage between the transferor and a designated beneficiary is dissolved after a transfer on death deed is recorded, a final judgment of the court dissolving the marriage operates to revoke the transfer on death deed as to that designated beneficiary if notice of the judgment is recorded before the transferor’s death in the deed records in the county clerk’s office of the county where the deed is recorded, notwithstanding Section 111.052.

(d) If a transfer on death deed is made by more than one transferor, revocation by a transferor does not affect the deed as to the interest of another transferor who does not make that revocation.

(e) A transfer on death deed made by joint owners with right of survivorship is revoked only if it is revoked by all of the living joint owners.

(f) This section does not limit the effect of an inter vivos transfer of the real property.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.
Subchapter C. Effect of Transfer on Death Deed; Liability of Transferred Property for Creditors' Claims

§ 114.101. Effect of Transfer on Death Deed During Transferor's Life

During a transferor’s life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including:
   (A) the right to transfer or encumber the real property that is the subject of the deed;
   (B) homestead rights in the real property, if applicable; and
   (C) ad valorem tax exemptions, including exemptions for residence homestead, persons 65 years of age or older, persons with disabilities, and veterans;

(2) affect an interest or right of a transferee of the real property that is the subject of the deed, even if the transferee has actual or constructive notice of the deed;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) affect the transferor’s or designated beneficiary’s eligibility for any form of public assistance, subject to applicable federal law;

(5) constitute a transfer triggering a “due on sale” or similar clause;

(6) invoke statutory real estate notice or disclosure requirements;

(7) create a legal or equitable interest in favor of the designated beneficiary; or

(8) subject the real property to claims or process of a creditor of the designated beneficiary.

Now.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.102. Effect of Subsequent Conveyance on Transfer on Death Deed

An otherwise valid transfer on death deed is void as to a subsequent grantee of an interest in real property that is conveyed by the transferor during the transferor’s lifetime after the transfer on death deed is executed and recorded if:

(1) a valid instrument conveying the interest or a memorandum sufficient to give notice of the conveyance of the interest is recorded in the deed records in the county clerk’s office of the same county in which the transfer on death deed is recorded; and

(2) the recording of the instrument or memorandum occurs before the transferor’s death.

Now.

§ 114.103. Effect of Transfer on Death Deed at Transferor's Death

(a) Except as otherwise provided in the transfer on death deed, this section, or any other statute or the common law of this state governing a decedent’s estate, on the death of the transferor, the following rules apply to an interest in real property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) if the designated beneficiary survives the transferor by 120 hours, the interest in the real property is transferred to the designated beneficiary in accordance with the deed;

(2) the share of any designated beneficiary that fails to survive the transferor by 120 hours lapses, notwithstanding Section 111.052, and is subject to and passes in accordance with Subchapter D. Chapter 255, as if the transfer on death deed were a devise made in a will; and

(3) subject to Subdivision (2), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(b) If a transferor is a joint owner with right of survivorship who is survived by one or more other joint owners, the real property that is the subject of the transfer on death deed belongs to the surviving joint owner or owners. If a transferor is a joint owner with right of survivorship who is the last surviving joint owner, the transfer on death deed is effective.

(c) If a transfer on death deed is made by two or more transferors who are joint owners with right of survivorship, the last surviving joint owner may revoke the transfer on death deed subject to Section 114.057.

(d) A transfer on death deed transfers real property without covenant of warranty of title even if the deed contains a contrary provision.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015. Subsec. (a) amended by Acts 2017, 85th Leg., ch. 971, § 1, eff. Sept. 1, 2017.

§ 114.104. Transfer on Death Deed Property Subject to Liens and Encumbrances at Transferor's Death; Creditors' Claims

(a) Subject to Section 13.001, Property Code, a beneficiary takes the real property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the real property is subject at the transferor’s death. For purposes of this subsection and Section 13.001, Property Code, the recording of the transfer on death deed is considered to have occurred at the transferor’s death.

(b) If a personal representative has been appointed for the transferor’s estate, an administration of the estate has been opened, and the real property transferring under a transfer on death deed is subject to a lien or security interest, including a deed of trust or mortgage, the personal representative shall give notice to the creditor of the transferor as the personal representative would any
other secured creditor under Section 308.053. The creditor shall then make an election under Section 355.151 in the period prescribed by Section 355.152 to have the claim treated as a matured secured claim or a preferred debt and lien claim, and the claim is subject to the claims procedures prescribed by this section.

(c) If the secured creditor elects to have the claim treated as a preferred debt and lien claim, Sections 355.154 and 355.155 apply as if the transfer on death deed were a devise made in a will, and the creditor may not pursue any other claims or remedies for any deficiency against the transferor’s estate.

(d) If the secured creditor elects to have the claim treated as a matured secured claim, Section 355.153 applies as if the transfer on death deed were a devise made in a will, and the claim is subject to the procedural provisions of this title governing creditor claims.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.105. Disclaimer

A designated beneficiary may disclaim all or part of the designated beneficiary’s interest as provided by Chapter 122.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015.

§ 114.106. Liability for Creditor Claims; Allowances in Lieu of Exempt Property and Family Allowances

(a) To the extent the transferor’s estate is insufficient to satisfy a claim against the estate, expenses of administration, any estate tax owed by the estate, or an allowance in lieu of exempt property or family allowance to a surviving spouse, minor children, or incapacitated adult children, the personal representative may enforce that liability against real property transferred at the transferor’s death by a transfer on death deed to the same extent the personal representative could enforce that liability if the real property were part of the probate estate.

(b) Notwithstanding Subsection (a), real property transferred at the transferor’s death by a transfer on death deed is not considered property of the probate estate for any purpose, including for purposes of Section 546.0403 [531.072], Government Code.

(c) If a personal representative does not commence a proceeding to enforce a liability under Subsection (a) on or before the 90th day after the date the representative receives a demand for payment, a proceeding to enforce the liability may be brought by a creditor, a distributee of the estate, a surviving spouse of the decedent, or any taxing authority.

(d) If more than one real property interest is transferred by one or more transfer on death deeds or if there are other nonprobate assets of the transferor that may be liable for the claims, expenses, and other payments specified in Subsection (a), the liability for those claims, expenses, and other payments may be apportioned among those real property interests and other assets in proportion to their net values at the transferor’s death.

(e) A proceeding to enforce liability under this section must be commenced not later than the second anniversary of the transferor’s death, except for any rights arising under Section 114.104(d).

(f) In connection with any proceeding brought under this section, a court may award costs and reasonable and necessary attorney’s fees in amounts the court considers equitable and just.

New.
Added by Acts 2015, 84th Leg., ch. 841, § 1, eff. Sept. 1, 2015. Amended by Acts 2023, 88th Leg., ch. 769, § 2.04, eff. Apr. 1, 2025.

Statutes in Context
Chapter 115

The 2017 Legislature added Chapter 115 to the Estates Code to allow the owners of a motor vehicle to name a beneficiary (co-beneficiaries are not allowed) who will own the vehicle upon the owner’s death. The designation is a revocable non-testamentary transfer and cannot be changed by the owner’s will. If the vehicle is jointly owned with survivorship rights, both co-owners must agree to the beneficiary designation. The beneficiary must apply for a transfer of the vehicle’s title within 180 days of the owner’s death. Also see Transportation Code § 501.0315.

Chapter 115. Beneficiary Designation for Motor Vehicles

§ 115.001 Definitions

§ 115.002 Beneficiary Designation Authorized

§ 115.003 Joint Ownership

§ 115.004 Effect of Beneficiary Designation During Owner’s Lifetime

§ 115.005 Effect of Beneficiary Designation at Owner’s or Last Surviving Owner’s Death

§ 115.006 Creditor Claims; Allowances in Lieu of Exempt Property and Family Allowances

Chapter 115. Beneficiary Designation for Motor Vehicles

§ 115.001. Definitions

In this chapter:
(1) “Beneficiary designation” means the designation by an owner of a motor vehicle of a beneficiary of the vehicle as provided by Section 501.0315, Transportation Code.
(2) “Designated beneficiary” means a person designated as a beneficiary of an owner’s interest in a motor vehicle under Section 501.0315, Transportation Code.

(3) “Joint owner with right of survivorship” or “joint owner” means a person who owns a motor vehicle concurrently with one or more other persons with a right of survivorship. The term does not include an owner of community property with or without a right of survivorship.

(4) “Motor vehicle” has the meaning assigned by Section 501.002, Transportation Code.

(5) “Person” has the meaning assigned by Section 311.005, Government Code.


§ 115.002. Beneficiary Designation Authorized

(a) An owner of a motor vehicle may transfer the owner’s interest in the motor vehicle to a sole beneficiary effective on the owner’s death by designating a beneficiary as provided by Section 501.0315, Transportation Code.

(b) A beneficiary designation is:

(1) subject to Section 115.003(b), revocable and may be changed at any time without the consent of the designated beneficiary as provided by Section 501.0315, Transportation Code;
(2) a nontestamentary instrument; and
(3) effective without:

(A) notice or delivery to or acceptance by the designated beneficiary during the owner’s life; or
(B) consideration.

(c) A will may not revoke or supersede a beneficiary designation, regardless of when the will is made.

(d) A designated beneficiary may disclaim the designated beneficiary’s interest in the motor vehicle as provided by Chapter 240, Property Code.


§ 115.003. Joint Ownership

(a) If a motor vehicle that is the subject of a beneficiary designation is owned by joint owners with right of survivorship, the beneficiary designation must be made by all of the joint owners.

(b) A beneficiary designation made by joint owners with right of survivorship:

(1) may be revoked or changed as provided by Section 501.0315, Transportation Code, only if it is revoked or changed by all of the joint owners; and
(2) may be revoked or changed by the last surviving joint owner as provided by Section 501.0315, Transportation Code.


§ 115.004. Effect of Beneficiary Designation During Owner’s Life

During a motor vehicle owner’s life, a beneficiary designation does not:

(1) affect an interest or right of the owner or owners making the designation, including the right to transfer or encumber the motor vehicle that is the subject of the designation;
(2) create a legal or equitable interest in favor of the designated beneficiary in the motor vehicle that is the subject of the designation, even if the beneficiary has actual or constructive notice of the designation;
(3) affect an interest or right of a secured or unsecured creditor or future creditor of the owner or owners making the designation, even if the creditor has actual or constructive notice of the designation; or
(4) affect an owner’s or the designated beneficiary’s eligibility for any form of public assistance, subject to applicable federal law.


§ 115.005. Effect of Beneficiary Designation at Owner’s or Last Surviving Owner’s Death

(a) On the death of the owner of a motor vehicle that is the subject of a beneficiary designation, the following rules apply to an interest in the motor vehicle:

(1) if the designated beneficiary survives the owner making the designation by 120 hours, the interest in the motor vehicle is transferred to the designated beneficiary; and
(2) if the designated beneficiary fails to survive the owner making the designation by 120 hours, the share of the designated beneficiary lapses, notwithstanding Section 111.052, and is subject to and passes in accordance with Subchapter D, Chapter 255, as if the beneficiary designation were a devise made in a will.

(b) If an owner is a joint owner with right of survivorship who is survived by one or more other joint owners, the motor vehicle that is the subject of the beneficiary designation belongs to the surviving joint owner or owners. If an owner is a joint owner with right of survivorship who is the last surviving joint owner, the beneficiary designation is effective.

(c) A designated beneficiary takes the motor vehicle subject to all encumbrances, assignments, contracts, liens, and other interests to which the vehicle is subject at the owner’s or last surviving owner’s death, as applicable. The transfer to the designated beneficiary does not affect the ability of a lienholder to pursue an existing means of debt collection permitted under the laws of this state.

§ 115.006. Creditor Claims; Allowances in Lieu of Exempt Property and Family Allowances

Sections 114.104(b), (c), and (d) and Section 114.106 apply to a transfer of an owner’s interest in a motor vehicle by a beneficiary designation in the same manner and to the same extent as a transfer of real property under a transfer on death deed under Chapter 114.

New.

Added by Acts 2017, 85th Leg., ch. 586, § 1, eff. Sept. 1, 2017.

Chapter 121. Survival Requirements

Subchapter A. General Provisions

§ 121.001. Applicability of Chapter

This chapter does not apply if provision has been made by will, living trust, deed, or insurance contract, or in any other manner, for a disposition of property that is different from the disposition of the property that would be made if the provisions of this chapter applied.

Derived from Probate Code § 47(f).


Subchapter B. Survival Requirement for Intestate Succession and Certain Other Purposes

§ 121.051. Applicability of Subchapter

This subchapter does not apply if the application of this subchapter would result in the escheat of an intestate estate.

Derived from Probate Code § 47(a).


§ 121.052. Required Period of Survival for Intestate Succession and Certain Other Purposes

A person who does not survive a decedent by 120 hours is considered to have predeceased the decedent for purposes of the homestead allowance, exempt property, and intestate succession, and the decedent’s heirs are determined accordingly, except as otherwise provided by this chapter.

Derived from Probate Code § 47(a).


§ 121.053. Intestate Succession: Failure to Survive Presumed Under Certain Circumstances

A person who, if the person survived a decedent by 120 hours, would be the decedent’s heir is considered not to have survived the decedent for the required period if:

(1) the time of death of the decedent or of the person, or the times of death of both, cannot be determined; and

(2) the person’s survival for the required period after the decedent’s death cannot be established.

Derived from Probate Code § 47(a).


Chapter 121. Survival Requirements

Subchapter A. General Provisions

Statutes in Context

Chapter 121

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

To remedy this problem, Chapter 121 imposes a survival period of 120 hours (5 days). If a person survives the decedent but dies prior to the expiration of the survival period, the property passes as if the person had actually predeceased the decedent.

§ 121.001. Applicability of Chapter

This chapter does not apply if provision has been made by will, living trust, deed, or insurance contract, or in any other manner, for a disposition of property that is different from the disposition of the property that would be made if the provisions of this chapter applied.

Derived from Probate Code § 47(f).


Subchapter B. Survival Requirement for Intestate Succession and Certain Other Purposes

§ 121.051. Applicability of Subchapter

This subchapter does not apply if the application of this subchapter would result in the escheat of an intestate estate.

Derived from Probate Code § 47(a).


§ 121.052. Required Period of Survival for Intestate Succession and Certain Other Purposes

A person who does not survive a decedent by 120 hours is considered to have predeceased the decedent for purposes of the homestead allowance, exempt property, and intestate succession, and the decedent’s heirs are determined accordingly, except as otherwise provided by this chapter.

Derived from Probate Code § 47(a).


§ 121.053. Intestate Succession: Failure to Survive Presumed Under Certain Circumstances

A person who, if the person survived a decedent by 120 hours, would be the decedent’s heir is considered not to have survived the decedent for the required period if:

(1) the time of death of the decedent or of the person, or the times of death of both, cannot be determined; and

(2) the person’s survival for the required period after the decedent’s death cannot be established.

Derived from Probate Code § 47(a).


Electronic copy available at: https://ssrn.com/abstract=4537861
Subchapter C. Survival Requirements for Certain Beneficiaries

§ 121.101. Required Period of Survival for Devises

A devisee who does not survive the testator by 120 hours is treated as if the devisee predeceased the testator unless the testator’s will contains some language that:

(1) deals explicitly with simultaneous death or deaths in a common disaster; or

(2) requires the devisee to survive the testator, or to survive the testator for a stated period, to take under the will.

Derived from Probate Code § 47(c).

§ 121.102. Required Period of Survival for Contingent Beneficiary

(a) If property is disposed of in a manner that conditions the right of a beneficiary to succeed to an interest in the property on the beneficiary surviving another person, the beneficiary is considered not to have survived the other person unless the beneficiary survives the person by 120 hours, except as provided by Subsection (b).

(b) If an interest in property is given alternatively to one of two or more beneficiaries, with the right of each beneficiary to take being dependent on that beneficiary surviving the other beneficiary or beneficiaries, and all of the beneficiaries die within a period of less than 120 hours, the property shall be divided into as many equal portions as there are beneficiaries. The portions shall be distributed respectively to those who would have taken if each beneficiary had survived.

Derived from Probate Code § 47(c).

Subchapter D. Distribution of Certain Property on Person’s Failure to Survive for Required Period

§ 121.151. Distribution of Community Property

(a) This section applies to community property, including the proceeds of life or accident insurance that are community property and become payable to the estate of either the husband or wife.

(b) If a husband and wife die leaving community property but neither survives the other by 120 hours, one-half of all community property shall be distributed as if the husband had survived, and the other one-half shall be distributed as if the wife had survived.

Derived from Probate Code § 47(b).

§ 121.152. Distribution of Property Owned by Joint Owners

If property, including community property with a right of survivorship, is owned so that one of two joint owners is entitled to the whole of the property on the death of the other, but neither survives the other by 120 hours, one-half of the property shall be distributed as if one joint owner had survived, and the other one-half shall be distributed as if the other joint owner had survived. If there are more than two joint owners and all of the joint owners die within a period of less than 120 hours, the property shall be divided into as many equal portions as there are joint owners and the portions shall be distributed respectively to those who would have taken if each joint owner survived.

Derived from Probate Code § 47(d).

§ 121.153. Distribution of Certain Insurance Proceeds

(a) If the insured under a life or accident insurance policy and a beneficiary of the proceeds of that policy die within a period of less than 120 hours, the insured is considered to have survived the beneficiary for the purpose of determining the rights under the policy of the beneficiary or beneficiaries as such.

(b) This section does not prevent the applicability of Section 121.151 to proceeds of life or accident insurance that are community property.

Derived from Probate Code § 47(e).

Chapter 122. Disclaimers and Assignments

Subchapter A. Disclaimer of Interest or Power

§ 122.001. Definitions

§ 122.002. Disclaimer

Subchapter E. Assignment of Interest

§ 122.201. Assignment; When Assignment Ineffective or Limited

§ 122.202. Filing of Assignment

§ 122.204. Failure to Comply

§ 122.205. Gift

§ 122.206. Spendthrift Provision

Chapter 122. Disclaimers and Assignments

Electronic copy available at: https://ssrn.com/abstract=4537861
Subchapter A. Disclaimer of Interest or Power

Statutes in Context
Chapter 122
Effective September 1, 2015, disclaimers are governed by the Uniform Disclaimer of Property Interests Act set forth in Property Code Title 13.

§ 122.001. Definitions
In this subchapter:
(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;
   (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;
   (H) by a transfer on death deed; or
   (I) by a beneficiary designation as defined by Section 115.001.
(2) “Disclaim” and “disclaimer” have the meanings assigned by Section 240.002, Property Code.
(3) “Property” includes all legal and equitable interests, powers, and property, present or future, vested or contingent, and beneficial or burdensome, in whole or in part.

Derived from Probate Code § 37A(e).

Subchapter E. Assignment of Interest

Statutes in Context
§§ 122.201–122.206

Once an heir or beneficiary receives the property through intestate succession, by will, or as the beneficiary of a life insurance policy, the person may assign his/her interest in the property to a third person. Unlike with a disclaimer, the heir or beneficiary will be liable for transfer taxes and the property will become subject to the creditors of the heir or beneficiary. An heir’s or beneficiary’s assignment of the decedent’s property is ineffective if the person is a child support obligor whose child support obligations are in arrears. This provision for assignments mirrors the provision for disclaimers. A personal representative who lacks actual knowledge of the child support obligation has no liability for transferring the property to the heir’s or beneficiary’s assignee.

See Property Code § 112.035 for a discussion of the “spendthrift provision” mentioned in § 122.206.

§ 122.201. Assignment; When Assignment Ineffective or Limited
(a) Except as provided by Subsection (b), 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 Chapter 240, Property Code, may assign the property or interest in property to any person.

(b) An assignment of property or an interest in property under Subsection (a) by a child support obligor does not take effect to the extent the assigned property or interest in property could be applied to satisfy a support obligation of the obligor that has been:
   (1) administratively determined as evidence by a certified child support payment record produced by the Title IV-D agency in a Title IV-D case; or
   (2) confirmed and reduced to judgment as provided by Section 157.263, Family Code.
(c) In this section:
   (1) “Title IV-D agency” has the meaning assigned by Section 101.033, Family Code.
   (2) “Title IV-D case” has the meaning assigned by Section 101.034, Family Code.
   (d) If Subsection (b) applies, the child support obligee to whom child support arrearages are owed may enforce the child support obligation against the obligor as to the assigned property or interest in property by a lien or by any other remedy provided by law.
   (e) Unless the personal representative of a decedent’s estate has actual notice of a claim that an assignment of property or an interest in property under Subsection (a)
§ 122.202. Filing of Assignment

An assignment may, at the request of the assignor, be delivered or filed as provided for the delivery or filing of a disclaimer under Subchapter C, Chapter 240, Property Code.

Derived from Probate Code § 37B(b).


§ 122.204. Failure to Comply

Failure to comply with Chapter 240, Property Code, does not affect an assignment.

Derived from Probate Code § 37B(c).


§ 122.205. Gift

An assignment under this subchapter is a gift to the assignee and is not a disclaimer under Chapter 240, Property Code.

Derived from Probate Code § 37B(d).


§ 122.206. Spendthrift Provision

An assignment of property or interest that would defeat a spendthrift provision imposed in a trust may not be made under this subchapter.

Derived from Probate Code § 37B(e).


Chapter 123. Dissolution of Marriage

Subchapter A. Effect of Dissolution of Marriage on Will

§ 123.001. Will Provisions Made Before Dissolution of Marriage

§ 123.002. Treatment of Decedent’s Former Spouse

Subchapter B. Effect of Dissolution of Marriage on Certain Nontestamentary Transfers

§ 123.003. Revocation of Certain Nontestamentary Transfers; Treatment of Former Spouse as Beneficiary Under Certain Policies or Plans

§ 123.004. Effect of Revocation

§ 123.005. Liability of Certain Purchasers or Recipients of Certain Payments, Benefits, or Property

§ 123.006. Liability of Former Spouse for Certain Payments, Benefits, or Property

Subchapter C. Certain Marriages Voidable After Death

§ 123.101. Proceeding to Void Marriage Based on Mental Capacity Pending at Time of Death

§ 123.102. Application to Void Marriage After Death

§ 123.103. Action on Application to Void Marriage After Death

§ 123.104. Effect of Voided Marriage

Subchapter D. Effect of Dissolution of Marriage on Certain Multiple-Party Accounts

§ 123.151. Designation of Former Spouse or Relative of Former Spouse on Certain Multiple-Party Accounts

Chapter 123. Dissolution of Marriage

Subchapter A. Effect of Dissolution of Marriage on Will

Statutes in Context
Chapter 123, Subchapter A

Divorce was not a common occurrence in the early history of England or the United States. Thus, there is little common law addressing the ramifications of a divorce on a will executed during marriage which made a gift to a person who is now an ex-spouse. Early decisions usually held that the divorce had no effect on the will. The courts realized that a testator probably did not intend for the property to pass to an ex-spouse but felt that they had no legal basis for voiding the gift.

Section 123.001 provides that upon divorce, all provisions of a will executed during marriage in favor of an ex-spouse and the ex-spouse’s relatives who are not also relatives of the testator are void. The balance of the will remains effective as written. Thus, the ex-spouse would not be able to take as a beneficiary or serve in a fiduciary capacity such as the executor of the will, the guardian of any minor children, or the trustee of a testamentary trust. If the spouses remarry each other and remain married until the first spouse dies, the will remains effective
as originally written. The testator also may include a provision validating a gift in favor of a spouse regardless of whether the spouses are married or divorced at the time of the testator’s death.

Generally under § 123.002, the property left to the ex-spouse beneficiary (or a relative of the ex-spouse who is not a relative of the testator) passes under the will as if the ex-spouse had predeceased the testator.

See Family Code §§ 9.301 & 9.302 for similar provisions applicable to life insurance policies and retirement plans and Estates Code § 123.051–123.055 for what happens if the settlor and beneficiary of a revocable trust are divorced and the settlor fails to amend the trust to address this change in circumstance.

§ 123.001. Will Provisions Made Before Dissolution of Marriage

(a) In this section:
(1) “Irrevocable trust” means a trust:
(A) for which the trust instrument was executed before the dissolution of a testator’s marriage; and
(B) that the testator was not solely empowered by law or by the trust instrument to revoke.
(2) “Relative” means an individual related to another individual by:
(A) consanguinity, as determined under Section 573.022, Government Code; or
(B) 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, unless the will expressly provides otherwise:
(1) 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 had died immediately before the dissolution of the marriage.

§ 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.

Subchapter B. Effect of Dissolution of Marriage on Certain Nontestamentary Transfers

The predecessor to Chapter 123, Subchapter B, was added to the Probate Code (not the Trust Code) in 2005 to address the situation of what happens if the settlor and beneficiary of a revocable trust are divorced and the settlor fails to amend the trust to address this change in circumstance.

The 2019 Legislature copied these provisions into Property Code § 112.101-112.106 but did not remove them from the Estates Code.

The Estate Code provisions apply if the divorce occurs on or after September 1, 2005. It does not matter when the settlor created the trust.

Only written revocable trusts are covered by the new provisions. The ex-spouse remains as the
§ 123.051. Definitions

In this subchapter:

(1) “Disposition or appointment of property” includes a transfer of property to or a provision of another benefit to a beneficiary under a trust instrument.

(2) “Divorced individual” means an individual whose marriage has been dissolved by divorce, annulment, or a declaration that the marriage is void.

(2-a) “Relative” means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, respectively.

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

Derived from Probate Code § 471.


§ 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 as settlor before the divorced individual’s marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) revocably confers a general or special power of appointment on the divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) revocably nominates the divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

(b) Subsection (a) does not apply if one of the following provides otherwise:

(1) a court order;

(2) the express terms of a trust instrument executed by the divorced individual before the individual’s marriage was dissolved; or

(3) an express provision of a contract relating to the division of the marital estate entered into between the divorced individual and the individual’s former spouse before, during, or after the marriage.

(c) Sections 9.301 and 9.302, Family Code, govern the designation of a former spouse as a beneficiary of certain retirement benefit plans or other financial plans.

Derived from Probate Code § 472(a).

TEXAS ESTATES CODE

§ 123.055. Liability of Former Spouse for Certain Payments, Benefits, or Property

(a) An interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) An interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

Derived from Probate Code § 472(b).


§ 123.054. Liability of Certain Purchasers or Recipients of Certain Payments, Benefits, or Property

A bona fide purchaser of property from a divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this subchapter to return the payment, benefit, or property; and

(2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

Derived from Probate Code § 473(a).


§ 123.055. Liability of Former Spouse for Certain Payments, Benefits, or Property

A divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections 123.052(a) and (b):

(1) shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this subchapter; or

(2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

Derived from Probate Code § 473(b).


Statutes in Context

§ 123.056

If a married couple creates a joint revocable trust, divorce, and they do not divide the trust before the first spouse dies, the trust is divided into shares for each settlor based on each spouse’s contributions to the trust. Then, the provisions in favor of the ex-spouse and the ex-spouse’s relatives are rendered ineffective with regard to the share created for the deceased spouse unless a court order, express trust terms, or an applicable marital agreement provides otherwise.

§ 123.056. Certain Trusts With Divorced Individuals as Joint Settlors

(a) This section applies only to a trust created under a trust instrument that:

(1) was executed by two married individuals as settlers whose marriage to each other is subsequently dissolved; and

(2) includes a provision described by Section 123.052(a).

(b) On the death of one of the divorced individuals who is a settlor of a trust to which this section applies, the trustee shall divide the trust into two trusts, each of which shall be composed of the property attributable to the contributions of only one of the divorced individuals.

(c) An action authorized in a trust instrument described by Subsection (a) that requires the actions of both divorced individuals may be taken with respect to a trust established in accordance with Subsection (b) from the surviving divorced individual’s contributions solely by that divorced individual.

(d) The provisions of this subchapter apply independently to each trust established in accordance with Subsection (b) as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument described by Subsection (a).

(e) This section 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 two divorced individuals before their marriage was dissolved; or

(3) an express provision of a contract relating to the division of the marital estate entered into between the two divorced individuals before, during, or after their marriage.

Added by Acts 2017, 85th Leg., ch. 844, § 6, eff. Sept. 1, 2017.

Subchapter C. Certain Marriages Voidable After Death

After Death
The 2007 Legislature added a procedure to challenge the validity of a marriage based on the lack of mental capacity of one of the spouses even after the death of the allegedly incompetent spouse. If the court deems the marriage void, the surviving partner may not receive any benefits to which a surviving spouse is normally entitled such as the ability to be an heir and claim homestead rights. This section was designed to remedy marriages entered into due to the actions of abusive caregivers. The time limitations specified in this subchapter do not apply to setting aside a marriage on other grounds such as consanguinity. See Allebach v. Gollub, 668 S.W.3d 458, (Tex. App.—Houston [14th Dist.] 2023, pet. filed) (time limit not applicable to setting aside marriage between decedent and his niece).

§ 123.101. Proceeding to Void Marriage Based on Mental Capacity Pending at Time of Death

(a) If a proceeding under Chapter 6, Family Code, to declare a marriage void based on the lack of mental capacity of one of the parties to the marriage is pending on the date of death of one of those parties, or if a guardianship proceeding in which a court is requested under Chapter 6, Family Code, to declare a ward’s or proposed ward’s marriage void based on the lack of mental capacity of the ward or proposed ward is pending on the date of the ward’s or proposed ward’s death, the court may make the determination and declare the marriage void after the decedent’s death.

(b) In making a determination described by Subsection (a), the court shall apply the standards for an annulment prescribed by Section 6.108(a), Family Code.

Derived from Probate Code § 47A(a).


§ 123.102. Application to Void Marriage After Death

(a) Subject to Subsection (c), if a proceeding described by Section 123.101(a) is not pending on the date of a decedent’s death, an interested person may file an application with the court requesting that the court void the marriage of the decedent if:

(1) on the date of the decedent’s death, the decedent was married; and

(2) that marriage commenced not earlier than three years before the date of the decedent’s death.

(b) The notice applicable to a proceeding for a declaratory judgment under Chapter 37, Civil Practice and Remedies Code, applies to a proceeding under Subsection (a).

(c) An application authorized by Subsection (a) may not be filed after the first anniversary of the date of the decedent’s death.

Derived from Probate Code §§ 47A(b), (c).


§ 123.103. Action on Application to Void Marriage After Death

(a) Except as provided by Subsection (b), in a proceeding brought under Section 123.102, the court shall declare the decedent’s marriage void if the court finds that, on the date the marriage occurred, the decedent did not have the mental capacity to:

(1) consent to the marriage; and

(2) understand the nature of the marriage ceremony, if a ceremony occurred.

(b) A court that makes a finding described by Subsection (a) may not declare the decedent’s marriage void if the court finds that, after the date the marriage occurred, the decedent:

(1) gained the mental capacity to recognize the marriage relationship; and

(2) did recognize the marriage relationship.

Derived from Probate Code §§ 47A(d), (e).


§ 123.104. Effect of Voided Marriage

If the court declares a decedent’s marriage void in a proceeding described by Section 123.101(a) or brought under Section 123.102, the other party to the marriage is not considered the decedent’s surviving spouse for purposes of any law of this state.

Derived from Probate Code § 47A(f).


Subchapter D. Effect of Dissolution of Marriage on Certain Multiple-Party Accounts

Statutes in Context

§ 123.151

Provisions of a multiple-party account in favor of an ex-spouse or a relative of the ex-spouse who is not a relative of the decedent will not be effective to transfer the funds to the ex-spouse or ex-spouse’s relative unless there has been a reaffirmation of the survivorship agreement. The funds are distributed as if the ex-spouse or ex-relative had predeceased the deceased joint account holder. However, a financial institution is not liable for paying the funds to ex-spouse or ex-spouse’s relative.

§ 123.151. Designation of Former Spouse or Relative of Former Spouse on Certain Multiple-Party Accounts

(a) In this section:

(1) “Beneficiary,” “multiple-party account,” “party,” “P.O.D. account,” and “P.O.D. payee” have the meanings assigned by Chapter 113.

(2) “Public retirement system” has the meaning assigned by Section 802.001, Government Code.
(3) “Relative” has the meaning assigned by Section 123.051.

(4) “Survivorship agreement” means an agreement described by Section 113.151.

(b) If a decedent established [designates a spouse or a relative of a spouse who is not a relative of the decedent as a P.O.D. payee or beneficiary, including alternative P.O.D. payee or beneficiary, on] a P.O.D. account or other multiple-party account and the decedent’s marriage was later dissolved by divorce, annulment, or a declaration that the marriage is void, any payable on request after death designation provision or provision of a survivorship agreement with respect to that account in favor of the decedent’s former spouse or a relative of a spouse who is not a relative of the decedent is not effective as to that spouse or relative unless:

(1) the court decree dissolving the marriage:

(A) designates the former spouse or the former spouse’s relative as the P.O.D. payee or beneficiary;

(B) reaffirms the survivorship agreement or the relevant provision of the survivorship agreement in favor of the former spouse or the former spouse’s relative;

(2) after the marriage was dissolved, the decedent:

(A) redesignated the former spouse or the former spouse’s relative as the P.O.D. payee or beneficiary;

(B) reaffirmed the survivorship agreement in writing; or

(3) the former spouse or the former spouse’s relative is designated to receive, or under the survivorship agreement would receive, the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either the decedent or the former spouse.

(c) If a designation is not effective under Subsection (b), a multiple-party account is payable to the named alternative P.O.D. payee or beneficiary or, if an alternative P.O.D. payee or beneficiary is not named, to the estate of the decedent.

(c-1) If the provision of a survivorship agreement is not effective under Subsection (b), for purposes of determining the disposition of the decedent’s interest in the account, the former spouse or former spouse’s relative who would have received the decedent’s interest if the provision were effective is treated as if that spouse or relative predeceased the decedent.

(d) A financial institution or other person obligated to pay an account described by Subsection (b) that pays the account to the former spouse or the former spouse’s relative as P.O.D. payee or beneficiary under a designation that is not effective under Subsection (b) is liable for payment of the account to the person provided by Subsection (c) only if:

(1) before payment of the account to the designated P.O.D. payee or beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the P.O.D. payee or beneficiary is not effective under Subsection (b); and

(2) the payor has not interpled the account funds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.

(d-1) A financial institution is not liable for payment of an account to a former spouse or the former spouse’s relative as a party to the account, notwithstanding the fact that a designation or provision of a survivorship agreement in favor of that person is not effective under Subsection (b).

(e) This section does not affect the right of a former spouse to assert an ownership interest in an undivided multiple-party account described by Subsection (b).

(f) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system.


Chapter 124. Valuation and Taxation of Estate Property

Subchapter A. Apportionment of Taxes

§ 124.001. Definitions

§ 124.002. References to Internal Revenue Code

§ 124.003. Apportionment Directed by Federal Law

§ 124.004. Effect of Disclaimers

§ 124.005. General Apportionment of Estate Tax; Exceptions

§ 124.006. Effect of Tax Deductions, Exemptions, or Credits

§ 124.007. Exclusion of Certain Property From Apportionment

§ 124.008. Exclusion of Certain Temporary Interests From Apportionment

§ 124.009. Qualified Real Property

§ 124.010. Effect of Extension or Deficiency in Payment of Estate Taxes; Liability of Representative

§ 124.011. Apportionment of Interest and Penalties

§ 124.012. Apportionment of Representative’s Expenses

§ 124.013. Withholding of Estate Tax Share by Representative

§ 124.014. Recovery of Estate Tax Share Not Withheld

§ 124.015. Recovery of Unpaid Estate Tax; Reimbursement

§ 124.016. Time to Initiate Actions to Recover Unpaid Estate Tax

§ 124.017. Tax or Death Duty Payable to Another State

§ 124.018. Payment of Expenses and Attorney’s Fees

Subchapter B. Satisfaction of Certain Pecuniary Gifts
§ 124.051. Valuation of Property Distributed in Kind in Satisfaction of Pecuniary Gift

§ 124.052. Satisfaction of Marital Deduction Pecuniary Gifts With Assets in Kind

Chapter 124. Valuation and Taxation of Estate Property

Subchapter A. Apportionment of Taxes

Statutes in Context
Chapter 124

The testator’s estate may be subject to a tax on the privilege of making gratuitous transfers upon the testator’s death, that is, the federal or Texas estate tax. What testamentary gifts bear the burden of these tax obligations? Some states do not have any special rules for tax liabilities. In other words, gifts abate to pay tax liabilities just like they do to pay other claims against the estate. On the other hand, an increasing number of states, including Texas in Chapter 124, have tax apportionment statutes so that the amount of each gift is reduced by the amount of estate tax attributable to the transfer. In effect, each transfer is reduced by its fair share of the tax rather than being subsidized by lower ranking gifts. Tax apportionment prevents the residual gift, which is often the most important gift in the will, from bearing the entire estate tax burden in addition to all of the other claims against the estate.

State and federal governments include many non-probate transfers in a testator’s taxable estate. Chapter 124 covers these non-probate assets as well as testamentary transfers. Federal law mandates that life insurance beneficiaries and recipients under powers of appointment shoulder their fair share of transfer taxes. See I.R.C. §§ 2206 and 2207. Texas extends apportionment to other transfers, such as multiple-party bank accounts, survivorship rights, and trusts over which the testator held the power of revocation.

Chapter 124 is designed to carry out the testator’s presumed intent. The legislature believed that most testators would want each transfer, be it probate or non-probate, to be responsible for its own tax. If the testator does not agree, the testator may provide otherwise in the will and those instructions will prevail over the apportionment statute. Note that the apportionment statute may be inadvertently trumped if the testator includes a generic clause in the will such as, “The executor shall pay all taxes payable because of my death from my residuary estate.” See Peterson v. Mayse, 993 S.W.2d 217 (Tex. App. — Tyler 1999, writ denied).

§ 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 former 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 2601 or 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 2601 or 2701(d)).
(4) “Person” includes a trust, natural person, partnership, association, joint stock company, corporation, government, political subdivision, or governmental agency.
(5) “Person interested in the estate” means a person, or a fiduciary on behalf of that person, who is entitled to receive or who has received, from a decedent or because of the death of the decedent, property included in the decedent’s estate for purposes of the estate tax. The term does not include a creditor of the decedent or of the decedent’s estate.
(6) “Representative” means the representative, executor, or administrator of an estate, or any other person who is required to pay estate taxes assessed against the estate.

Derived from Probate Code §§ 322A(a), (s).


§ 124.002. References to Internal Revenue Code

A reference in this subchapter to a section of the Internal Revenue Code of 1986 refers to that section as it exists at the time in question. The reference also includes a corresponding section of a subsequent Internal Revenue Code and, if the referenced section is renumbered, the section as renumbered.

Derived from Probate Code § 322A(x).


§ 124.003. Apportionment Directed by Federal Law

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

Derived from Probate Code § 322A(l).
§ 124.004. Effect of Disclaimers

This subchapter shall be applied after giving effect to any disclaimers made in accordance with Chapter 240, Property Code.

Derived from Probate Code § 322A(p).


§ 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 viva or testamentary instrument disposing of or creating an interest in property, specifically directs the manner of apportionment of estate tax or grants a discretionary power of apportionment to another person. A direction for the apportionment or nonapportionment of estate tax is limited to the estate tax on the property passing under the instrument unless the instrument is a will that provides otherwise.

(c) If directions under Subsection (b) for the apportionment of an estate tax are provided in two or more instruments executed by the same person and the directions in those instruments conflict, the instrument disposing of or creating an interest in the property to be taxed controls. If directions for the apportionment of estate tax are provided in two or more instruments executed by different persons and the directions in those instruments conflict, the direction of the person in whose estate the property is included controls.

(d) Subsections (b) and (c) do not:

(1) grant or enlarge the power of a person to apportion estate tax to property passing under an instrument created by another person in excess of the estate tax attributable to the property; or
(2) apply to the extent federal law directs a different manner of apportionment.

Derived from Probate Code § 322A(b).


§ 124.006. Effect of Tax Deductions, Exemptions, or Credits

(a) A deduction, exemption, or credit allowed by law in connection with the estate tax inures to a person interested in the estate as provided by this section.

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

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

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

Derived from Probate Code §§ 322A(c), (d), (e), (f).


§ 124.007. Exclusion of Certain Property from Apportionment

(a) To the extent that property passing to or in trust for a surviving spouse or a charitable, public, or similar gift or devise is not an allowable deduction for purposes of the estate tax solely because of an inheritance tax or other death tax imposed on and deductible from the property:

(1) the property is not included in the computation provided for by Section 124.005; and
(2) no apportionment is made against the property.

(b) The exclusion provided by this section does not apply if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d), Internal Revenue Code of 1986, for a state death tax on a transfer for a public, charitable, or religious use.

Derived from Probate Code § 322A(g).


§ 124.008. Exclusion of Certain Temporary Interests from Apportionment

(a) Except as provided by Section 124.009(c), the following temporary interests are not subject to apportionment:

(1) an interest in income;
(2) an estate for years or for life; or
(3) another temporary interest in any property or fund.
(b) The estate tax apportionable to a temporary interest described by Subsection (a) and the remainder, if any, is chargeable against the corpus of the property or the funds that are subject to the temporary interest and remainder.

Derived from Probate Code § 322A(h).


§ 124.009. Qualified Real Property

(a) In this section, “qualified real property” has the meaning assigned by Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A).
(b) If an election is made under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A), the representative shall apportion estate taxes according to the amount of federal estate tax that would be payable if the election were not made. The representative shall apply the amount of the reduction of the estate tax resulting from the election to reduce the amount of the estate tax allocated based on the value of the qualified real property that is the subject of the election. If the amount of that reduction is greater than the amount of the taxes allocated based on the value of the qualified real property, the representative shall:

(1) apply the excess amount to the portion of the taxes allocated for all other property; and
(2) apportion the amount described by Subdivision (1) under Section 124.005(a).
(c) If additional federal estate tax is imposed under Section 2032A(c), Internal Revenue Code of 1986 (26 U.S.C. Section 2032A), because of an early disposition or cessation of a qualified use, the additional tax shall be equitably apportioned among the persons who have an interest in the portion of the qualified real property to which the additional tax is attributable in proportion to their interests. The additional tax is a charge against that qualified real property. If the qualified real property is split between one or more life or term interests and remainder interests, the additional tax shall be apportioned to each person whose action or cessation of use caused the imposition of additional tax, unless all persons with an interest in the qualified real property agree in writing to dispose of the property, in which case the additional tax shall be apportioned among the remainder interests.

Derived from Probate Code § 322A(i).


§ 124.010. Effect of Extension or Deficiency in Payment of Estate Taxes; Liability of Representative

(a) If the date for the payment of any portion of an estate tax is extended:

(1) the amount of the extended tax shall be apportioned to the persons who receive the specific property that gives rise to the extension; and
(2) those persons are entitled to the benefits and shall bear the burdens of the extension.
(b) Except as provided by Subsection (c), interest on an extension of estate tax and interest and penalties on a deficiency shall be apportioned equitably to reflect the benefits and burdens of the extension or deficiency and of any tax deduction associated with the interest and penalties.
(c) A representative shall be charged with the amount of any penalty or interest that is assessed due to delay caused by the representative’s negligence.

Derived from Probate Code §§ 322A(k), (m).


§ 124.011. Apportionment of Interest and Penalties

(a) Interest and penalties assessed against an estate by a taxing authority shall be apportioned among and charged to the persons interested in the estate in the manner provided by Section 124.005 unless, on application by any person interested in the estate, the court determines that:

(1) the proposed apportionment is not equitable; or
(2) the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative.

(b) If the apportionment is not equitable, the court may apportion interest and penalties in an equitable manner.

(c) If the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative, the court may charge the representative with the amount of the interest and penalties assessed attributable to the representative’s conduct.

Derived from Probate Code § 322A(q).


§ 124.012. Apportionment of Representative’s Expenses

(a) Expenses reasonably incurred by a representative in determination of the amount, apportionment, or collection of the estate tax shall be apportioned among and charged to persons interested in the estate in the manner provided by Section 124.005 unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable.

(b) If the court determines that the proposed apportionment is not equitable, the court may apportion the expenses in an equitable manner.

Derived from Probate Code § 322A(r).

§ 124.013. Withholding of Estate Tax Share by Representative

A representative who has possession of any estate property that is distributable to a person interested in the estate may withhold from that property an amount equal to the person’s apportioned share of the estate tax.

Derived from Probate Code § 322A(t).


§ 124.014. Recovery of Estate Tax Share Not Withheld

(a) If property includable in an estate does not come into possession of a representative obligated to pay the estate tax, the representative shall:

(1) recover from each person interested in the estate the amount of the estate tax apportioned to the person under this subchapter; or

(2) assign to persons affected by the tax obligation the representative’s right of recovery.

(b) The obligation to recover a tax under Subsection (a) does not apply if:

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

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

Derived from Probate Code § 322A(n).


§ 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 Section 124.005 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 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.

(d) A representative who has a right of reimbursement may petition a court to determine the right of reimbursement.

Derived from Probate Code §§ 322A(o), (u).


§ 124.016. Time to Initiate Actions to Recover Unpaid Estate Tax

(a) A representative required to recover unpaid amounts of estate tax apportioned to persons interested in the estate under this subchapter may not be required to initiate the necessary actions until the expiration of the 90th day after the date of the final determination by the Internal Revenue Service of the amount of the estate tax.

(b) A representative who initiates an action under this subchapter within a reasonable time after the expiration of the 90-day period is not subject to any liability or surcharge because a portion of the estate tax apportioned to a person interested in the estate was collectible during a period after the death of the decedent but thereafter became uncollectible.

Derived from Probate Code § 322A(v).


§ 124.017. Tax or Death Duty Payable to Another State

(a) A representative acting in another state may initiate an action in a court of this state to recover from a person interested in the estate who is domiciled in this state or owns property in this state subject to attachment or execution, a proportionate amount of:

(1) the federal estate tax;

(2) an estate tax payable to another state; or

(3) a death duty due by a decedent’s estate to another state.

(b) In the action, a determination of apportionment by the court having jurisdiction of the administration of the decedent’s estate in the other state is prima facie correct.

(c) This section applies only if the state in which the determination of apportionment was made provides a substantially similar remedy.

Derived from Probate Code § 322A(w).


§ 124.018. Payment of Expenses and Attorney’s Fees

The court shall award necessary expenses, including reasonable attorney’s fees, to the prevailing party in an action initiated by a person for the collection of estate taxes from a person interested in the estate to whom estate taxes were apportioned and charged under Section 124.005.

Derived from Probate Code § 322A(y).


Subchapter B. Satisfaction of Certain Pecuniary Gifts
Chapter 124, Subchapter B, helps assure that marital deduction pecuniary gifts which authorize in-kind distribution of assets meet the "fairly representative" test and thus qualify for the deduction.

§ 124.051. Valuation of Property Distributed in Kind in Satisfaction of Pecuniary Gift

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

Derived from Probate Code § 378A(b).


§ 124.052. Satisfaction of Marital Deduction Pecuniary Gifts with Assets in Kind

(a) This section applies to an executor, administrator, or trustee authorized under the will or trust of a decedent to satisfy a pecuniary devise or transfer in trust in kind with assets at their value for federal estate tax purposes, in satisfaction of a gift intended to qualify, or that otherwise would qualify, for a United States estate tax marital deduction.

(b) Unless the governing instrument provides otherwise, an executor, administrator, or trustee, in order to implement a devise or transfer described by Subsection (a), shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the devise or transfer.

Derived from Probate Code § 378A(a).


SUBTITLE D. PROCEEDINGS BEFORE ADMINISTRATION OF ESTATE

Chapter 151. Examination of Documents and Safe Deposit Boxes

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

A testator often protects the will and other important documents by placing them in a safe deposit box. Chapter 151 provides guidelines for certain parties, such as a spouse, parent, adult descendent, or executor, to gain access to the safe deposit box for the purpose of obtaining the decedent’s will as well as a burial plot deed and life insurance policies. These provisions provide procedures for both court and non-court ordered access.

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

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

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

(2) the documents or safe deposit box may contain:

(A) a will of the decedent;

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

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

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

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

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

Derived from Probate Code § 36B.


§ 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 leased the safe deposit box to permit the court representative to take possession of a document described by Section 151.001(a)(2).
(b) The court representative shall deliver:
(1) a will to the clerk of a court that:
   (A) has probate jurisdiction; and
   (B) is located in the same county as the court of the judge who ordered the examination under Section 151.001;
(2) a burial plot deed to the person designated by the judge in the order for the examination; or
(3) an insurance policy to a beneficiary named in the policy.
(c) A court clerk to whom a will is delivered under Subsection (b) shall issue a receipt for the will to the court representative.

Derived from Probate Code § 36C.

§ 151.003. Examination of Document or Safe Deposit Box Without Court Order
(a) A person who possesses or controls a document delivered by a decedent for safekeeping or who leases a safe deposit box to a decedent may permit examination of the document or the contents of the safe deposit box by:
   (1) the decedent’s spouse;
   (2) a parent of the decedent;
   (3) a descendant of the decedent who is at least 18 years of age; or
   (4) a person named as executor of the decedent’s estate in a copy of a document that the person has and that appears to be a will of the decedent.
(b) An examination under Subsection (a) shall be conducted in the presence of the person who possesses or controls the document or who leases the safe deposit box or, if the person is a corporation, an officer of the corporation.

Derived from Probate Code § 36D.

§ 151.004. Delivery of Document Without Court Order
(a) Subject to Subsection (c), a person who permits an examination of a decedent’s document or safe deposit box under Section 151.003 may deliver:
   (1) a document appearing to be the decedent’s will to:
      (A) the clerk of a court that:
         (i) has probate jurisdiction; and
         (ii) is located in the county in which the decedent resided; or
      (B) a person named in the document as an executor of the decedent’s estate;
   (2) a document appearing to be a deed to a burial plot in which the decedent is to be buried, or appearing to give burial instructions, to the person conducting the examination; or
   (3) a document appearing to be an insurance policy on the decedent’s life to a beneficiary named in the policy.

(b) A person who has leased a safe deposit box to the decedent shall keep a copy of a document delivered by the person under Subsection (a)(1) until the fourth anniversary of the date of delivery.
(c) A person may not deliver a document under Subsection (a) unless the person examining the document:
   (1) requests delivery of the document; and
   (2) issues a receipt for the document to the person delivering the document.
Derived from Probate Code § 36E.

§ 151.005. Restriction on Removal of Contents of Safe Deposit Box
A person may not remove the contents of a decedent’s safe deposit box except as provided by Section 151.002, Section 151.004, or another law.

Derived from Probate Code § 36F.

Chapter 152. Emergency Intervention
Subchapter A. Emergency Intervention Application
§ 152.001. Application Authorized
§ 152.002. Contents of Application
§ 152.003. Additional Contents of Application: Instructions Regarding Decedent’s Funeral and Remains
§ 152.004. Time and Place of Filing

Subchapter B. Order for Emergency Intervention
§ 152.051. Issuance of Order Regarding Funeral and Burial Expenses
§ 152.052. Issuance of Order Regarding Access to Certain Personal Property
§ 152.053. Duration of Order
§ 152.054. Certified Copies of Order
§ 152.055. Liability of Certain Persons in Connection With Order

Subchapter C. Limitation on Right of Decedent’s Surviving Spouse to Control Decedent’s Burial or Cremation
§ 152.101. Application Authorized
§ 152.102. Hearing; Issuance of Order

Chapter 152. Emergency Intervention
Subchapter A. Emergency Intervention Application
Statutes in Context
Chapter 152

Chapter 152 provides a method for a person qualified to serve as an administrator under § 304.001 to obtain court permission in an accelerated time frame to (1) obtain access to the decedent’s funds to pay for the decedent’s funeral and burial expenses and (2) to obtain access to the decedent’s personal property. The application cannot be filed earlier than the third day after the decedent’s death, was located in accommodations owned by the decedent that, on the date of the decedent’s death, was located in accommodations rented by the decedent that contain the decedent’s personal property and the applicant has been denied access to those accommodations.

§ 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 or reimbursement of the decedent’s funeral and burial expenses; or
(2) the protection and storage of personal property owned by the decedent that, on the date of the decedent’s death, was located in accommodations rented by the decedent.

(b) An applicant may file an application under this section only if:

(1) an application or affidavit has not been filed and is not pending under Section 256.052, 256.054, or 301.052 or Chapter 205 or 401; and
(2) the applicant needs to:

(A) obtain funds for the payment or reimbursement of the decedent’s funeral and burial expenses; or
(B) gain access to accommodations rented by a decedent that contain the decedent’s personal property and the applicant has been denied access to those accommodations.

§ 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 or paid by the applicant for the decedent’s funeral and burial; and

(5) the names of any known or ascertainable heirs and devisees of the decedent.

(b) In addition to the information required under Subsection (a), if emergency intervention is requested to obtain funds needed for the payment or reimbursement 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;

(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; and

(4) if applicable, the amount paid by the applicant for the funeral and burial procedures described by Subdivision (2).

(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.


§ 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 or reimbursement of a decedent’s funeral and burial expenses, the application must also state whether there are or were 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, or must have fully complied, as appropriate, with the instructions.

(b) If written instructions do not exist, the applicant may not permit or have permitted the decedent’s remains
to be cremated unless the applicant obtains or obtained the court’s permission to cremate the remains.

Derived from Probate Code § 111(b).


§ 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 nine months after the date of the decedent’s death.

Derived from Probate Code § 108.


Subchapter B. Order for Emergency Intervention

§ 152.051. Issuance of Order Regarding Funeral and Burial Expenses

If on review of an application filed under Section 152.001 the court determines that emergency intervention is necessary to obtain funds needed for the payment or reimbursement 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 or the applicant, as applicable, only for:

(1) reasonable and necessary attorney’s fees for the attorney who obtained the order;
(2) court costs for obtaining the order; and
(3) funeral and burial expenses not to exceed $5,000 as ordered by the court to provide the decedent with a reasonable, dignified, and appropriate funeral and burial.

Derived from Probate Code § 113(a).


§ 152.052. Issuance of Order Regarding Access to Certain Personal Property

If on review of an application filed under Section 152.001 the court determines that emergency intervention is necessary to gain access to accommodations rented by the decedent that, at the time of the decedent’s death, contain the decedent’s personal property, the court may order one or more of the following:

(1) that the owner or agent of the accommodations shall grant the applicant access to the accommodations at a reasonable time and in the presence of the owner or agent;
(2) that the applicant and owner or agent of the accommodations shall jointly prepare and file with the court a list that generally describes the decedent’s property found at the premises;
(3) that the applicant or the owner or agent of the accommodations may remove and store the decedent’s property at another location until claimed by the decedent’s heirs;
(4) that the applicant has only the powers that are specifically stated in the order and that are necessary to protect the decedent’s property that is the subject of the application; or
(5) that funds of the decedent held by an individual, an employer, or a financial institution be paid to the applicant for reasonable and necessary attorney’s fees and court costs for obtaining the order.

Derived from Probate Code § 113(b).

§ 152.053. Duration of Order

The authority of an applicant under an emergency intervention order expires on the earlier of:

(1) the 90th day after the date the order is issued; or
(2) the date a personal representative of the decedent’s estate qualifies.

Derived from Probate Code § 114(a).


§ 152.054. Certified Copies of Order

The court clerk may issue certified copies of an emergency intervention order on request of the applicant only until the earlier of:

(1) the 90th day after the date the order is signed; or
(2) the date a personal representative of the decedent’s estate qualifies.

Derived from Probate Code § 113(c).


§ 152.055. Liability of Certain Persons in Connection with Order

(a) A person who is provided a certified copy of an emergency intervention order within the period prescribed by Section 152.054 is not personally liable for an action taken by the person in accordance with and in reliance on the order.

(b) If a personal representative has not been appointed when an emergency intervention order issued under Section 152.052 expires, a person in possession of the decedent’s personal property that is the subject of the order, without incurring civil liability, may:

(1) release the property to the decedent’s heirs; or
(2) dispose of the property under Subchapter C, Chapter 54, Property Code, or Section 7.209 or 7.210, Business & Commerce Code.

Derived from Probate Code §§ 113(d), 114(b).  

Subchapter C. Limitation on Right of Decedent’s Surviving Spouse to Control Decedent’s Burial or Cremation

Statutes in Context  
Chapter 152

Chapter 152 permits the person serving as the executor of a deceased spouse’s will or the deceased spouse's next of kin to file an application to limit the right of the surviving spouse to control the deceased spouse’s burial or cremation. The purpose of this procedure is to prevent a spouse who is suspected of being involved in the deceased spouse’s death from burying or cremating the deceased spouse’s body and thereby concealing or destroying potentially inculpatory evidence. See also Health & Safety Code § 711.002.

§ 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 decedent’s surviving spouse to control the decedent’s burial or cremation.

(b) For purposes of Subsection (a), the decedent’s next of kin:

(1) is determined in accordance with order of descent, with the person nearest in order of descent first, and so on; and

(2) includes the decedent’s descendants who legally adopted the decedent or who have been legally adopted by the decedent.

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

(1) whether the decedent died intestate or testate;

(2) that the surviving spouse is alleged to be a principal or accomplice in a wilful act that resulted in the decedent’s death; and

(3) that good cause exists to limit the surviving spouse’s right to control the decedent’s burial or cremation.

Derived from Probate Code § 115(c), (d).  

Chapter 153. Access to Intestate’s Account With Financial Institution

§ 153.001 Definitions

§ 153.002 Inapplicability of Chapter

§ 153.003 Court-Ordered Access to Intestate’s Account Information

Statutes in Context  
Chapter 153

If an intestate dies owning a bank account that has funds which do not pass to another person under the terms of the account, an interested person may apply to the court for an order requiring the financial institution to reveal the balance in the account if 90 days have passed since the intestate died, no letters have been issued, and no petition for the appointment of a personal representative is pending. This procedure, added by the 2015 Legislature, will help heirs determine the appropriate administration method for the decedent’s estate.

§ 153.001 Definitions

In this chapter:

(1) “Account” has the meaning assigned by Section 113.001.

(2) “Financial institution” has the meaning assigned by Section 201.101, Finance Code.

(3) “P.O.D. account” and “trust account” have the meanings assigned by Section 113.004.

New.  
Added by Acts 2015, 84th Leg., ch. 217, § 1, eff. Sept. 1, 2015.
§ 153.002.  Inapplicability of Chapter

This chapter does not apply to:
(1) an account with a beneficiary designation;
(2) a P.O.D. account;
(3) a trust account; or
(4) an account that provides for a right of survivorship.

New.
Added by Acts 2015, 84th Leg., ch. 217, § 1, eff. Sept. 1, 2015.

§ 153.003.  Court-Ordered Access to Intestate’s Account Information

(a) In this section, “interested person” means an heir, spouse, creditor, or any other having a property right in or claim against the decedent’s estate.

(b) On application of an interested person or on the court’s own motion, a court may issue an order requiring a financial institution to release to the person named in the order information concerning the balance of each account that is maintained at the financial institution of a decedent who dies intestate if:
(1) 90 days have elapsed since the date of the decedent’s death;
(2) no petition for the appointment of a personal representative for the decedent’s estate is pending; and
(3) no letters testamentary or of administration have been granted with respect to the estate.

New.
Added by Acts 2015, 84th Leg., ch. 217, § 1, eff. Sept. 1, 2015.

SUBTITLE E. INTESTATE SUCCESSION

Chapter 201. Descent and Distribution

Subchapter A. Intestate Succession

§ 201.001.  Estate of an Intestate Not Leaving Spouse
§ 201.002.  Separate Estate of an Intestate
§ 201.003.  Community Estate of an Intestate

Subchapter B. Matters Affecting Inheritance

§ 201.051.  Maternal Inheritance
§ 201.052.  Paternal Inheritance
§ 201.053.  Effect of Reliance on Affidavit of Heirship
§ 201.054.  Adopted Child
§ 201.055.  Issue of Void or Voidable Marriage
§ 201.056.  Persons Not in Being
§ 201.057.  Collateral Kindred of Whole and Half Blood
§ 201.058.  Convicted Persons
§ 201.059.  Person Who Dies by Casualty
§ 201.060.  Alienage

Subchapter C. Distribution to Heirs

§ 201.101.  Determination of Per Capita With Representation Distribution
§ 201.102.  No Distinction Based on Property’s Source
§ 201.103.  Treatment of Intestate’s Estate

Subchapter D. Advancements

§ 201.151.  Determination of Advancement; Date of Valuation
§ 201.152.  Survival of Recipient Required

Chapter 201. Descent and Distribution

Statutes in Context
Chapter 201

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

Chapter 201 of the Estates Code governs what happens when a person dies without a valid will or dies with a valid will which does not encompass all of the person’s probate estate. When this happens, the person’s probate property which is not covered by a valid will is distributed through a process called intestate succession. A person may die totally intestate, that is, intestate as to the person, if the person did not leave any type of valid will. A person may also die partially intestate, that is, intestate as to property, if the person’s valid will fails to dispose of all of the person’s probate estate.

Statutes in Context
Chapter 201, Subchapter A

Early in the evolution of civilization, societies developed customs and laws to control the transmission of a person’s property after death. Our
modern intestacy laws are traced originally to the Anglo-Saxons. The Norman Conquest of 1066 A.D. played a significant role in the development of these rules. William the Conqueror was irritated that English landowners refused to recognize his right to the English Crown after his victory. Accordingly, William took ownership of all land by force and instituted the Norman form of feudalism. Under this system, the Crown was the true owner of all real property with others holding the property in a hierarchical scheme under which lower-ranked holders owed various financial and service-oriented duties to higher-ranked holders.

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

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

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

The intestate distribution scheme in Texas is derived from §§ 201.001–201.002 (distribution of property of a single decedent and the separate property of a married decedent), § 201.003 (distribution of the community property of a married decedent), and § 201.101 (determination of the type of distribution). Below is a summary of these sections assuming that the decedent died on or after September 1, 1993.

**A. Individual Property Distribution (Unmarried Intestate)**

The distribution of the property of an unmarried intestate is governed by Estates Code § 201.001. Real and personal property are treated the same.

1. **Descendants Survive**

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

2. **No Descendants Survive But a Parent Survives**

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

a. **Both Parents Survive**

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

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

If only one parent survives the intestate, then the surviving parent receives one-half of the estate with the remaining one-half passing to the siblings and their descendants. See § D, below, for a discussion of how this distribution is done.

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

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

3. **No Surviving Descendants or Parents**

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

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

5. No Surviving Heir

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

B. Distribution of Community Property of Married Intestate

The distribution of the community property of an intestate who was married at the time of death is governed by Estates Code § 201.003. Real and personal property are treated the same.

1. If No Surviving Descendants

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

2. If Surviving Children or Their Descendants

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

a. No Non-Spousal Descendants

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

b. Non-Spousal Descendants

If any of the deceased spouse’s surviving descendants are not also descendants of the surviving spouse, then the community property is divided. The surviving spouse retains one-half of the community property, that is, the one-half the surviving spouse already owned by virtue of it being community property. The descendants of the deceased spouse inherit the deceased spouse’s one-half of the community property. All of the deceased spouse’s descendants are treated as a group regardless of whether the other parent is or is not the surviving spouse.

C. Distribution of Separate Property of Married Intestate

Unlike most states, Texas has retained a vestige of the common law distinction between the descent of real property and the distribution of personal property in § 201.002.

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

1. Surviving Descendants

a. Personal Property

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

b. Real Property

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

2. No Surviving Descendants

a. Personal Property

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

b. Real Property

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

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

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

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

D. Type of Distribution

Whenever individuals such as children, grandchildren, siblings and their descendants, cousins, etc. are heirs, you must determine how to divide their shares among them. See Estates Code § 201.101.

1. Per Capita

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

2. Per Capita by Representation

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

EXAMPLES

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

Answer: Wilma’s entire estate passes to Sammy.

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

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

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

a. How would H’s property be distributed?

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


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

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

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


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

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


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

Answer: Only the distribution of community property in each case is different. In each situation, W would only retain her one-half of the community. H’s share of the community property passes to his descendants because not all of his descendants are descendants of W. In (a), each of A, B, and C would get 1/6 of the total community (1/3 of H’s one-half). In (b), A would receive 1/6, each of N, O, and P, 1/18, and each of R and S, 1/12. In (c), each grandchild would receive 1/12 of the total community.
Example 4: Mother and Father, now deceased, had three children, Arthur, Bill, and Chris. Arthur died survived by his wife, Peggy, and their two children, Linda and Ken. Bill is unmarried and childless. Chris is married to Wendy and they have no children. Chris died intestate with both community and separate property. In addition, Chris owned real and personal property of each type. How would Chris’ property be distributed?

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

§ 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 parcnary 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 entire estate passes to the person’s siblings and the siblings’ descendants.

(g) If none of the kindred described by Subsections (b)-(e) survive the person, the person’s entire estate passes to the person’s paternal kindred as provided by Subsection (g); and

(h) 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.

(b) The moiety passing to the person’s maternal kindred passes in the same order and manner as the other moiety passes to the decedent’s paternal kindred under Subsection (g).

Derived from Probate Code § 38(a).


§ 201.002. Separate Estate of an Intestate

(a) If a person who dies intestate leaves a surviving spouse, the estate, other than a community estate, to which the person had title descends and passes as provided by this section.

(b) If the person has one or more children or a descendant of a child:

(1) the surviving spouse takes one-third of the personal estate;

(2) two-thirds of the personal estate descends to the person’s child or children, and the descendants of a child or children; and

(3) the surviving spouse is entitled to a life estate in one-third of the person’s land, with the remainder descending to the person’s child or children and the descendants of a child or children.

(c) Except as provided by Subsection (d), if the person has no child and no descendant of a child:

(1) the surviving spouse is entitled to all of the personal estate;

(2) the surviving spouse is entitled to one-half of the person’s land without a remainder to any person; and

(3) one-half of the person’s land passes and is inherited according to the rules of descent and distribution.

(d) If the person described by Subsection (c) does not leave a surviving parent or one or more surviving siblings, or their descendants, the surviving spouse is entitled to the entire estate.

Derived from Probate Code § 38(b).


Statutes in Context

§ 201.003

Section 201.003 provides the intestate distribution scheme for community property. See the Statutes in Context to Chapter 201, Subchapter A for a discussion of this provision.
Note that the distribution of community property was considerably different prior to September 1, 1993; the deceased spouse’s half of the community passed to the deceased spouse’s children even if all of the deceased spouse’s children were also children of the surviving spouse.

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

§ 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 other descendant of the surviving spouse, the deceased spouse’s undivided one-half interest in the community estate passes to the deceased spouse’s children or other descendants. The descendants inherit only the portion of that estate to which they would be entitled under Section 201.101. In every case, the community estate passes charged with the debts against the community estate.

Derived from Probate Code § 45.

Subchapter B. Matters Affecting Inheritance

§§ 201.051–201.052

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

This harsh treatment of nonmarital children, formerly referred to by pejorative terms such as “illegitimate children” or “bastards,” has been greatly alleviated under modern law. In the 1977 United States Supreme Court case of Trimble v. Gordon, 430 U.S. 726 (1977), the Court held that marital and nonmarital children must be treated the same when determining heirs under intestacy statutes. The Court held that discriminating against non-marital children was a violation of the equal protection clause of the 14th Amendment.

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

§ 201.051. Maternal Inheritance
(a) For purposes of inheritance, a child is the child of the child’s biological or adopted mother, and the child and the child’s issue shall inherit from the child’s mother and the child’s maternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and they may inherit from the child and the child’s issue. However, if a child has intended parents, as defined by Section 160.102, Family Code, under a gestational agreement validated under Subchapter I, Chapter 160, Family Code, the child is the child of the intended mother and not the biological mother or gestational mother unless the biological mother is also the intended mother.
(b) This section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 or by the child’s issue.

Derived from Probate Code § 42(a).

§ 201.052. Paternal Inheritance
(a) For purposes of inheritance, a child is the child of the child’s biological father if:
   (1) the child is born under circumstances described by Section 160.201, Family Code;
   (2) the child is adjudicated to be the child of the father by court decree under Chapter 160, Family Code;
   (3) the child was adopted by the child’s father; or
   (4) the father executed an acknowledgment of paternity under Subchapter D, Chapter 160, Family Code, or a similar statement properly executed in another jurisdiction.

(a-1) Notwithstanding Subsection (a), if a child has intended parents, as defined by Section 160.102, Family Code, under a gestational agreement validated under Subchapter I, Chapter 160, Family Code, the child is the child of the intended father and not the biological father unless the biological father is also the intended father.
(b) A child described by Subsection (a) or (a-1) and the child’s issue shall inherit from the child’s father and the child’s paternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and they may inherit from the child and the child’s issue.

(c) A person may petition the probate court for a determination of right of inheritance from a decedent if the person:

(1) claims to be a biological child of the decedent and is not otherwise presumed to be a child of the decedent; or

(2) claims inheritance through a biological child of the decedent who is not otherwise presumed to be a child of the decedent.

(d) If under Subsection (c) the court finds by clear and convincing evidence that the purported father was the biological father of the child:

(1) the child is treated as any other child of the decedent for purposes of inheritance; and

(2) the child and the child’s issue may inherit from the child’s paternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and they may inherit from the child and the child’s issue.

(e) This section does not permit inheritance by a purported father of a child, recognized or not, if the purported father’s parental rights have been terminated.

(f) This section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 or by the child’s issue.

Derived from Probate Code § 42(b)(1).


§ 201.053. Effect of Reliance on Affidavit of Heirship

(a) A person who purchases for valuable consideration any interest in property of the heirs of a decedent acquires good title to the interest that the person would have received, as purchaser, in the absence of a claim of the child described by Subdivision (1), if the person:

(1) in good faith relies on the declarations in an affidavit of heirship that does not include a child who at the time of the sale or contract of sale of the property:

(A) is not a presumed child of the decedent; and

(B) has not under a final court decree or judgment been found to be entitled to treatment under Section 201.052 as a child of the decedent; and

(2) is without knowledge of the claim of the child described by Subdivision (1).

(b) Subsection (a) does not affect any liability of the heirs for the proceeds of a sale described by Subsection (a) to the child who was not included in the affidavit of heirship.

Derived from Probate Code § 42(b)(2).


Statutes in Context

§ 201.054

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

Section 201.054 details the effect of adoption on intestate distribution. The rights of three parties are at issue: (1) the adopted child; (2) the adoptive parents; and (3) the biological parents. Adopted children will inherit from and through the adoptive parents and, unlike in many states, also from and through the biological parents if the child was adopted as a minor. Adoptive parents are entitled to inherit from and through the adopted child. The inheritance rights of the biological parents, on the other hand, are cut off — biological parents do not inherit from or through their child who was given up for adoption. See also Family Code §§ 162.017 (adoption of minors) and 162.507 (adoption of adults).

Although Estates Code § 201.054(b) provides that only an adopted-out person retains the right to inherit from the biological relatives and that the right to inherit from the biological side of the family does not pass down to the descendants of the adopted-out person, the court in In re Estate of Forister, 421 S.W.3d 175 (Tex. App.—San Antonio 2013, pet. denied), explained that the statutory section must be construed as a whole and in doing so, it is clear that adoption does not cut off the inheritance rights of the adopted person as well as those of the adopted person’s descendants.

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

Effective with regard to intestate individuals who die on or after September 1, 2005, the adopted adult
Texas Estates Code

may no longer inherit from or through the adult’s biological parent. See Family Code § 162.507(c).

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

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

The discovery rule does not apply to heirship claims by adoptees. Little v. Smith, 643 S.W.2d 414 (Tex. 1987).

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

Despite apparent clear statutory language to the contrary, the Texas courts consistently held that when an adopted by estoppel child dies, the child’s property passes to the biological family rather than to the adoptive family as is the case when a formally adopted child dies. See Heien v. Crabtree, 369 S.W.2d 28 (Tex. 1963). The 2017 Legislature changed the definition of “child” in § 22.004(a) to expressly include an equitably adopted child and added language including equitably adopted children in this statute which effectively overrule this case.

An adult may not be adopted by estoppel. See Dampier v. Williams, 493 S.W.3d 118 (Tex. App. – Houston [1 st Dist.] 2016, no pet.).

§ 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 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.

(e) For purposes of this section:

(1) “Adopted [or adopted] child” means a child:

(A) adopted through an existing or former statutory procedure; or

(B) considered by a court to be equitably adopted or adopted by acts of estoppel.

(2) “Adoptive parent” means a parent:

(A) who adopted a child through an existing or former statutory procedure; or

(B) considered by a court to have equitably adopted a child or adopted a child by acts of estoppel.

Derived from Probate Code § 40.


§ 201.055. Issue of Void or Voidable Marriage

The issue of a marriage declared void or voided by annulment shall be treated in the same manner as the issue of a valid marriage.

Derived from Probate Code § 42(d).


Statutes in Context

§ 201.056

Posthumous heirs are heirs who are born after the intestate dies. The 2015 Legislature amended this section to provide that a posthumous heir must be in gestation at the time of the intestate’s death to obtain inheritance rights. This amendment precludes the use of the decedent’s sperm, eggs, or embryos to produce heirs who are born years or decades after the intestate’s death. In addition there are no longer different rules for lineal and collateral posthumous heirs.

§ 201.056. Persons Not in Being

No right of inheritance accrues to any person unless the person is born before, or is in gestation at, the time of the intestate’s death and survives for at least 120 hours. A person is:

(1) considered to be in gestation at the time of the intestate’s death if insemination or implantation
occurs at or before the time of the intestate’s death; and

(2) presumed to be in gestation at the time of the intestate’s death if the person is born before the 301st day after the date of the intestate’s death.

Derived from Probate Code § 41(a).


Statutes in Context

§ 201.057

The term “half-blood” refers to collateral relatives who share only one common ancestor. For example, a brother and sister who have the same mother but different fathers would be half-siblings. On the other hand, if the brother and sister have the same mother but who share only one common ancestor. For example, Brenda and Charlie receiving one share each with Arthur receiving two shares (1/2 of the estate). The estate would be distributed to half- and whole-blooded heirs under § 201.057 is relevant only if distribution is made to collateral heirs of the intestate. Remember that the distinction between whole and half-blooded heirs is relevant only if distribution is made to collateral heirs of the intestate.

A simple way to determine the proper distribution to half- and whole-blooded heirs under § 201.057 is to calculate the total number of shares by creating two shares for each whole-blooded heir and one share for each half-blooded heir. Each whole-blooded heir receives two of these shares and each half-blooded heir receives one. For example, if there are three sibling heirs, Whole Blood Arthur, Half Blood Brenda, and Half Blood Charlie, four shares would be created (two for Arthur and one each for Brenda and Charlie). The estate would be distributed with Arthur receiving two shares (1/2 of the estate) and Brenda and Charlie receiving one share each (1/4 of the estate).

§ 201.057. Collateral Kindred of Whole and Half Blood

If the inheritance from an intestate passes to the collateral kindred of the intestate and part of the collateral kindred are of whole blood and the other part are of half blood of the intestate, each of the collateral kindred who is of half blood inherits only half as much as that inherited by each of the collateral kindred who is of whole blood. If all of the collateral kindred are of half blood of the intestate, each of the collateral kindred inherits a whole portion.

Derived from Probate Code § 41(b).


Statutes in Context

§ 201.058

Corruption of blood refers to a common law principle that prevented a person from inheriting land if the person was convicted or imprisoned for certain offenses, especially treason and other capital crimes. Article I, § 21 of the Texas Constitution prohibits corruption of blood and § 201.058 restates this prohibition. Accordingly, an imprisoned person, even one on death row, may inherit property.

Forfeiture refers to a common law principle that caused all the property of a person who was convicted of a felony to be forfeited to the government so there was no property for the person’s heirs to inherit. Article I, § 21 of the Texas Constitution prohibits forfeiture and § 201.058 restates this prohibition. Note, however, that under federal law, a person convicted of certain drug offenses forfeits a portion of the person’s property to the government. 21 U.S.C. § 853.

To prevent murderers from benefiting from their evil acts, most state legislatures have enacted statutes prohibiting murderers from inheriting. These provisions are often referred to as slayers’ statutes. Section 201.058, however, only applies if a beneficiary of a life insurance policy is convicted and sentenced as a principal or accomplice in wilfully bringing about the death of the insured. Texas courts resort to the constructive trust principle to prevent the murdering heir from inheriting. Legal title does not pass to the murderer but equity treats the murderer as a constructive trustee of the title because of the unconscionable mode of its acquisition and then compels the murderer to convey it to the heirs of the deceased, exclusive of the murderer. See Pritchett v. Henry, 287 S.W.2d 546 (Tex. Civ. App. — Beaumont 1955, writ dism’d).

§ 201.058. Convicted Persons

(a) No conviction shall work corruption of blood or forfeiture of estate except as provided by Subsection (b).

(b) If a beneficiary of a life insurance policy or contract is convicted and sentenced as a principal or accomplice in wilfully bringing about the death of the insured, the proceeds of the insurance policy or contract shall be paid in the manner provided by the Insurance Code.
§ 201.059. Person Who Dies by Casualty

Death by casualty does not result in forfeiture of estate.

§ 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.

§ 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.
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 a child, elderly individual, or disabled individual);
(K) Section 25.02 (prohibited sexual conduct);
(L) Section 43.25 (sexual performance by a child); or
(M) Section 43.26 (possession or promotion of child pornography).

(b) On a determination under Subsection (a) that the parent of a child may not inherit from or through the child, the parent shall be treated as if the parent predeceased the child for purposes of:

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

Derived from Probate Code §§ 41(e), (f).


Subchapter C. Distribution to Heirs

§ 201.101. Determination of Per Capita with Representation Distribution

(a) The children, descendants, brothers, sisters, uncles, aunts, or other relatives of an intestate who stand in the first or same degree of relationship alone and come into the distribution of the intestate’s estate take per capita, i.e., each heir takes the same amount. For example, assume that Grandfather had three children; two predeceased, one-third passes to the surviving child, with one-third passing to the children of each deceased child (grandchildren). If each deceased child had a different number of grandchildren, the shares of the grandchildren will be different (e.g., if one deceased child had two children, each gets one-sixth; if the other deceased child had three children, each gets one-ninth).

See the examples in the Statutes in Context for Chapter 201, Subchapter A.

§ 201.102. 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.
§ 201.103. Treatment of Intestate’s Estate

All of the estate to which an intestate had title at the time of death descends and vests in the intestate’s heirs in the same manner as if the intestate had been the original purchaser.

Derived from Probate Code § 39.

Subchapter D. Advancements

Statutes in Context
Chapter 201, Subchapter D

An advancement is a special type of inter vivos gift. The advancer (donor) anticipates dying intestate and the advancee (donee) is an individual who is likely to be one of the advancer’s heirs. Although the gift is irrevocable and unconditional, the advancer intends the advancement to be an early distribution from the advancer’s estate. Thus, the advancee’s share of the advancer’s estate is reduced to compensate for the advancement.

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

Section 201.151 provides that property given during an intestate’s life to an heir is an advancement only if (1) the decedent acknowledges the advancement in a contemporaneous writing at the time of or prior to the transfer, or (2) the heir acknowledges in writing, at any time, that the transfer of property is to be treated as an advancement.

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

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

Example 2 Intestate had three children, Arthur, Brenda, and Charles. Intestate made a $100,000 advancement to Arthur. Intestate died with a distributable probate estate of $500,000. What is the proper distribution of Intestate’s estate?

Arthur receives none of Intestate’s estate, Brenda receives $25,000 and Charles receives $25,000. Like other inter vivos gifts, advancements are irrevocable. Thus, Arthur is under no obligation to actually return the advanced amount to Intestate’s estate. Arthur is not indebted for the advanced amount. Instead, Arthur simply does not share in Intestate’s estate because he has already received property in excess of the share to which he would be entitled under a hotchpotch computation. Thus, Intestate’s entire estate is distributed to Brenda and Charles.

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

Arthur receives $80,000, Brenda receives $210,000, and Charles receives $210,000. Advancements are valued as of the date of the advancement under § 201.151(b). Thus, subsequent appreciation and depreciation of advanced property is ignored when going into hotchpot. The house valued at $100,000 and the car valued at $30,000 come into hotchpot. The value of the hotchpot, that is, advancements plus Intestate’s estate, is $630,000. Each of the three children is entitled to $210,000. Because Arthur already received advancements valued at $130,000, he receives only $80,000 from the estate. Brenda and Charles each receive a full $210,000 share because neither of them had received an advancement.

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

Under § 201.152, the advancement is not considered because Arthur did not survive Intestate and thus hotchpot does not occur unless Intestate specified in writing that the advancement is to be
brought into hotspot even if Intestate predeceases Arthur. Accordingly, Brenda and Charles would each receive one-third of Intestate’s probate estate (approximately $166,666) while Sam and Susan would each receive one-sixth (approximately $83,333). The policy behind this approach is that the advancee’s heirs may not have received the advanced property or its value from the advancee’s estate.

The analogous concept to advancements in a will context is called satisfaction and is governed by §§ 255.101–255.102.

§ 201.151. Determination of Advancement; Date of Valuation

(a) If a decedent dies intestate as to all or part of the decedent’s estate, property that the decedent gave during the decedent’s lifetime to a person who, on the date of the decedent’s death, is the decedent’s heir, or property received by the decedent’s heir under a nontestamentary transfer under Subchapter B, Chapter 111, or Chapter 112 or 113, is an advancement against the heir’s intestate share of the estate only if:

(1) the decedent declared in a contemporaneous writing, or the heir acknowledged in writing, that the gift or nontestamentary transfer is an advancement; or
(2) the decedent’s contemporaneous writing or the heir’s written acknowledgment otherwise indicates that the gift or nontestamentary transfer is to be considered in computing the division and distribution of the decedent’s intestate estate.

(b) For purposes of Subsection (a), property that is advanced is valued as of the earlier of:

(1) the time that the heir came into possession or enjoyment of the property; or
(2) the time of the decedent’s death.

Derived from Probate Code §§ 44(a), (b).


§ 201.152. Survival of Recipient Required

If the recipient of property described by Section 201.151 does not survive the decedent, the property is not considered in computing the division and distribution of the decedent’s intestate estate unless the decedent’s contemporaneous writing provides otherwise.

Derived from Probate Code § 44(c).


Chapter 202. Determination of Heirship

Subchapter A. Authorization and Procedures for Commencement of Proceeding to Declare Heirship

§ 202.001. General Authorization For and Nature of Proceeding to Declare Heirship

§ 202.002. Circumstances Under Which Proceeding to Declare Heirship is Authorized


§ 202.004. Persons Who May Commence Proceeding to Declare Heirship

§ 202.005. Application for Proceeding to Declare Heirship

§ 202.006. Request for Determination of Necessity for Administration

§ 202.007. Affidavit Supporting Application Required

§ 202.008. Required Parties to Proceeding to Declare Heirship

§ 202.009. Attorney Ad Litem

Subchapter B. Notice of Proceeding to Declare Heirship

§ 202.051. Service of Citation by Qualified Delivery Method When Recipient’s Name and Address are Known or Ascertainable

§ 202.052. Service of Citation by Publication When Recipient’s Name or Address is Not Ascertainable

§ 202.053. Required Posting of Citation

§ 202.054. Personal Service of Citation May Be Required

§ 202.055. Service of Citation on Certain Persons Not Required

§ 202.056. Waiver of Service of Citation on Certain Persons Not Permitted

§ 202.057. Affidavit of Service of Citation

Subchapter C. Transfer of Pending Proceeding to Declare Heirship

§ 202.101. Required Transfer of Pending Proceeding to Declare Heirship Under Certain Circumstances

§ 202.102. Transfer of Records

§ 202.103. Procedures Applicable to Transferred Proceeding to Declare Heirship; Consolidation With Other Proceeding

Subchapter D. Evidence Relating to Determination of Heirship

§ 202.151. Evidence in Proceeding to Declare Heirship

Subchapter E. Judgment in Proceeding to Declare Heirship

§ 202.201. Required Statements in Judgment


§ 202.203. Correction of Judgment at Request of Heir Not Properly Served

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 202.001. General Authorization for and Nature of Proceeding to Declare Heirship

In the manner provided by this chapter, a court may determine through a proceeding to declare heirship:

(1) the persons who are a decedent’s heirs and only heirs; and

(2) the heirs’ respective shares and interests under the laws of this state in the decedent’s estate or, if applicable, in the trust.

Derived from Probate Code § 48(a).

§ 202.002. Circumstances Under Which Proceeding to Declare Heirship Is Authorized

A court may conduct a proceeding to declare heirship when:

(1) a person dies intestate owning or entitled to property in this state and there has been no administration in this state of the person’s estate;

(2) there has been a will probated in this state or elsewhere or an administration in this state of a decedent’s estate, but:
   (A) property in this state was omitted from the will or administration; or
   (B) no final disposition of property in this state has been made in the administration; or
   (3) it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent.

Derived from Probate Code § 48(a).

§ 202.004. Persons Who May Commence Proceeding to Declare Heirship

A proceeding to declare heirship of a decedent may be commenced and maintained under a circumstance specified by Section 202.002 by:

(1) the personal representative of the decedent’s estate;

(2) a person claiming to be a creditor or the owner of all or part of the decedent’s estate;

(3) if the decedent was a ward with respect to whom a guardian of the estate had been appointed, the guardian of the estate, provided that the proceeding is commenced and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the decedent’s death;

(4) a party seeking the appointment of an independent administrator under Section 401.003; or

(5) the trustee of a trust holding assets for the benefit of a decedent.

Derived from Probate Code § 49(a).
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.20,

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 202.005. Application for Proceeding to Declare Heirship

A person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004 to commence the proceeding. The application must state:

(1) the decedent’s name and date and place of death;
(2) the names and physical addresses where service can be had of the decedent’s heirs, the relationship of each heir to the decedent, whether each heir is an adult or minor, and the true interest of the applicant and each of the heirs in the decedent’s estate or in the trust, as applicable;
(3) if the date or place of the decedent’s death or the name or physical address where service can be had 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 date or place of the decedent’s death or the name or physical address where service can be had 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, as applicable:
   (A) belonging to the decedent’s estate that is subject to distribution under a judgment in the proceeding; or
   (B) held in trust for the benefit of the decedent, as applicable; and
(8) an explanation for the omission from the application of any of the information required by this section.

Derived from Probate Code § 48(b).

§ 202.006. Request for Determination of Necessity for Administration

A person who files an application under Section 202.005 not later than the fourth anniversary of the date of the death of the decedent who is the subject of the application may request that the court determine whether there is a need for administration of the decedent’s estate. The court shall hear evidence on the issue and, in the court’s judgment, make a determination of the issue.

Derived from Probate Code § 48(b).

§ 202.007. Affidavit Supporting Application Required

(a) An application filed under Section 202.005 must be supported by the affidavit of each applicant.

(b) An affidavit of an applicant under Subsection (a) must state that, to the applicant’s knowledge:
   (1) all the allegations in the application are true; and
   (2) no material fact or circumstance has been omitted from the application.

Derived from Probate Code § 49(b).

§ 202.008. Required Parties to Proceeding to Declare Heirship

Each of the following persons must be made a party to a proceeding to declare heirship:

(1) each unknown heir of the decedent who is the subject of the proceeding;
(2) each person who is named as an heir of the decedent in the application filed under Section 202.005; and
(3) each person who is, on the filing date of the application, shown as owning a share or interest in any real property described in the application by the deed records of the county in which the property is located.

Derived from Probate Code § 49(b).

§ 202.009. Attorney Ad Litem

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

(b) The court may expand the appointment of the attorney ad litem appointed under Subsection (a) to include representation of an heir who is an incapacitated person on a finding that the appointment is necessary to protect the interests of the heir.

Derived from Probate Code § 53(b), (c).

Subchapter B. Notice of Proceeding to Declare Heirship
§ 202.051. Service of Citation by Qualified Delivery Method [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 a qualified delivery method [registered or certified mail] on:

(1) each distributee who is 12 years of age or older and whose name and address are known or can be ascertained through the exercise of reasonable diligence; and

(2) the parent, managing conservator, or guardian of each distributee who is younger than 12 years of age if the name and address of the parent, managing conservator, or guardian are known or can be reasonably ascertained.

Derived from Probate Code § 50(a).


§ 202.052. Service of Citation by Publication.

If the address of a person or entity on whom citation is required to be served cannot be ascertained, citation must be served to 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 required by this subchapter to be served on the distributee.

Derived from Probate Code § 50(b).


§ 202.053. Required Posting of Citation

Except in a proceeding in which citation is served by publication as provided by Section 202.052, citation in a proceeding to declare heirship must be posted in:

(1) the county in which the proceeding is commenced; and

(2) the county of the last residence of the decedent who is the subject of the proceeding.

Derived from Probate Code § 50(c).


§ 202.054. Personal Service of Citation May Be Required

(a) 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.

(b) If a distributee to be cited under Subsection (a) is absent from or is not a resident of this state, any disinterested person competent to make an oath that the citation was served may serve the citation.

Derived from Probate Code § 50(d).


§ 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, entered an appearance in the proceeding, or waived citation under this subchapter is not required to be served by any method.

Derived from Probate Code § 50(e).


§ 202.056. Waiver of Service of Citation

(a) [Except as provided by Subsection (b)(2), a distributee who is 16 years of age or older may waive citation required by this subchapter to be served on the distributee.

(b) A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is younger than 16 years of age may waive citation required by this subchapter to be served on the distributee.

(c) A distributee who is 12 years of age or older may not waive citation required by this subchapter to be served on the distributee.

Derived from Probate Code § 50(f).


Statutes in Context

§ 202.057

A court cannot enter an order determining heirs unless the applicant files (1) a copy of the notice and proof of delivery sent to interested parties and (2) an affidavit of the applicant or a certificate signed by the applicant’s attorney stating that notice was given, the name of each person who received the notice if not shown on the proof, and the name of each person who waived citation.

§ 202.057. Affidavit of Service of Citation

(a) A person who files an application under Section 202.005 shall file with the court:

(1) a copy of any citation required by this subchapter and the proof of delivery of service of the citation; and

(2) an affidavit sworn to by the applicant or a certificate signed by the applicant’s attorney stating:
TEXAS ESTATES CODE

§ 202.056.     Affidavit or Certificate of Service of Citation

(A) that the citation was served as required by this subchapter;
(B) the name of each person to whom the citation was served, if the person’s name is not shown on the proof of delivery; and
(C) if service of citation is waived under Section 202.056;
(i) the name of each person who waived citation under that section; and
(ii) if citation is waived under Section 202.056(b)(1), the name of the distributee and the representative capacity of the person who waived citation required to be served on the distributee.

(b) The court may not enter an order in the proceeding to declare heirship under Subchapter E until the affidavit or certificate required by Subsection (a) is filed.

New.

Subchapter C. Transfer of Pending Proceeding to Declare Heirship

§ 202.101.     Required Transfer of Pending Proceeding to Declare Heirship Under Certain Circumstances

If, after a proceeding to declare heirship is commenced, an administration of the estate of the decedent who is the subject of the proceeding is granted in this state or the decedent’s will is admitted to probate in this state, the court in which the proceeding to declare heirship is pending shall, by an order entered of record in the proceeding, transfer the proceeding to the court in which the administration was granted or the will was probated.

Derived from Probate Code § 51.

§ 202.102.     Transfer of Records

The clerk of the court from which a proceeding to declare heirship is transferred under Section 202.101 shall, on entry of the order under that section, send to the clerk of the court named in the order a certified transcript of all pleadings, entries in the judge’s probate docket, and orders of the court in the proceeding. The clerk of the court to which the proceeding is transferred shall:
(1) file the transcript; and
(2) docket the proceeding.

Derived from Probate Code § 51.

§ 202.103.     Procedures Applicable to Transferred Proceeding to Declare Heirship; Consolidation with Other Proceeding

A proceeding to declare heirship that is transferred under Section 202.101 shall proceed as though the proceeding was originally filed in the court to which the proceeding is transferred. The court may consolidate the proceeding with the other proceeding pending in that court.

Derived from Probate Code § 51.

Subchapter D. Evidence Relating to Determination of Heirship

§ 202.151.     Evidence in Proceeding to Declare Heirship

(a) The court may require that any testimony admitted as evidence in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively.

(b) Except as provided by Subsection (c), in a proceeding to declare heirship, testimony regarding a decedent’s heirs and family history must be taken:
(1) from two disinterested and credible witnesses in open court;
(2) by deposition in accordance with Section 51.203;
(3) by a recorded statement of facts contained in:
(A) an affidavit or instrument that satisfies the requirements of Section 203.001; or
(B) a judgment of a court of record as specified by Section 203.001(a)(1)(B); or
(4) in accordance with the Texas Rules of Civil Procedure.

(c) If it is shown to the court’s satisfaction in a proceeding to declare heirship that, after a diligent search was made, only one disinterested and credible witness can be found who can make the required proof in the proceeding, the testimony of that witness must be taken:
(1) in open court;
(2) by deposition in accordance with Section 51.203;
(3) by a recorded statement of facts contained in:
(A) an affidavit or instrument that satisfies the requirements of Section 203.001; or
(B) a judgment of a court of record as specified by Section 203.001(a)(1)(B); or
(4) in accordance with the Texas Rules of Civil Procedure.

(d) Notwithstanding any other law, a person interested in an estate solely because the person is a creditor or has a claim against the estate may serve as a witness under this section if the person is otherwise a credible witness.

Derived from Probate Code § 53(a).
Subchapter E. Judgment in Proceeding to Declare Heirship

§ 202.201. Required Statements in Judgment

(a) The judgment in a proceeding to declare heirship must state:
   (1) the names of the heirs of the decedent who is the subject of the proceeding; and
   (2) the heirs’ respective shares and interests in the decedent’s property.

(b) If the proof in a proceeding to declare heirship is in any respect deficient, the judgment in the proceeding must state that.

Derived from Probate Code § 54.


(a) The judgment in a proceeding to declare heirship is a final judgment.

(b) At the request of an interested person, the judgment in a proceeding to declare heirship may be appealed or reviewed within the same time limits and in the same manner as other judgments in probate matters.

Derived from Probate Code § 55(a).


§ 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 a qualified delivery method[registered or certified mail] or personal service in the proceeding, the heir may:

(1) have the judgment in the proceeding corrected by bill of review:
   (A) at any time, but not later than the fourth anniversary of the date of the judgment; or
   (B) after the passage of any length of time, on proof of actual fraud; and
   (2) recover the heir’s just share of the property or the value of that share from:
      (A) the heirs named in the judgment; and
      (B) those who claim under the heirs named in the judgment and who are not bona fide purchasers for value.

Derived from Probate Code § 55(A).


§ 202.204. Limitation of Liability of Certain Persons Acting in Accordance with Judgment

(a) The judgment in a proceeding to declare heirship is conclusive in a suit between an heir omitted from the judgment and a bona fide purchaser for value who purchased property after entry of the judgment without actual notice of the claim of the omitted heir, regardless of whether the judgment is subsequently modified, set aside, or nullified.

(b) A person is not liable to another person for the following actions performed in good faith after a judgment is entered in a proceeding to declare heirship:

   (1) delivering the property of the decedent who was the subject of the proceeding to the persons named as heirs in the judgment; or
   (2) engaging in any other transaction with the persons named as heirs in the judgment.

Derived from Probate Code § 55(b).


§ 202.205. Effect of Certain Judgments on Liability to Creditors

(a) A judgment in a proceeding to declare heirship stating that there is no necessity for administration of the estate of the decedent who is the subject of the proceeding constitutes authorization for a person who owes money to the estate, has custody of estate property, acts as registrar or transfer agent of an evidence of interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with an heir named in the judgment to take the following actions without liability to a creditor of the estate or other person:

   (1) to pay, deliver, or transfer the property or the evidence of property rights to an heir named in the judgment; or
   (2) to purchase property from an heir named in the judgment.

(b) An heir named in a judgment in a proceeding to declare heirship is entitled to enforce the heir’s right to payment, delivery, or transfer described by Subsection (a) by suit.

(c) Except as provided by this section, this chapter does not affect the rights or remedies of the creditors of a decedent who is the subject of a proceeding to declare heirship.

Derived from Probate Code § 55(c).


§ 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

Electronic copy available at: https://ssrn.com/abstract=4537861
(3) indexed in the name of the decedent who was
the subject of the proceeding as grantor and in the
names of the heirs named in the judgment as grantees.
(b) On the filing of a judgment in accordance with
Subsection (a), the judgment constitutes constructive
notice of the facts stated in the judgment.

Derived from Probate Code § 56.

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

Chapter 203. Nonjudicial Evidence of
Heirship

§ 203.001. Recorded Statement of Facts as Prima Facie
Evidence of Heirship

§ 203.002. Form of Affidavit Concerning Identity of
Heirs

Chapter 203. Nonjudicial Evidence of
Heirship

Statutes in Context
Chapter 203

Some title companies, oil landpersons, and
financial institutions may rely on an affidavit of
heirship, standing alone without a formal
determination of heirship, to clear defects in title to
real property.

§ 203.001. Recorded Statement of Facts as Prima
Facie Evidence of Heirship

(a) A court shall receive in a proceeding to declare
heirship or a suit involving title to property a statement of
facts concerning the family history, genealogy, marital
status, or the identity of the heirs of a decedent as prima
facie evidence of the facts contained in the statement if:

(1) the statement is contained in:

(A) an affidavit or other instrument legally
executed and acknowledged or sworn to before,
and certified by, an officer authorized to take
acknowledgments or oaths, as applicable; or

(B) a judgment of a court of record; and

(2) the affidavit or instrument containing the
statement has been of record for five years or more
in the deed records of a county in this state in which the
property is located at the time the suit involving title
to property is commenced, or in the deed records of a
county in this state in which the decedent was
domiciled or had a fixed place of residence at the time
of the decedent’s death.

(b) If there is an error in a statement of facts in a
recorded affidavit or instrument described by Subsection
(a), anyone interested in a proceeding in which the
affidavit or instrument is offered in evidence may prove
the true facts.

(c) An affidavit of facts concerning the identity of a
decedent’s heirs as to an interest in real property that is
filed in a proceeding or suit described by Subsection (a)
may be in the form prescribed by Section 203.002.

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

Derived from Probate Code § 52.

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

§ 203.002. Form of Affidavit Concerning Identity of
Heirs

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

AFFIDAVIT OF FACTS CONCERNING THE
IDENTITY OF HEIRS

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

1. My name is __________ (insert name of affiant),
and I live at __________ (insert address of affiant’s
residence). I am personally familiar with the family and
marital history of __________ (“Decedent”) (insert name
of decedent), and I have personal knowledge of the facts
stated in this affidavit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Signed this ___ day of __________, ___.
__________________________________
(signature of affiant)
State of __________
County of __________
Sworn to and subscribed to before me on __________
(date) by __________ (insert name of affiant).
_________________________________
(signature of notarial officer)
(Seal, if any, of notary) __________
(printed name)
My commission expires: __________

Derived from Probate Code § 52A.

Chapter 204. Genetic Testing in
Proceedings to Declare Heirship

Subchapter A. General Provisions
§ 204.001. Proceedings and Records Public

A proceeding under this chapter or Chapter 202
involving genetic testing is open to the public as in other
civil cases. Papers and records in the proceeding are
available for public inspection.

Derived from Probate Code § 53E.

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

Subchapter B. Court Orders for Genetic
Testing in Proceedings to Declare Heirship

§ 204.051. Order for Genetic Testing
§ 204.052. Advancement of Costs
§ 204.053. Order and Advancement of Costs for
Subsequent Genetic Testing

§ 204.054. Submission of Genetic Material by Other
Relative Under Certain Circumstances
§ 204.055. Genetic Testing of Deceased Individual
§ 204.056. Criminal Penalty

Subchapter C. Results of Genetic Testing
§ 204.101. Results of Genetic Testing; Admissibility
§ 204.102. Presumption Regarding Results of Genetic
Testing; Rebuttal
§ 204.103. Contesting Results of Genetic Testing

Subchapter D. Use of Results of Genetic
Testing in Certain Proceedings to Declare
Heirship
§ 204.151. Applicability of Subchapter
§ 204.152. Presumption; Rebuttal
§ 204.153. Effect of Inconclusive Results of Genetic
Testing

Subchapter E. Additional Orders
Following Results of Genetic Testing
§ 204.201. Order for Change of Name
§ 204.052. Advancement of Costs

Subject to any assessment of costs following a proceeding to declare heirship in accordance with Rule 131, Texas Rules of Civil Procedure, the cost of genetic testing ordered under Section 204.051 must be advanced:

(1) by a party to the proceeding who requests the testing;
(2) as agreed by the parties and approved by the court; or
(3) as ordered by the court.

Derived from Probate Code § 53A(b).


§ 204.053. Order and Advancement of Costs for Subsequent Genetic Testing

(a) Subject to Subsection (b), the court shall order genetic testing subsequent to the testing conducted under Section 204.051 if:

(1) a party to the proceeding to declare heirship contests the results of the genetic testing ordered under Section 204.051; and
(2) the party contesting the results requests that additional testing be conducted.

(b) If the results of the genetic testing ordered under Section 204.051 identify a tested individual as an heir of the decedent, the court may order additional genetic testing in accordance with Subsection (a) only if the party contesting those results pays for the additional testing in advance.

Derived from Probate Code §§ 53A(c), (d).


§ 204.054. Submission of Genetic Material by Other Relative Under Certain Circumstances

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

(1) a parent, sibling, or child of the individual whose genetic material is not available; or
(2) any other relative of that individual, as necessary to conduct the testing.

Derived from Probate Code § 53A(e).


§ 204.055. Genetic Testing of Deceased Individual

On good cause shown, the court may order:

(1) genetic testing of a deceased individual under this subchapter; and
(2) if necessary, removal of the remains of the deceased individual as provided by Section 711.004, Health and Safety Code, for that testing.

Derived from Probate Code § 53A(f).


§ 204.056. Criminal Penalty

(a) An individual commits an offense if:

(1) the individual intentionally releases an identifiable sample of the genetic material of another individual that was provided for purposes of genetic testing ordered under this subchapter; and
(2) the release:

(A) is for a purpose not related to the proceeding to declare heirship; and
(B) was not ordered by the court or done in accordance with written permission obtained from the individual who provided the sample.

(b) An offense under this section is a Class A misdemeanor.

Derived from Probate Code § 53A(g).


Subchapter C. Results of Genetic Testing

§ 204.101. Results of Genetic Testing; Admissibility

A report of the results of genetic testing ordered under Subchapter B:

(1) must comply with the requirements for a report prescribed by Section 160.504, Family Code; and
(2) is admissible in a proceeding to declare heirship under Chapter 202 as evidence of the truth of the facts asserted in the report.

Derived from Probate Code § 53B(a).


§ 204.102. Presumption Regarding Results of Genetic Testing: Rebuttal

The presumption under Section 160.505, Family Code:

(1) applies to the results of genetic testing ordered under Subchapter B; and
(2) may be rebutted as provided by Section 160.505, Family Code.

Derived from Probate Code § 53B(b).


§ 204.103. Contesting Results of Genetic Testing

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

Derived from Probate Code § 53B(c).


Subchapter D. Use of Results of Genetic Testing in Certain Proceedings to Declare Heirship

§ 204.151. Applicability of Subchapter

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

Derived from Probate Code § 53C(a).


§ 204.152. Presumption; Rebuttal

The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Section 204.151, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code.

Derived from Probate Code § 53C(b), (c).


§ 204.153. Effect of Inconclusive Results of Genetic Testing

If the results of genetic testing ordered under Subchapter B do not identify or exclude a tested individual as the ancestor of the individual described by Section 204.151:

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

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

Derived from Probate Code § 53C(d).


Subchapter E. Additional Orders Following Results of Genetic Testing

§ 204.201. Order for Change of Name

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

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

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

Derived from Probate Code § 53D.


Chapter 205. Small Estate Affidavit

§ 205.001. Entitlement to Estate Without Appointment of Personal Representative

§ 205.002. Affidavit Requirements

§ 205.003. Examination and Approval of Affidavit

§ 205.004. Copy of Affidavit to Certain Persons

§ 205.005. Affidavit as Local Government Record

§ 205.006. Title to Homestead Transferred Under Affidavit

§ 205.007. Liability of Certain Persons

§ 205.008. Effect of Chapter

§ 205.009. Construction of Certain References

Chapter 205 provides a short-form method for handling an intestate estate when the total value of the intestate’s property, not including homestead and exempt property, does not exceed $75,000. This procedure is inexpensive and quick and thus is often preferred to a normal administration. Note, however, that the only real property which may be transferred in this manner is the homestead. The estate of a wealthy person might qualify for this procedure because the decedent’s wealth may be in non-probate assets, the decedent’s homestead, and other exempt property.

§ 205.001. Entitlement to Estate Without Appointment of Personal Representative

The distributees of the estate of a decedent who dies intestate are entitled to the decedent’s estate without waiting for the appointment of a personal representative of the estate to the extent the estate assets, excluding homestead and exempt property, exceed the known liabilities of the estate, excluding any liabilities secured by homestead and exempt property, if:

(1) 30 days have elapsed since the date of the decedent’s death;

(2) no petition for the appointment of a personal representative is pending or has been granted;

(3) the value of the estate assets on the date of the affidavit described by Subdivision (4), excluding

Electronic copy available at: https://ssrn.com/abstract=4537861
homestead and exempt property, does not exceed $75,000;
(4) an affidavit that meets the requirements of Section 205.002 is filed with the clerk of the court that has jurisdiction and venue of the estate;
(5) the judge approves the affidavit as provided by Section 205.003; and
(6) the distributees comply with Section 205.004.

Derived from Probate Code § 137(a).

§ 205.002. Affidavit Requirements
(a) 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.
(b) A list of all known estate assets under Subsection (a)(3)(A) must indicate which assets the applicant claims are exempt.

Derived from Probate Code § 137(A).

§ 205.003. Examination and Approval of Affidavit
The judge shall examine an affidavit filed under Section 205.001. The judge may approve the affidavit if the judge determines that the affidavit conforms to the requirements of this chapter.

Derived from Probate Code § 137(a).

§ 205.004. Copy of Affidavit to Certain Persons
The distributees of the estate shall provide a copy of the affidavit under this chapter, certified by the court clerk, to each person who:
(1) owes money to the estate;
(2) has custody or possession of estate property; or
(3) acts as a registrar, fiduciary, or transfer agent of or for an evidence of interest, indebtedness, property, or other right belonging to the estate.

Derived from Probate Code § 137(a).

§ 205.005. Affidavit as Local Government Record
(a) If the judge approves an affidavit under Section 205.003, the affidavit shall be maintained as a local government record under Subtitle C, Title 6, Local Government Code.
(b) If the county does not maintain local government records in a manner authorized under Subtitle C, Title 6, Local Government Code, the county clerk shall provide and keep in the clerk’s office an appropriate book labeled “Small Estates” in which the clerk shall, on payment of the legal recording fee, record each affidavit filed under this chapter. The small estates book must contain an accurate index that shows the decedent’s name and references to any land involved.

Derived from Probate Code § 137(d).

§ 205.006. Title to Homestead Transferred Under Affidavit
(a) If a decedent’s homestead is the only real property in the decedent’s estate, title to the homestead may be transferred under an affidavit that meets the requirements of this chapter. The affidavit used to transfer title to the homestead must be recorded in the deed records of a county in which the homestead is located.
(b) A bona fide purchaser for value may rely on an affidavit recorded under this section. A bona fide purchaser for value without actual or constructive notice of an heir who is not disclosed in the recorded affidavit acquires title to a homestead free of the interests of the undisclosed heir, but remains subject to any claim a creditor of the decedent has by law. A purchaser has constructive notice of an heir who is not disclosed in the recorded affidavit if an affidavit, judgment of heirship, or title transaction in the chain of title in the deed records identifies that heir as the decedent’s heir.
(c) An heir who is not disclosed in an affidavit recorded under this section may recover from an heir who receives consideration from a purchaser in a transfer for value of title to a homestead passing under the affidavit.

Derived from Probate Code § 137(c).

§ 205.007. Liability of Certain Persons
(a) A person making a payment, delivery, transfer, or issuance under an affidavit described by this chapter is released to the same extent as if made to a personal
representative of the decedent. The person may not be required to:
(1) see to the application of the affidavit; or
(2) inquire into the truth of any statement in the affidavit.
(b) The distributees to whom payment, delivery, transfer, or issuance is made are:
(1) answerable for the payment, delivery, transfer, or issuance to any person having a prior right; and
(2) accountable to any personal representative appointed after the payment, delivery, transfer, or issuance.
(c) Each person who executed the affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit.
(d) If a person to whom the affidavit is delivered refuses to pay, deliver, transfer, or issue property as provided by this section, the property may be recovered in an action brought for that purpose by or on behalf of the distributees entitled to the property on proof of the facts required to be stated in the affidavit.

Derived from Probate Code § 138.


§ 205.008. Effect of Chapter
(a) This chapter does not affect the disposition of property under a will or other testamentary document.
(b) Except as provided by Section 205.006, this chapter does not transfer title to real property.

Derived from Probate Code § 137(b).


§ 205.009. Construction of Certain References
A reference in this chapter to “homestead” or “exempt property” means only a homestead or other exempt property that would be eligible to be set aside under Section 353.051 if the decedent’s estate was being administered.

New.

Added by Acts 2015, 84th Leg., ch. 1106, § 2, eff. Sept. 1, 2015.

SUBTITLE F. WILLS

Chapter 251. Fundamental Requirements and Provisions Relating to Wills

Subchapter A. Will Formation
§ 251.001. Who May Execute Will
§ 251.002. Interests That May Pass by Will; Disinheritance

Subchapter B. Will Requirements

Statutes in Context
Chapter 251

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

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

Many states have a savings statute which permits a will that does not meet the requirements of a valid will under local law to nonetheless be
effective under certain circumstances. The Texas savings statute, added by the 2015 Legislature, is found in § 251.053.

There are four main requirements of a valid will: (1) legal capacity (§ 251.001), (2) testamentary capacity (§ 251.001 and case law thereunder), (3) testamentary intent (case law), and (4) formalities (attested wills under § 251.051 and holographic wills under § 251.052). Whenever you are asked to determine if a document purporting to be a will is valid, you must begin your analysis by ascertaining whether the testator satisfied each of these four requirements.

### Subchapter A. Will Formation

**Statutes in Context**

**§ 251.001**

Section 251.001 requires that the testator have both legal and testamentary capacity to execute a will.

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

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

### § 251.001. Who May Execute Will

Under the rules and limitations prescribed by law, a person of sound mind has the right and power to make a will if, at the time the will is made, the person: (1) is 18 years of age or older; (2) is or has been married; or (3) is a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

Derived from Probate Code § 57.


**Statutes in Context**

**§ 251.002**

Section 251.002 authorizes a negative will, that is, a will which does not provide for the disposition of property but rather merely states that a named heir may not take by intestacy. Negative provisions were not enforced under the common law.

### § 251.002. Interests That May Pass by Will; Disinheritance

(a) Subject to limitations prescribed by law, a person competent to make a will may devise under the will 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 will may:

(1) disinherit an heir; and

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

Derived from Probate Code §§ 58(a), (b).


### Subchapter B. Will Requirements

**Statutes in Context**

**§ 251.051**

Section 251.051 sets forth the formalities necessary for an attested will.

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

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

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

Section 251.051 does not specify a location for the testator’s signature. See *Lawson v. Dawson’s Estate*, 53 S.W. 64 (Tex. Civ. App. — 1899, writ ref’d) (holding with regard to a holographic will that the location of the testator’s signature is “of secondary consequence”).

3. **Attested by at Least Two Witnesses** The witnesses must be credible, that is, competent to testify in court under the applicable evidence rules.
See *Moos v. First State Bank*, 60 S.W.2d 888 (Tex. Civ. App. 1935, writ dism’d w.o.j.). The witnesses only need to be above the age of 14. See Estates Code § 254.002 for what happens if the witness is also a beneficiary of the will.

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

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

Although § 251.051 states that the witnesses must “subscribe” (that is, attest at the end of the will), the courts have not read this requirement strictly. See *Fowler v. Stagner*, 55 Tex. 393 (1881).

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

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

§ 251.051. Written, Signed, and Attested

Except as otherwise provided by law, a will must be:

(1) in writing;

(2) signed by:

(A) the testator in person; or

(B) another person on behalf of the testator:

(i) in the testator’s presence; and

(ii) under the testator’s direction; and

(3) attested by two or more credible witnesses who are at least 14 years of age and who subscribe their names to the will in their own handwriting in the testator’s presence.

Derived from Probate Code § 59(a).


Statutes in Context

§ 251.052

A holographic will is prepared in the testator’s own handwriting. Section 251.052 exempts holographic wills from the attestation requirement. This special treatment is justified by the aura of validity that surrounds a handwritten document because of the reduced chance of forgery and enhanced assurance of authenticity resulting from the large sample of the testator’s writing.

The will must be “wholly” in the testator’s own handwriting. Texas courts have adopted the surplusage approach which means that nonholographic material will not injure the holographic character of the will as long as the nonholographic material is not necessary to complete the instrument and does not affect its meaning. See *Maul v. Williams*, 39 S.W.2d 1107 (Tex. Comm’n App. 1934, holding approved).

A holographic will may be made self-proved. See Estates Code § 251.107. Because the self-proving affidavit is a separate instrument, it does not need to be holographic.

§ 251.052. Exception for Holographic Wills

Notwithstanding Section 251.051, a will written wholly in the testator’s handwriting is not required to be attested by subscribing witnesses.

Derived from Probate Code §§ 59(a), 60.


Statutes in Context

§ 251.053

Section 251.053 is the Texas savings statute which was enacted by the 2015 Legislature. The statute provides that a will is valid in Texas, even if it does not meet the Texas requirements, if it meets the requirements of the jurisdiction where (1) the will was executed, (2) the decedent was domiciled, or (3) the decedent had a place of residence.

§ 251.053. Exception for Foreign and Certain Other Wills

A [Section 251.051 does not apply to a] written will does not need to meet the requirements of Section 251.051 if the will is executed in compliance with:

(1) the law of the state or foreign country where the will was executed, as that law existed at the time of the will’s execution; or

(2) the law of the state or foreign country where the testator was domiciled or had a place of residence.
as that law existed at the time of the will’s execution or at the time of the testator’s death.

New.  
Added by Acts 2015, 84th Leg., ch. 995, § 13, eff. Sept. 1, 2015.

Subchapter C. Self-Proved Wills

Statutes in Context
Chapter 251

Self-Proving Affidavit. Section 251.101 provides the testator with the option making the will self-proved by either (1) adding an affidavit as a separate document under § 251.051 or (2) including the affidavit within the text of the will under § 251.1045. Virtually all wills contain this affidavit because it substitutes for the in-court testimony of the witnesses when the will is probated thereby saving considerable time and expense.

In the past, problems arose if the testator and/or the witnesses signed the affidavit but not the will. The courts consistently held that the will and the affidavit were separate documents and thus a signature on the self-proving affidavit could not substitute for a missing signature on the will. See Boren v. Boren, 402 S.W.2d 728 (Tex. 1966). The 1991 Texas Legislature amended the predecessor to Estates Code § 251.105 to alleviate this harsh result. Now, a signature on the affidavit may be used to prove the will but the will is then no longer considered self-proved and the testimony of the witnesses will be needed to probate the will.

The 2011 Legislature went a step further by allowing the testator to include the self-proving language within the body of the will so that only one set of signatures is required. See § 251.1045.

In Estate of Flarity, No. 09-19-00089-CV, 2020 WL 5552140 (Tex. App.—Beaumont Sept. 17, 2020, pet. denied), the validity of a self-proving affidavit was placed in doubt because the notary admitted that she did not give the testatrix and the witnesses an oral oath, just a written one. Both the trial and appellate courts rejected this argument because Estates Code § 251.104 does not require the oath to be oral. Because the Estates Code does not define the term “oath,” the Code Construction Act provision, Government Code § 602.001, applies which provides that the term oath “includes the oath in an affidavit.” Despite the holding in this case, prudent practice is for the notary to orally administer an oath before having the testator and witnesses sign the self-proving affidavit.

§ 251.101. Self-Proved Will

A self-proved will is a will:

(1) to which a self-proving affidavit subscribed and sworn to by the testator and witnesses is attached or annexed; or
(2) that is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

Derived from Probate Code § 59(b).

§ 251.102. Probate and Treatment of Self-Proved Will

(a) A self-proved will may be admitted to probate without the testimony of any subscribing witnesses if:

(1) the testator and witnesses execute a self-proving affidavit; or
(2) the will is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

(b) A self-proved will may not otherwise be treated differently than a will that is not self-proved.

Derived from Probate Code §§ 59(a), (c).

§ 251.103. Period for Making Attested Wills Self-Proved

A will that meets the requirements of Section 251.051 may be made self-proved at:

(1) the time of the execution of the will; or
(2) a later date during the lifetime of the testator and the witnesses.

Derived from Probate Code § 59(a).

§ 251.104. Requirements for Self-Proving Affidavit

(a) An affidavit that is in form and content substantially as provided by Subsection (e) is a self-proving affidavit.

(b) A self-proving affidavit must be made by the testator and by the attesting witnesses before an officer authorized to administer oaths. The officer shall affix the officer’s official seal to the self-proving affidavit.

(c) The self-proving affidavit shall be attached or annexed to the will.

(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 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
TEXAS ESTATES CODE

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] will, and that [he/she] was lawfully married, or is a member of the armed forces of the United States or of the United States Maritime Service, and we believe the testator to be of sound mind; 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 ___________, ___________, witnesses, this ______ day of __________, 20__________ A.D.

(SEAL) (Signed) ________________
(Official Capacity of Officer)

Derived from Probate Code § 59(a), (b).


§ 251.1045. Simultaneous Execution, Attestation, and Self-Proving

(a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, ________________, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I willingly make and execute it, and that I request each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this ______ day of __________, 20__________ A.D.

Testator    __________________________________
Witness    __________________________________
Witness    __________________________________
Witness    __________________________________

Subscribed and sworn to before me by the said ___________, ___________, testator, and by the said ___________, ___________, ___________, witnesses, this ______ day of __________, 20__________ A.D.

(SEAL) (Signed) ________________
(Official Capacity of Officer)

(b) A will that is in substantial compliance with the form provided by Subsection (a) is sufficient to self-prove a will.

Derived from Probate Code § 59(a-1).


§ 251.105. Effect of Signature on Self-Proving Affidavit

A signature on a self-proving affidavit is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses or both, except that, in that case, the will may not be considered a self-proved will.

Derived from Probate Code § 59(b).


§ 251.106. Contest, Revocation, or Amendment of Self-Proved Will

A self-proved will may be contested, revoked, or amended by a codicil in the same manner as a will that is not self-proved.

Derived from Probate Code § 59(c).
§ 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 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.

Statutes in Context
Chapter 252
Chapter 252 provides a procedure for a testator to deposit the will with the clerk of the court for safekeeping. Thus, when a person dies, it is prudent for those interested in the estate to check with the county court clerk in every county in which the decedent has resided. The deposit has no legal effect and does not enhance the likelihood of the will being deemed valid.

§ 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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the last known residence of the testator if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is not able to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

(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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the testator’s last known residence. This provision solves the problem of what someone, especially an attorney, should do with an original will when the person does not know how to locate the testator or even if the testator is still alive.

§ 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.

(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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the testator’s last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is unable to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

§ 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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the testator’s last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is unable to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

§ 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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the testator’s last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is unable to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

(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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the testator’s last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is unable to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

(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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the testator’s last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is unable to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

(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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the testator’s last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is unable to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

(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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the testator’s last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is unable to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:

(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.

(a-1) An attorney, business entity, or other person in possession of a testator’s will may deposit the will with the county clerk of the county of the testator’s last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is unable to contact or locate the testator. The attorney, business entity, or other person shall provide to the county clerk at the time the will is deposited:
§ 252.001. Sealed Wrapper Required
(a) A will intended to be deposited with a county clerk shall be enclosed in a sealed wrapper.

(b) The wrapper of a will deposited under Section 252.001(a) 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.

(c) The wrapper of a will deposited under Section 252.001(a-1) must be endorsed with:
   (1) “Will of,” followed by the name and last known address of the testator; and
   (2) if the will names an executor, the name and last known address, if available, of each executor named in the will, including any alternate executors.

Derived from Probate Code § 71(b).

§ 252.002. 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 must bear the same number as the will for which the certificate is issued.

Derived from Probate Code § 71(a).

§ 252.003. Index
A county clerk shall keep an index of all wills deposited with the clerk under Section 252.001.

Derived from Probate Code § 71(c).
§ 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 that the will is on deposit with the clerk; and
(2) deliver, on request, the will to the person named as executor.

§ 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 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).

Subchapter D. Legal Effect of Will Deposit

§ 252.151. Deposit Has No Legal Significance
The provisions of Subchapter A providing for the deposit of a will with a county clerk 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.

§ 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 of the testator, notwithstanding the fact that the testator has a prior will that has been deposited in accordance with Subchapter A.

Subchapter E. Duty and Liability of Custodian of Estate Papers

§ 252.201. Will Delivery
(a) 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.
(b) The clerk of the court shall handle the will in the same manner prescribed by Subchapter A for a will deposited under Section 252.001 other than collection of a fee under Section 252.001(b).

§ 252.2015. Notice and Delivery of Will to Executor or Devisees
(a) On the deposit of a will under Section 252.201 that names an executor, the clerk of the court shall:
(1) notify the person named as executor in the manner prescribed by Section 252.104; and
(2) deliver, on request, the will to the person named as executor.
(b) On the deposit of a will under Section 252.201, the clerk of the court shall notify the devisees named in the will in the manner prescribed by Section 252.105(a) 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 Subsection (a) is mailed to the person; or
(3) the notice mailed to the person named as executor is returned as undelivered.
(c) On request, the clerk of the court shall deliver the will to any or all of the devisees notified under Subsection (b).

Added by Acts 2017, 85th Leg., ch. 701, § 8, eff. Sept. 1, 2017.

§ 252.202. Personal Service on Custodian of Estate Papers

On a sworn written complaint that a person has custody of the last will of a testator or any papers belonging to the estate of a testator or intestate, the judge of the court that has jurisdiction of the estate shall have the person cited by personal service to appear and show cause why the person should not deliver:
(1) the will to the court for probate; or
(2) the papers to the executor or administrator.

Derived from Probate Code § 75.

§ 252.203. Arrest; Confinement

On the return of a citation served under Section 252.202, if the judge is satisfied that the person served with the citation had custody of the will or papers at the time the complaint under that section was filed and the person does not deliver the will or papers or show good cause why the will or papers have not been delivered, the judge may have the person arrested and confined until the person delivers the will or papers.

Derived from Probate Code § 75.

§ 252.204. Damages

(a) A person who refuses to deliver a will or papers described by Section 252.202 is liable to any person aggrieved by the refusal for all damages sustained as a result of the refusal.

(b) Damages may be recovered under this section in any court of competent jurisdiction.

Derived from Probate Code § 75.

Chapter 253. Change and Revocation of Wills

§ 253.001. Court May Not Prohibit Changing or Revoking a Will

§ 253.002. Revocation of Will

Statutes in Context
§ 253.001

A judge in a divorce action may issue an order preventing a party from revoking or changing his or her will during the pendency of the divorce. Section 253.001 prohibits this practice and provides that such an order is void.

§ 253.001. Court May Not Prohibit Changing or Revoking 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:
(1) executing a new will;
(2) executing a codicil to an existing will; or
(3) revoking an existing will or codicil in whole or in part.

(c) Any portion of a court order that purports to prohibit a person from engaging in an action described by Subsection (b) is void and may be disregarded without penalty or sanction of any kind.

Derived from Probate Code § 69A.

Statutes in Context
§ 253.002

Section 253.002 provides two methods for revoking a will.

1. Subsequent Writing The testator may revoke a will in a new will, codicil, or other written declaration. The revocation may be express (“I hereby revoke all prior wills and codicils.”) or it may be by inconsistency (the testator’s old will left Blackacre to Able and the new will leaves Blackacre to Brenda). The formalities for the revocation instrument are the same as for a will.

2. Physical Act The testator may revoke a will by “destroying or canceling” the will such as by tearing up the will, drawing a dark line through the testator’s signature, or burning the will. Revocation by physical act is an “all or nothing” arrangement, that is, Texas law does not permit partial revocation by physical act. Thus, if the testator merely draws lines through certain provisions or makes interlineations on a nonholographic will, these self-help changes will not be given effect; the will is probated as originally written. See Leatherwood v.

The physical act may be performed by a proxy provided it is done in the testator’s presence.

In the almost unbelievable opinion of In re Estate of Catlin, 311 S.W.3d 697 (Tex. App.—Amarillo 2010, pet. denied), the court accepted proponent’s explanation that he looked at the testator’s home, office, safety deposit boxes, and drafting attorney’s office but could not find the original. The court explained that the will proponent did not have to demonstrate an affirmative reason why the original cannot be located such as “the eating habits of a neighbor’s goat, the occurrence of a Kansas tornado, the devastation of a flash flood, or the like.” See Estates Code § 256.156. This court basically makes it impossible for a testator to revoke a will by physical act because even if the will cannot be found and there is no affirmative reason why it cannot be found, a copy may nonetheless be probated.

§ 253.002. Revocation of Will

A written will, or a clause or devise in a written will, may not be revoked, except by a subsequent will, codicil, or declaration in writing that is executed with like formalities, or by the testator destroying orcanceling the same, or causing it to be destroyed or canceled in the testator’s presence.

Derived from Probate Code § 63.


Chapter 254. Certain Provisions in, and Contracts Relating to, Wills

§ 254.001. Devises to Trustees

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

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

(2) at the testator’s death by the testator’s devise to the trustee, regardless of the existence, size, or character of the corpus of the trust, if:

(A) the trust is identified in the testator’s will; and

(B) the terms of the trust are in:

(i) a written instrument, other than a will, executed before, with, or after the execution of the testator’s will; or

(ii) another person’s will if that person predeceased the testator.

(b) A devise under Subsection (a) is not invalid because the trust:

(1) is amendable or revocable; or

(2) was amended after the execution of the will or the testator’s death.

(c) Unless the testator’s will provides otherwise, property devised to a trust described by Subsection (a) is not held under a testamentary trust of the testator. The property:

(1) becomes part of the trust to which the property is devised; and

Statutes in Context

§ 254.001

Section 254.001 authorizes the use of a pour-over provision in a will, that is, a testamentary gift to an inter vivos trust. Pour-over provisions are very common because a testator may wish to obtain the benefits of a trust but not want to create the trust in the testator’s will. Reasons a testator may prefer the pour-over technique include (1) an inter vivos trust is easier to amend than a will; (2) an inter vivos trust can serve as a receptacle for a variety of other assets, such as life insurance proceeds and annuity payments, to provide a unified disposition of the testator’s property; and (3) the testator may pour over into a trust created by someone else, such as a spouse.

Section 254.001 is based on the 1991 version of the Uniform Testamentary Additions to Trusts Act. Innovations in this act include (1) the testator’s ability to pour over to an inter vivos trust which, although placed in writing, has not actually been created because no property has yet been transferred to the trust (in other words, the testamentary gift may provide the initial funding of the trust) and (2) the pour-over property is governed by the current terms of the trust, not those in effect when the testator died. Thus, if a testator leaves property to a trust created by someone else who is still alive, the potential exists for that person to make amendments to the trust after the testator’s death which may change the identity of the beneficiaries and how the trust property is spent or managed.

See Insurance Code §§ 1104.021 through 1104.025 for additional provisions applicable to life insurance which is payable to the trustee named in the policy.
A testamentary gift to a beneficiary who is also a witness to the will is presumed void under the Texas purging statute, § 254.002. The testimony of an interested witness about the attestation is suspect because the witness has a motive to lie. There are three exceptions to this rule. The first exception applies if the witness would be an heir if the testator had actually died intestate in which case the witness may receive the gift provided it does not exceed the share of the testator’s estate the witness could take under intestate succession. With regard to the smaller of the gift under the will or the intestate share, the witness has no motive to lie because the witness will receive that amount regardless of the validity of the will. The second exception is if the will can “be otherwise established” such as by the testimony of another witness. The third exception is detailed in § 254.002(c).

Section 254.002(c) provides the third exception to the interested witness rule. If the testimony of the witness-beneficiary is corroborated by a disinterested and credible person, the witness-beneficiary may retain the testamentary gift. Note that this person does not have to be an attesting witness to the will. For example, this person could be the attorney who supervised the will execution ceremony.

(2) must be administered and disposed of according to the provisions of the instrument establishing the trust, including any amendment to the instrument made before or after the testator’s death.

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

Derived from Probate Code § 58a.


Statutes in Context
§ 254.002

A testamentary gift to a beneficiary who is also a witness to the will is presumed void under the Texas purging statute, § 254.002. The testimony of an interested witness about the attestation is suspect because the witness has a motive to lie. There are three exceptions to this rule. The first exception applies if the witness would be an heir if the testator had actually died intestate in which case the witness may receive the gift provided it does not exceed the share of the testator’s estate the witness could take under intestate succession. With regard to the smaller of the gift under the will or the intestate share, the witness has no motive to lie because the witness will receive that amount regardless of the validity of the will. The second exception is if the will can “be otherwise established” such as by the testimony of another witness. The third exception is detailed in § 254.002(c).

Section 254.002(c) provides the third exception to the interested witness rule. If the testimony of the witness-beneficiary is corroborated by a disinterested and credible person, the witness-beneficiary may retain the testamentary gift. Note that this person does not have to be an attesting witness to the will. For example, this person could be the attorney who supervised the will execution ceremony.

Statutes in Context
§ 254.003

Section 254.003 voids a testamentary gift made to an attorney or someone closely connected to the attorney (i.e., the attorney’s spouse, the attorney’s parent, a descendent of the attorney’s parent, or the attorney’s employee) when the attorney is also the attorney who drafted the will. This section, however, does not apply to wills where the beneficiary listed in subsection (a) is also the testator’s spouse, ascendant or descendant, or related within the third degree of consanguinity or affinity. See Government Code §§ 573.021-573.025 (definitions of “consanguinity” and “affinity” by analogy).

In Jones v. Krown, 218 S.W.3d 746 (Tex. App.—Fort Worth 2007, pet. denied), an attorney drafted a will for a testator which named his paralegal (an independent contractor) as both a beneficiary and as the executrix. After the testator died, his sister filed a motion for a declaratory judgment to set aside the gift to the paralegal under the Probate Code predecessor to Estates Code § 254.003. The court held that the paralegal’s gift was void and that the property passed via intestacy to his sister.

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

§ 254.003. Devises to Certain Attorneys and Other Persons

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

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

(b) This section does not apply to:

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

Derived from Probate Code § 58b.


---

**Statutes in Context**

§ 254.004

A contractual will refers to a will that is either (a) executed in whole or in part as the consideration for a contract, or (b) not revoked as the consideration for a contract. The contract must meet all the requirements for a valid contract under applicable Texas law.

To ensure that only the wills of testators who actually intend to be bound are deemed contractual, § 254.004 requires that (1) the will state that a contract exists along with the material terms of the contract or (2) the contract be proved by a binding and enforceable written agreement such as a premarital agreement, divorce property settlement, or buy-sell agreement. See Estate of Gilbert, 513 S.W.3d 767, 772 (Tex. App.—San Antonio 2017, no pet.) ("section 254.004 bars a claim for promissory estoppel on an oral promise to devise property that is disposed of in a will").

The statute further provides that joint wills (a single testamentary instrument that contains the wills of two or more persons, such as a husband and wife) and reciprocal wills (separate wills which contain parallel dispositive provisions) are not presumably contractual. Nonetheless, to avoid the unintended creation of a contractual will, it may be prudent to include an anticontract provision.

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

§ 254.004. Contracts Concerning Wills or Devises; Joint or Reciprocal Wills

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

1. a written agreement that is binding and enforceable; or
2. a will stating:
   (A) that a contract exists; and
   (B) the material provisions of the contract.

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

Derived from Probate Code § 59a.


---

**Statutes in Context**

§ 254.005

A forfeiture, no contest, or in terrorem clause provides that a beneficiary who unsuccessfully contests a will is precluded from thereafter receiving property under the will. A forfeiture clause is presumed enforceable unless the party who wants the clause to be unenforceable establishes by a preponderance of the evidence that just cause existed for bringing the action and the action was brought and maintained in good faith.

§ 254.005. Forfeiture Clause

(a) A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

1. just cause existed for bringing the action; and
2. the action was brought and maintained in good faith.

(b) This section is not intended to and does not repeal any law recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary’s duties, seeking redress against a fiduciary for a breach of the fiduciary’s duties, or seeking a judicial construction of a will or trust.

Derived from Probate Code § 64.


§ 254.006. Designation of Administrator

(a) A testator may grant in a will to an executor named in the will or to another person identified by name, office, or function the authority to designate one or more persons to serve as administrator of the testator’s estate.

(b) To be effective, a designation of an administrator of a testator’s estate as authorized by a will under Subsection (a) must be in writing and acknowledged before an officer authorized to take acknowledgments and administer oaths.

(c) Unless the will provides otherwise, a person designated to serve as administrator of a testator’s estate as provided by Subsection (a) may serve only if:

1. each executor named in the testator’s will:
   (A) is deceased;
   (B) is disqualified to serve as executor; or
   (C) indicates by affidavit filed with the county clerk of the county in which the application for letters testamentary is filed or, if an application has not been filed, a county described by Section
33.001(a)(1) or (2) the executor’s inability or unwillingness to serve as executor;
(2) the designation is effective as provided by Subsection (b); and
(3) the person is not disqualified from serving under Section 304.003.
(d) Unless the will or designation provides otherwise, a person designated as administrator of a testator’s estate as provided by this section has the same rights, powers, and duties as an executor named in the will, including the right to serve as an independent administrator with the power to sell property without the need for consent of the distributees under Section 401.002 or 401.006.

New.
Added by Acts 2019, 86th Leg., ch. 1141, § 8, eff. Sept. 1, 2019.

Chapter 255. Construction and Interpretation of Wills

Subchapter A. Certain Personal Property Excluded From Devise or Legacy

§ 255.001. Definitions
§ 255.002. Certain Personal Property Excluded From Devise of Real Property
§ 255.003. Contents Excluded From Legacy of Personal Property

Subchapter B. Succession by Pretermitted Child

§ 255.051. Definition
§ 255.052. Applicability and Construction
§ 255.053. Succession by Pretermitted Child if Testator Has Living Child at Will’s Execution
§ 255.054. Succession by Pretermitted Child if Testator Has No Living Child at Will’s Execution
§ 255.055. Ratable Recovery by Pretermitted Child From Portions Passing to Other Beneficiaries

Subchapter C. Lifetime Gifts as Satisfaction of Devise

§ 255.101. Certain Lifetime Gifts Considered Satisfaction of Devise
§ 255.102. Valuation of Property

Subchapter D. Failure of Devisee; Disposition of Property To Devisee Who Predeceases Testator

§ 255.151. Applicability of Subchapter
§ 255.152. Failure of Devisee; Effect on Residuary Estate
§ 255.153. Disposition of Property To Certain Devisees Who Predecease Testator
§ 255.154. Devisee Under Class Gift

Subchapter F. Devise of Securities

§ 255.251. Definitions
§ 255.252. Increase in Securities; Accessions
§ 255.253. Cash Distribution Not Included in Devise

Subchapter G. Exoneration of Debts Secured by Specific Devises

§ 255.301. No Right to Exoneration of Debts
§ 255.302. Exception
§ 255.303. Rights of Certain Creditors and Other Persons
§ 255.304 Applicability of Subchapter

Subchapter H. Exercise of Power of Appointment Through Will

§ 255.351. Exercise of Power of Appointment Through Will

Subchapter I. Class Gifts

§ 255.401 Posthumous Class Gift Membership

Subchapter J. Judicial Modification or Reformation of Wills

§ 255.451 Circumstances Under Which Will May be Modified or Reformed
§ 255.452 Judicial Discretion
§ 255.453 Retroactive Effect
§ 255.454 Powers Cumulative
§ 255.455 Duties and Liability of Personal Representative
§ 255.456 Jurisdiction and Transfer of Proceeding

Chapter 255. Construction and Interpretation of Wills

Subchapter A. Certain Personal Property Excluded from Devise or Legacy

Statutes in Context
Chapter 255, Subchapter A

Section 255.003 provides that the contents of any specifically gifted item are not included in the gift unless the gift expressly includes the contents. Intangible property such as stock and titled personal property such as motor vehicles, are not considered contents. For example, if the will devises “my home to Son,” the contents of the real property will not pass to Son. However, if the will devises “my house and its contents to Son” and upon testator’s death the home contains furniture, stock certificates, and a car, Son would receive the furniture, but not the stock or car.
§ 255.001. Definitions
In this subchapter:
(1) “Contents” means tangible personal property, other than titled personal property, found inside of or on a specifically devised item. The term includes clothing, pictures, furniture, coin collections, and other items of tangible personal property that:
(A) do not require a formal transfer of title; and
(B) are located in another item of tangible personal property such as a cedar chest or other furniture.
(2) “Titled personal property” includes all tangible personal property represented by a certificate of title, certificate of ownership, written label, marking, or designation that signifies ownership by a person. The term includes a motor vehicle, motor home, motorboat, or other similar property that requires a formal transfer of title.
Derived from Probate Code § 58(d).

§ 255.002. Certain Personal Property Excluded from Devise of Real Property
A devise of real property does not include any personal property located on, or associated with, the real property or any contents of personal property located on the real property unless the will directs that the personal property or contents are included in the devise.
Derived from Probate Code § 58(c).

§ 255.003. Contents Excluded from Legacy of Personal Property
A legacy of personal property does not include any contents of the property unless the will directs that the contents are included in the legacy.
Derived from Probate Code § 58(c).

Subchapter B. Succession by Pretermitted Child

Statutes in Context
Chapter 255, Subchapter B
Parents have no obligation to provide testamentary gifts for their children, even if they are minors. Thus, a parent may intentionally disinherit one or more of the parent’s children. However, to protect a child from an accidental or inadvertent disinheritance, state legislatures have enacted statutes which may provide a forced share of the parent’s estate for a pretermitted (omitted) child under certain circumstances. This Subchapter contains the rules for determining whether a pretermitted child is entitled to a forced share of the testator’s estate.

To qualify as a pretermitted child, the child must be born or adopted after the testator executes the will. A child is not pretermitted merely because the child is not a beneficiary of the will.

A pretermitted child will not be entitled to a forced share if (1) the testator provided for the pretermitted child in the will such as by a class gift to “children,” (2) the testator provided for the pretermitted child with a non-probate asset such as a life insurance policy or a P.O.D. account, or (3) the testator mentioned the pretermitted child in the will (for example, “I intentionally make no provision for any child who may be hereafter born or adopted.”).

If the will makes no gift to the testator’s children (i.e., (1) the testator had a child when the testator executed the will but left nothing to this child, or (2) the testator had no living child when the testator executed the will), then the share of each pretermitted child is determined as follows. First, ascertain the amount of the estate not passing to the pretermitted child’s other parent (remember that the testator’s spouse may not be the child’s other parent). Second, give the pretermitted child a share of this amount as if the testator had died intestate with no surviving spouse. The other beneficiaries will receive proportionately less to make up the pretermitted child’s share.

If the will provides for at least one of the testator’s living children, then the pretermitted child’s share is determined as follows. First, ascertain the amount of the estate given to the testator’s children. Second, ascertain the number of children named as beneficiaries in the testator’s will and the number of pretermitted children. Add these two figures together. Third, divide the amount of the estate given to the testator’s children (step 1) by the figure in step 2 (children beneficiaries + pretermitted children). Each pretermitted child will receive this amount and the gifts to the other children beneficiaries will be reduced proportionately.

Example 1 Husband and Wife have three children, Art, Brenda, and Charles. After Wife executed her will, she had a fourth child, Paul. Husband is Paul’s father and Wife’s will does not mention or provide for Paul. To how much is Paul entitled under the following circumstances:

(a) Wife’s will gives her entire estate to Husband. Paul is entitled to nothing because Wife’s entire estate was left to Paul’s other parent (Husband).

(b) Wife’s will gives $25,000 to Husband and the residuary to the American Red Cross. Paul is entitled to one-quarter of the residuary estate. Husband will still receive $25,000 and the American

Electronic copy available at: https://ssrn.com/abstract=4537861
Testator’s child who is born or adopted:

§ 255.051. Definition

The Red Cross will receive three-quarters of the residuary estate.

(c) Wife’s will gives her entire estate to the American Red Cross. Paul is entitled to one-fourth of the estate with the balance passing to the American Red Cross.

(d) Wife’s will provides $50,000 to Art, $30,000 to Brenda, and $20,000 to Charles. Paul is entitled to $25,000 (Wife left a total of $100,000 to her children, the total number of will beneficiaries and pretermitted children is four; $100,000/4 = $25,000). The beneficiary children receive proportionately less, that is, Art will receive $37,500, Brenda will receive $22,500, and Charles will receive $15,000.

(e) Wife’s will leaves $100,000 to Art. Paul is entitled to $50,000 and Art’s gift is reduced to $50,000. Brenda and Charles still receive nothing.

(f) Wife named Paul as a beneficiary of her life insurance policy. Paul is entitled to nothing from Wife’s estate.

Example 2 After executing her will, Wife has her first and only child, Paul. Wife’s will does not mention or provide for Paul. To how much is Paul entitled under the following circumstances assuming that Husband is Paul’s father?

(a) Wife’s will gives her entire estate to Husband. Paul is entitled to nothing because Wife left her entire estate to Paul’s other parent (Husband).

(b) Wife’s will gives $25,000 to Husband and the residuary to the American Red Cross. Paul is entitled to the entire residuary. Husband still receives $25,000 and the American Red Cross receives nothing.

(c) Wife’s will gives her entire estate to the American Red Cross. Paul is entitled to Wife’s entire estate.

Example 3 After Husband married Wife (both childless prior to the marriage), Husband executed a will leaving his entire estate to Wife. This will did not mention or provide for any subsequent children. As a result of an affair Husband had with Sarah, Paul was born and paternity has been properly established. To how much is Paul entitled upon Husband’s death?

If Husband died before September 1, 2011, Paul will receive Husband’s entire estate because Wife is not Paul’s other parent. However, if Husband died on or after September 1, 2011, Paul will receive only one-half of Husband’s estate because of the limitation imposed by § 255.056 and Wife will receive the remaining half.

§ 255.051. Definition

In this subchapter, “pretermitted child” means a testator’s child who is born or adopted:

(1) during the testator’s lifetime or after the testator’s death; and

(2) after the execution of the testator’s will.

Derived from Probate Code § 67(c).


§ 255.052. Applicability and Construction

(a) Sections 255.053 and 255.054 apply only to a pretermitted child who is not:

(1) mentioned in the testator’s will;

(2) provided for in the testator’s will; or

(3) otherwise provided for by the testator.

(b) For purposes of this subchapter, a child is provided for or a provision is made for a child if a disposition of property to or for the benefit of the pretermitted child, whether vested or contingent, is made:

(1) in the testator’s will, including a devise to a trustee under Section 254.001; or

(2) outside the testator’s will and is intended to take effect at the testator’s death.

Derived from Probate Code §§ 67(a), (d).


§ 255.053. Succession by Pretermitted Child if Testator Has Living Child at Will’s Execution

(a) If no provision is made in the testator’s last will for any child of the testator who is living when the testator executes the will, a pretermitted child succeeds to the portion of the testator’s separate and community estate, other than any portion of the estate devised to the pretermitted child’s other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

(b) If a provision, whether vested or contingent, is made in the testator’s last will for one or more children of the testator who are living when the testator executes the will, a pretermitted child is entitled only to a portion of the disposition made to children under the will that is equal to the portion the child would have received if the testator had:

(1) included all of the testator’s pretermitted children with the children on whom benefits were conferred under the will; and

(2) given an equal share of those benefits to each child.

(c) To the extent feasible, the interest in the testator’s estate to which the pretermitted child is entitled under Subsection (b) must be of the same character, whether an equitable or legal life estate or in fee, as the interest that the testator conferred on the testator’s children under the will.

Derived from Probate Code § 67(a)(1).

§ 255.054. Succession by Pretermitted Child if Testator Has No Living Child at Will’s Execution

If a testator has no child living when the testator executes the testator’s last will, a pretermitted child succeeds to the portion of the testator’s separate and community estate, other than any portion of the estate devised to the pretermitted child’s other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

Derived from Probate Code § 67(a)(2).


§ 255.055. Ratable Recovery by Pretermitted Child from Portions Passing to Other Beneficiaries

(a) A pretermitted child may recover the share of the testator’s estate to which the child is entitled from the testator’s other children under Section 255.053(b) or from the testamentary beneficiaries under Sections 255.053(a) and 255.054, other than the pretermitted child’s other parent, ratably, out of the portions of the estate passing to those persons under the will.

(b) In abating the interests of the beneficiaries described by Subsection (a), the character of the testamentary plan adopted by the testator must be preserved to the maximum extent possible.

Derived from Probate Code § 67(b).


§ 255.056. Limitation on Reduction of Estate Passing to Surviving Spouse

If a pretermitted child’s other parent is not the surviving spouse of the testator, the portion of the testator’s estate to which the pretermitted child is entitled under Section 255.053(a) or 255.054 may not reduce the portion of the testator’s estate passing to the testator’s surviving spouse by more than one-half.

Derived from Probate Code § 67(e).


Subchapter C. Lifetime Gifts as Satisfaction of Devise

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

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

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

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

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

§ 255.101. Certain Lifetime Gifts Considered Satisfaction of Devise

Property that a testator gives to a person during the testator’s lifetime is considered a satisfaction, either wholly or partly, of a devise to the person if:

(1) the testator’s will provides for deduction of the lifetime gift from the devise;

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

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

Derived from Probate Code § 37C(a).


§ 255.102. Valuation of Property

Property given in partial satisfaction of a devise shall be valued as of the earlier of:

(1) the date the devisee acquires possession of or enjoys the property; or

(2) the date of the testator’s death.

Derived from Probate Code § 37C(b).


Subchapter D. Failure of Devise; Disposition of Property to Devisee Who Predeceases Testator

Deceased individuals cannot take and hold title to property. Accordingly, a testamentary gift intended for a beneficiary who died before the testator will not take effect, that is, the gift lapses. Lapse also may
To determine the proper distribution of a lapsed gift, if the will provides a substitute taker in the event of lapse, that alternate beneficiary will receive the gift. Language in the residuary clause including within its scope lapsed gifts may prevent the application of the anti-lapse statute. See *Lacis v. Lacis*, 355 S.W.3d 727 (Tex. App.—Houston [1st Dist.] 2011, writ dism’d w.o.j.).

Section 255.153 provides a substitute beneficiary if four conditions are satisfied. (1) The deceased beneficiary must be either a descendant of the testator or a descendant of the testator’s parents (i.e., siblings, nieces, and nephews). (2) The beneficiary must die during the testator’s lifetime or be treated as dying during the testator’s lifetime. (3) The predeceased beneficiary must have left at least one surviving descendant. (4) A surviving descendant of the deceased beneficiary must survive the testator.

If all four requirements are met, then the gift to the predeceased beneficiary does not lapse and instead passes to the descendants of the predeceased beneficiary on a per capita with representation basis.

Section 255.154 provides that the anti-lapse provisions apply to class gifts, as well as to gifts to individuals, as long as the class member was alive at the date the testator executed the will.

Section 255.152 addresses the issue of a partial lapse in the residuary clause when the clause lacks survivorship language. For example, assume that a valid will leaves the residuary estate to two of testator’s friends, Bill and George. If Bill dies before the testator, George will receive the entire residuary estate. Section 255.152 implies survivorship language even though the will is silent. Remember that survivorship language is implied only for residuary gifts (that is, not for specific or general gifts).

§ 255.151. Applicability of Subchapter

This subchapter applies unless the testator’s will 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.
§ 255.154. Devisee Under Class Gift

For purposes of this subchapter, a person who would have been a devisee under a class gift if the person had survived the testator is treated as a devisee unless the person died before the date the will was executed.
Derived from Probate Code § 68(a).

Subchapter F. Devise of Securities

Statutes in Context
Chapter 255, Subchapter F

This Subchapter provides rules for determining who is entitled to increases in securities which occur between the time the testator executed the will and the testator’s death. Generally, cash dividends are not included in a gift of securities but stock splits and stock dividends are included.

§ 255.251. Definitions

In this subchapter:
(1) “Securities” has the meaning assigned by Section 4001.068, Government Code.
(2) “Stock” means securities.
Derived from Probate Code § 70A(c).

§ 255.252. Increase in Securities; Accessions

Unless the will of a testator clearly provides otherwise, a devise of securities that are owned by the testator on the date the will is executed includes the following additional securities subsequently acquired by the testator as a result of the testator’s ownership of the devised securities:

(1) securities of the same organization acquired because of an action initiated by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment; and
(2) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment.
Derived from Probate Code § 70A(a).

§ 255.253. Cash Distribution Not Included in Devise

Unless the will of a testator clearly provides otherwise, a devise of securities does not include a cash distribution relating to the securities that accrues before the testator’s death, regardless of whether the distribution is paid before the testator’s death.
Derived from Probate Code § 70A(b).

Subchapter G. Exoneration of Debts Secured by Specific Devises

Statutes in Context
Chapter 255, Subchapter G

Texas had long followed the doctrine of exoneration, that is, debts on specifically gifted property were paid from other estate assets so that the beneficiary receives the asset unencumbered, rather than just the testator’s equity. See Currie v. Scott, 187 S.W.2d 551 (Tex. 1945).

The doctrine has been abolished for wills executed on or after September 1, 2005. A specific gift passes subject to each debt secured by the property that exists on the date of the testator’s death under Estates Code § 255.302.

The statute contains two special rules. First, the testator may expressly provide in the will for the debts against a specific gift to be exonerated. Note, however, that a general provision in the will stating that debts are to be paid is not sufficient. Second, there is a provision addressing the situation where a secured creditor elects matured secured claim status under Estates Code § 355.153.

§ 255.301. No Right to Exoneration of Debts

Except as provided by Section 255.302, a specific devise passes to the devisee subject to each debt secured by the property that exists on the date of the testator’s death, and the devisee is not entitled to exoneration from the testator’s estate for payment of the debt.
Derived from Probate Code § 71A(a).

§ 255.302. Exception

A specific devise does not pass to the devisee subject to a debt described by Section 255.301 if the will in which the devise is made specifically states that the devise passes without being subject to the debt. A general provision in the will stating that debts are to be paid is not a specific statement for purposes of this section.
Derived from Probate Code § 71A(b).
§ 255.303. Rights of Certain Creditors and Other Persons

(a) Section 255.301 does not affect the rights of creditors provided under this title or the rights of other persons or entities provided under Chapters 102 and 353.

(b) A debt described by Section 255.301 that a creditor elects to have allowed and approved as a matured secured claim shall be paid in accordance with Sections 355.153(b), (c), (d), and (e).

Derived from Probate Code § 71A(c).

§ 255.304. Applicability of Subchapter

This subchapter is applicable only to wills executed on or after September 1, 2005.

New.
Added by Acts 2015, 84th Leg., ch. 995, § 18, eff. Sept. 1, 2015.

Subchapter H. Exercise of Power of Appointment Through Will

Statutes in Context
§ 255.351

The 2003 Texas Legislature clarified whether a residuary clause will be deemed to exercise a power of appointment held by the testator by enacting the Probate Code predecessor to Estates Code § 255.351. A residuary clause or a clause purporting to dispose of all of the testator's property will exercise a power of appointment in favor of the will beneficiary only if one of the following two conditions is satisfied:

1. The testator makes a specific reference to the power of appointment in the will.

2. There is some other indication in writing (but not necessarily the will itself) that the testator intended to include the property subject to the power of appointment in the will.

§ 255.351. Exercise of Power of Appointment Through Will

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

(1) the testator makes a specific reference to the power in the will; or

(2) there is some other indication in writing that the testator intended to include the property subject to the power in the will.

Derived from Probate Code § 58c.

Subchapter I. Class Gifts

Statutes in Context
§ 255.401

The 2017 Legislature fixed a glitch in this statute enacted in 2015 which limited class gift membership to members born or in gestation at the time of the testator’s death. The statute originally made no distinction between immediate gifts ("to my grandchildren") and postponed gifts ("to my child for life and then to my grandchildren"). In the latter case, it is likely the testator intended grandchildren born after the testator’s death to be included in the gift. The clarification provides that the beneficiary must be alive or in gestation at the death of the person by whom the class is measured rather than the testator.

§ 255.401. Posthumous Class Gift Membership

(a) A right to take as a member under a class gift does not accrue to any person unless the person is born before, or is in gestation at, the time of death of the person by which the class is measured and survives that person by at least 120 hours.

(a-1) For purposes of this section, a person is:

(1) considered to be in gestation if insemination or implantation occurs at or before the time of death of the person by which the class is measured; and

(2) presumed to be in gestation at the time of death of the person by which the class is measured if the person was born before the 301st day after the date of the person’s death.

(b) A provision in the testator’s will that is contrary to this section prevails over this section.

New.

Subchapter J. Judicial Modification or Reformation of Wills

Statutes in Context
Subchapter J

In a major change in Texas law, courts have now been given the authority to modify and reform a will even if the will is unambiguous effectively overturning the Supreme Court of Texas case of San Antonio Area Foundation v. Lang, 35 S.W.3d 636 (Tex. 2000), which held that “extrinsic evidence is not admissible to construe an unambiguous will provision.” Id. at 637. Acts 2015, 84th Leg., ch. 995, § 19, eff. Sept. 1, 2015 (adding Estates Code §§ 255.451-.455).

Below are the key features of how a court may exercise this new power:
Only a personal representative may petition for modification or reformation; disgruntled beneficiaries and wishful beneficiaries lack standing.

The action must be filed on or before the fourth anniversary of the date the will was admitted to probate.

The court has broad authority to order the personal representative to perform acts which the testator prohibited and to prevent the personal representative from acting as the testator specified.

The court must have a “good” reason for ordering the modification or reformation such as to make estate administration more efficient, carry out the testator’s tax objectives, assist a beneficiary in qualifying for government benefits, or to correct a scrivener’s error but only if there is clear and convincing evidence of the testator’s intent.

The court must modify or reform the will to conform to the “probable” intent of the testator.

The personal representative has no duty to seek a reformation or modification and is not required to tell the beneficiaries that the personal representative has the ability to seek reformation or modification.

The personal representative has no liability for failing to seek reformation or modification.

Although these provisions have the laudable goal of carrying out the testator’s intent, they have the possibility of preventing a testator from achieving certainty when drafting a will. For example, the testator could write, “I leave $10,000 to X,” and later have the court decide that the testator actually meant to leave X $100,000 or that the funds were intended for Y.

In Odom v. Coleman, 615 S.W.3d 613 (Tex. App.—Houston [1st Dist.] 2020, no pet.), the will’s residuary clause covered only personal property which passed to Son. A dispute arose as to the disposition of residuary real property. Daughter claimed that the testator died intestate with regard to the real property so she would inherit one-half. Son argued that even though the will is unambiguous, he can establish with clear and convincing evidence that reformation is appropriate to correct a scrivener’s error under Estates Code § 255.451. The court was impressed with the testimony of the drafting attorney who admitted that he used a former client’s will as a template for the testator’s will and neglected to delete the word “personal” from the residuary clause when he cut-and-pasted the form language. Accordingly, the court reformed the will by deleting the word “personal” in the residuary clause resulting in all property passing under the will. The appellate court affirmed.

§ 255.451. Circumstances Under Which Will May be Modified or Reformed

(a) Subject to the requirements of this section, on the petition of a personal representative, a court may order that the terms of the will be modified or reformed, that the personal representative be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or that the personal representative be prohibited from performing acts that are required by the terms of the will, if:

(1) modification of administrative, non-dispositive terms of the will is necessary or appropriate to prevent waste or impairment of the estate’s administration;

(2) the order is necessary or appropriate to achieve the testator’s tax objectives or to qualify a distributee for government benefits and is not contrary to the testator’s intent; or

(3) the order is necessary to correct a scrivener’s error in the terms of the will, even if unambiguous, to conform with the testator’s intent.

(a-1) A personal representative seeking to modify or reform a will under this section must file a petition on or before the fourth anniversary of the date the will was admitted to probate.

(b) An order described in Subsection (a)(3) may be issued only if the testator’s intent is established by clear and convincing evidence.

(c) Chapter 123, Property Code, applies to a proceeding under Subsection (a) that involves a charitable trust.

New.


§ 255.452. Judicial Discretion

The court shall exercise the court’s discretion to order a modification or reformation under this subchapter in the manner that conforms as nearly as possible to the probable intent of the testator.

New.

Added by Acts 2015, 84th Leg., ch. 995, § 19, eff. Sept. 1, 2015.

§ 255.453. Retroactive Effect

The court may direct that an order described by this subchapter has retroactive effect.

New.

Added by Acts 2015, 84th Leg., ch. 995, § 19, eff. Sept. 1, 2015.

§ 255.454. Powers Cumulative

This subchapter does not limit a court’s powers under other law, including the power to modify, reform, or
terminate a testamentary trust under Section 112.054, Property Code.

New.

Added by Acts 2015, 84th Leg., ch. 995, § 19, eff. Sept. 1, 2015.

§ 255.455. Duties and Liability of Personal Representative Under Subchapter

(a) This subchapter does not create or imply a duty for a personal representative to:
   (1) petition a court for modification or reformation of a will, to be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or to be prohibited from performing acts that are required by the terms of the will;
   (2) inform devisees about the availability of relief under this subchapter; or
   (3) review the will or other evidence to determine whether any action should be taken under this subchapter.

(b) A personal representative is not liable for failing to file a petition under Section 255.451.

New.

Added by Acts 2015, 84th Leg., ch. 995, § 19, eff. Sept. 1, 2015.

§ 255.456. Jurisdiction and Transfer of Proceeding

(a) To the extent that this section conflicts with other provisions of this title, this section prevails.

(b) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, if a personal representative petitions the county court to modify or reform the terms of a will, the judge of the county court may, on the judge’s own motion, or shall, on the motion of any party to the proceeding, transfer the proceeding to the county court at law, which may then hear the proceeding as if originally filed in the county court at law.

(g) The county court shall continue to exercise jurisdiction over the management of the estate, other than the modification or reformation proceeding, until final disposition of the modification or reformation proceeding is made in accordance with this subchapter.

(b) On resolution of the modification or reformation proceeding, the statutory probate court judge assigned to hear the proceeding or the district court or county court at law to which the proceeding is transferred under this section shall return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court, district court, or county court at law, as applicable.

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

New.

Added by Acts 2019, 86th Leg., ch. 1141, § 10, eff. Sept. 1, 2019.

Chapter 256. Probate of Wills Generally

Subchapter A. Effectiveness of Will; Period for Probate

§ 256.001. Will Not Effective Until Probated

§ 256.002. Probate Before Death Void

§ 256.003. Period for Admitting Will to Probate; Protection for Certain Purchasers

Subchapter B. Application Requirements

§ 256.051. Eligible Applicants for Probate of Will

§ 256.052. Contents of Application For Probate of Will

§ 256.053. Filing of Will With Application For Probate Generally Required.

§ 256.054. Additional Application Requirements When No Will Is Produced

Subchapter C. Procedures for Second Application

§ 256.101. Procedure on Filing of Second Application When Original Application Has Not Been Heard

§ 256.102. Procedure on Filing of Second Application for Probate After First Will Has Been Admitted

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 256.103. Procedure When Application for Probate is Filed After Letters of Administration Have Been Granted

**Subchapter D. Required Proof for Probate of Will**

§ 256.151. General Proof Requirements
§ 256.152. Additional Proof Required for Probate of Will
§ 256.153. Proof of Execution of Attested Will
§ 256.154. Proof of Execution of Holographic Will
§ 256.155. Procedures for Depositions When No Contest is Filed
§ 256.156. Proof of Will Not Produced in Court
§ 256.157. Testimony Regarding Probate to be Committed to Writing

**Subchapter E. Admission of Will to, and Procedures Following, Probate**

§ 256.201. Admission of Will to Probate
§ 256.202. Custody of Probated Will
§ 256.203. Establishing Contents of Will Not in Court’s Custody
§ 256.204. Period for Contest

**Chapter 256. Probate of Wills Generally**

**Subchapter A. Effectiveness of Will; Period for Probate**

A will has no legal effect until it is probated. Under § 256.001, a beneficiary has no claim to the devised or bequeathed property until the will is admitted to probate.

§ 256.001. Will Not Effective Until Probated

Except as provided by Subtitle K with respect to foreign wills, a will is not effective to prove title to, or the right to possession of, any property disposed of by the will until the will is admitted to probate.

Derived from Probate Code § 94.

Texas does not recognize ante-mortem probate. However, a few states including Alaska, Arkansas, North Dakota, and Ohio do permit a testator to have the validity of his or her will determined while the testator is still alive.

§ 256.002. Probate Before Death Void

The probate of a will of a living person is void.

Derived from Probate Code § 72(a).
*Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.*

The application for the probate of a will must be filed within four years of the testator’s death. However, § 256.003(a) permits a court to permit a “late” probate if the proponent of the will was “not in default.” The courts have been quite lenient and have accepted a variety of reasons for the proponent’s tardiness. See [*In re Estate of Perez*, 324 S.W.3d 257 (Tex. App.—El Paso 2010, no pet.),] in which the court accepted the proponent’s excuse that she did not realize that she needed to probate her husband’s will sooner because she was uneducated and economically challenged. See also [*Kamoos v. Woodward*, 570 S.W.2d 6 (Tex. Civ. App. — San Antonio 1978, writ ref’d n.r.e.).] Although it may not be possible to probate a will after the expiration of the four years because the proponent was in default, the will may nonetheless be used to show that the testator had revoked a prior will. [*Chambers v. Chambers*, 542 S.W.2d 901, 905 (Tex. Civ. App.—Dallas 1976, no writ)].

The court may consider only the applicant’s default in determining whether to probate a will after four years. It does not matter whether someone else, even the person through whom the applicant is claiming, was in default. [*Ferreira v. Butler*, 575 S.W.3d 331 (Tex. 2019)].

§ 256.003. Period for Admitting Will to Probate; Protection for Certain Purchasers

(a) Except as provided by Section 501.001 with respect to a foreign will, 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) Except as provided by Section 501.006 with respect to a foreign will, letters testamentary may not be issued if a will is admitted to probate after the fourth anniversary of the testator’s death unless it is shown that the application for probate was filed on or before 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
§ 256.051. Eligible Applicants for Probate of Will

(a) An executor named in a will, an administrator designated as authorized under Section 254.006, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b), or an interested person may file an application with the court for an order admitting a will to probate, whether the will is:

(1) in the applicant’s possession or not;
(2) lost;
(3) destroyed; or
(4) outside of this state.

(b) An application for the probate of a will may be combined with an application for the appointment of an executor or administrator. A person interested in either the probate or the appointment may apply for both.

Derived from Probate Code § 76.


Subchapter B. Application Requirements

§ 256.052. Contents of Application For Probate of Will

(a) An application for the probate of a will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant’s name and domicile;
(2-a) the last three numbers of each applicant’s driver’s license number and social security number, if the applicant has been issued one;
(2) the testator’s name, domicile, and, if known, age, on the date of the testator’s death;
(2-a) the last three numbers of the testator’s driver’s license number and social security number;
(3) the fact, date, and place of the testator’s death;
(4) facts showing that the court with which the application is filed has venue;
(5) that the testator owned property, including a statement generally describing the property and the property’s probable value;
(6) the date of the will;
(7) the name, state of residence, and physical address where service can be had of the executor named in the will or other person to whom the applicant desires that letters be issued;
(8) the name of each subscribing witness to the will, if any;
(9) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
(10) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom;
(11) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and
(12) that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

(b) If an applicant does not state or aver any matter required by Subsection (a) in the application, the application must state the reason the matter is not stated and averred.

Derived from Probate Code § 81(a).


§ 256.053. Filing of Will With Application For Probate Generally Required

(a) An applicant for the probate of a will shall file the will with the application if the will is in the applicant’s control.

(b) A will filed under Subsection (a) must remain in the custody of the county clerk unless removed from the clerk’s custody:

(1) by a court order under Section 256.202; or
(2) by a court order issued under Subchapter C, Chapter 33, in which case the clerk shall deliver the will directly to the clerk of the court to which the probate proceeding is transferred.

Derived from Probate Code § 81(a).


§ 256.054. Additional Application Requirements When No Will Is Produced.

In addition to the requirements for an application under Section 256.052, if an applicant for the probate of a will cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;
(2) the contents of the will, as far as known; and
TEXAS ESTATES CODE

(3) the name and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of:
(A) each devisee;
(B) each person who would inherit as an heir of the testator in the absence of a valid will; and
(C) in the case of partial intestacy, each heir of the testator.

Derived from Probate Code § 81(b).


Subchapter C. Procedures for Second Application

§ 256.101. Procedure on Filing of Second Application when Original Application Has Not Been Heard

(a) If, after an application for the probate of a decedent’s will or the appointment of a personal representative for the decedent’s estate has been filed but before the application is heard, an application is filed for the probate of a will of the same decedent that has not previously been presented for probate, the court shall:
(1) hear both applications together; and
(2) determine:
(A) if both applications are for the probate of a will, which will should be admitted to probate, if either, or whether the decedent died intestate; or
(B) if only one application is for the probate of a will, whether the will should be admitted to probate or whether the decedent died intestate.

(b) The court may not sever or bifurcate the proceeding on the applications described in Subsection (a).

Derived from Probate Code § 83(a).


§ 256.102. Procedure on Filing of Second Application for Probate After First Will Has Been Admitted

If, after a decedent’s will has been admitted to probate, an application is filed for the probate of a will of the same decedent that has not previously been presented for probate, the court shall determine:
(1) whether the former probate should be set aside; and
(2) if the former probate is to be set aside, whether:
(A) the other will should be admitted to probate; or
(B) the decedent died intestate.

Derived from Probate Code § 83(b).


§ 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 as valid as if no will had been discovered.

Derived from Probate Code § 83(c).


Subchapter D. Required Proof for Probate of Will

§ 256.151. General Proof Requirements

An applicant for the probate of a will must prove to the court’s satisfaction that:
(1) the testator is dead;
(2) four years have not elapsed since the date of the testator’s death and before the application;
(3) the court has jurisdiction and venue over the estate;
(4) citation has been served and returned in the manner and for the period required by this title; and
(5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified.

Derived from Probate Code § 88(a).


Statutes in Context

§§ 256.152–256.155

Sections 256.152–256.155 explain how to prove a written will which is physically produced in court. If the will is self-proved, no additional proof is needed. See §§ 251.051 (attested wills) and 251.052 (holographic wills).

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 256.152. Additional Proof Required for Probate of Will

(a) An applicant for the probate of a will must prove the following to the court’s satisfaction, in addition to the proof required by Section 256.151, to obtain the probate:

1. the testator did not revoke the will; and
2. if the will is not self-proved as provided by this title, the testator:
   (A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and
   (B) at the time of executing the will, was of sound mind and:
      (i) was 18 years of age or older;
      (ii) was or had been married; or
      (iii) was a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

(b) A will that is self-proved as provided by Subchapter C, Chapter 251, that is self-proved in accordance with the law of another state or foreign country where the will was executed, as that law existed at the time of the will’s execution, or that is self-proved in accordance with the law of another state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will’s execution or the time of the testator’s death, is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

(c) As an alternative to Subsection (b), a will is considered self-proved without further evidence of the law of any state or foreign country if:

1. the will was executed in another state or a foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will’s execution or the time of the testator’s death; and
2. the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:
   (A) the testator declared that the testator signed the instrument as the testator’s will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator’s free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and
   (B) the witnesses declared that the testator signed the instrument as the testator’s will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator’s signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

Derived from Probate Code § 84(a), 88(b).


§ 256.153. Proof of Execution of Attested Will

(a) An attested will produced in court that is not self-proved as provided by this title may be proved in the manner provided by this section.

(b) A will described by Subsection (a) may be proved by the sworn testimony or affidavit of one or more of the subscribing witnesses to the will taken in open court.

(c) If all the witnesses to a will described by Subsection (a) are nonresidents of the county or the witnesses who are residents of the county are unable to attend court, the will may be proved:

1. by the sworn testimony of one or more of the witnesses by written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure;
2. if no opposition in writing to the will is filed on or before the date set for the hearing on the will, by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition as provided by Subdivision (1), to the signature or the handwriting evidenced by the signature of:
   (A) one or more of the attesting witnesses; or
   (B) the testator, if the testator signed the will; or
3. if it is shown under oath to the court’s satisfaction that, after a diligent search was made, only one witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature, or the handwriting evidenced by a signature, described by Subdivision (2).

(d) If none of the witnesses to a will described by Subsection (a) are living, or if each of the witnesses is a member of the armed forces or the armed forces reserves of the United States, an auxiliary of the armed forces or armed forces reserves, or the United States Maritime Service and is beyond the court’s jurisdiction, the will may be proved:

1. by two witnesses to the handwriting of one or both of the subscribing witnesses to the will or the testator, if the testator signed the will, by:
(A) sworn testimony or affidavit taken in open court; or
(B) written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure; or
(2) if it is shown under oath to the court’s satisfaction that, after a diligent search was made, only one witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature or the handwriting described by Subdivision (1).
(c) A witness being deposed for purposes of proving the will as provided by Subsection (c) or (d) may testify
by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court’s file and shown to the witness.

Derived from Probate Code § 84(b).

§ 256.154. Proof of Execution of Holographic Will
(a) A will wholly in the handwriting of the testator that is not self-proved as provided by this title may be proved by two witnesses to the testator’s handwriting. The evidence may be by:
(1) sworn testimony or affidavit taken in open court;
or
(2) if the witnesses are nonresidents of the county or are residents who are unable to attend court, written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure.
(b) A witness being deposed for purposes of proving the will as provided by Subsection (a)(2) may testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court’s file and shown to the witness.

Derived from Probate Code § 84(c).

§ 256.155. Procedures for Depositions when No Contest is Filed
(a) This section, rather than Sections 256.153(c) and (d) and 256.154 regarding the taking of depositions, applies if no contest has been filed with respect to an application for the probate of a will.
(b) Depositions for the purpose of establishing a will may be taken in the manner provided by Section 51.203 for the taking of depositions when there is no opposing party or attorney of record on whom notice and copies of interrogatories may be served.

Derived from Probate Code § 84(d).

§ 256.156. Proof of Will Not Produced in Court
(a) A will that cannot be produced in court must be
proved in the manner provided by Section 256.153 for an attested will or Section 256.154 for a holographic will, as applicable. The same amount and character of testimony is required to prove the will not produced in court as is required to prove a will produced in court.

Electronic copy available at: https://ssrn.com/abstract=4537861
(b) In addition to the proof required by Subsection (a):
(1) the cause of the nonproduction of a will not produced in court must be proved, which must be sufficient to satisfy the court that the will cannot by any reasonable diligence be produced; and
(2) the contents of the will must be substantially proved by the testimony of a credible witness who has read either the original or a copy of the will, has heard the will read, or can identify a copy of the will.

Derived from Probate Code § 85.

§ 256.157. Testimony Regarding Probate to Be Committed to Writing

(a) Except as provided by Subsection (b), all testimony taken in open court on the hearing of an application to probate a will must be:
(1) committed to writing at the time the testimony is taken;
(2) subscribed and sworn to in open court by the witness; and
(3) filed by the clerk.

(b) In a contested case, the court, on the agreement of the parties or, if there is no agreement, on the court’s own motion, may waive the requirements of Subsection (a).

Derived from Probate Code § 87.

Subchapter E. Admission of Will To, and Procedures Following, Probate

§ 256.201. Admission of Will to Probate

If the court is satisfied on the completion of hearing an application for the probate of a will that the will should be admitted to probate, the court shall enter an order admitting the will to probate. Certified copies of the will and the 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;
(2) the court clerk shall make and retain a copy of the will; and
(3) the will shall be delivered back to the office of the county clerk of the county in which the will was probated after the inspection is completed.

Derived from Probate Code § 90.

§ 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;
(2) the court clerk shall make and retain a copy of the will; and
(3) the will shall be delivered back to the office of the county clerk of the county in which the will was probated after the inspection is completed.

Derived from Probate Code § 90.

§ 256.203. Establishing Contents of Will Not in Court’s Custody

If for any reason a will is not in the court’s custody, the court shall find the contents of the will by written order. Certified copies of the contents as established by the order may be:
(1) recorded in other counties; and
(2) used in evidence, as certified copies of wills in the custody of the court may be used.

Derived from Probate Code § 91.

Statutes in Context

§ 256.204. Period for Contest

(a) After a will is admitted to probate, an interested person may commence a suit to contest the validity thereof not later than the second anniversary of the date the will was admitted to probate, except that an interested person may commence a suit to cancel a will for forgery or other fraud not later than the second anniversary of the date the forgery or fraud was discovered.

(b) Notwithstanding Subsection (a), an incapacitated person may commence the contest under that subsection on or before the second anniversary of the date the person’s disabilities are removed.

Derived from Probate Code § 93.
Chapter 257. Probate of Will as Muniment of Title

Subchapter A. Authorization

§ 257.001. Probate of Will as Muniment of Title Authorized

A court may admit a will to probate as a muniment of title if the court is satisfied that the will should be admitted to probate and the court:

(1) is satisfied that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate; or

(2) finds for another reason that there is no necessity for administration of the estate.

Subchapter B. Application and Proof Requirements

§ 257.051. Contents of Application Generally

(a) An application for the probate of a will as a muniment of title must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant's name and domicile;

(1-a) the last three numbers of each applicant's driver's license number and social security number, if the applicant has been issued one;

(2) the testator's name, domicile, and, if known, age, on the date of the testator's death;

(2-a) the last three numbers of the testator's driver's license number and social security number;

(3) the fact, date, 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;

The fact that a will has already been admitted to probate as a muniment of title will not preclude a later estate administration as long as either (1) four years have not elapsed since the testator died, or (2) the court determines that estate administration is needed under Estates Code § 301.002(b) (e.g., to recover property due a decedent's estate). Certain time periods for the court or personal representative to take action will now run from the date the personal representative qualifies rather than from when the court admitted the will to probate as a muniment of title (e.g., the giving of notice to the beneficiaries).

The muniment of title procedure is also used for "late" probates which are permitted under § 256.003. See also § 258.051 (heirs must receive notice of late probate).

Subchapter C. Order Admitting Will; Report

§ 257.101. Declaratory Judgment Construing Will

A court may admit a will to probate as a muniment of title if the court is satisfied that the will should be admitted to probate and the court:

(1) is satisfied that the testator’s estate does not owe an unpaid debt, other than any debt secured by a lien on real estate; or

(2) finds for another reason that there is no necessity for administration of the estate.

Derived from Probate Code § 89C(a).


Subchapter D. Subsequent Estate Administration

§ 257.151. Appointment of Personal Representative and Opening of Administration After Will Admitted to Probate as Muniment of Title

§ 257.151. Computation of Certain Periods

Chapter 257. Probate of Will as Muniment of Title

Statutes in Context

Chapter 257
details how to probate a will as a muniment of title. This procedure is extremely efficient and cost-effective because there is no administration of the estate (no executor is appointed; no letters testamentary are issued). Instead, the testator's will is proved to be valid and the court order admitting the will to probate documents title transfer to the beneficiaries and gives authority to all those who hold the testator's property to deliver it to the beneficiaries. To use the procedure, however, the testator's estate must have no unpaid debts (except those secured by real property) or the court must determine for another reason that there is no necessity for administration. Sometimes the beneficiaries will pay the testator's debts out of their own pockets so that this procedure may be used.
(7) the name, state of residence, and physical address where service can be had of the executor named in the will;
(8) the name of each subscribing witness to the will, if any;
(9) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
(10) that the testator’s estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate;
(11) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom; and
(12) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee.

(b) If an applicant does not state or aver any matter required by Subsection (a) in the application, the application must state the reason the matter is not stated and averred.

Derived from Probate Code § 89A(a).


§ 257.052. Filing of Will With Application Generally Required

(a) An applicant for the probate of a will as a muniment of title shall file the will with the application if the will is in the applicant’s control.

(b) A will filed under Subsection (a) must remain in the custody of the county clerk unless removed from the clerk’s custody by court order.

Derived from Probate Code § 89A(a).


§ 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, or that for another reason there is no necessity for administration of the estate;
(6) the testator did not revoke the will; and
(7) if the will is not self-proved in the manner provided by this title, the testator:

(A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and
(B) at the time of executing the will was of sound mind and:

(i) was 18 years of age or older;
(ii) was or had been married; or
(iii) was a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

Derived from Probate Code § 89B.


Subchapter C. Order Admitting Will; Report

§ 257.101. Declaratory Judgment Construing Will

(a) On application and notice as provided by Chapter 37, Civil Practice and Remedies Code, the court may hear evidence and include in an order probating a will as a muniment of title a declaratory judgment:

(1) construing the will, if a question of construction of the will exists; or
(2) determining those persons who are entitled to receive property under the will and the persons’ shares or interests in the estate, if a person who is entitled to property under the provisions of the will cannot be ascertained solely by reference to the will.
(b) A declaratory judgment under this section is conclusive in any suit between a person omitted from the judgment and a bona fide purchaser for value who purchased property after entry of the judgment without actual notice of the claim of the omitted person to an interest in the estate.

(c) A person who delivered the testator’s property to a person declared to be entitled to the property under the declaratory judgment under this section or engaged in any other transaction with the person in good faith after entry of the judgment is not liable to any person for actions taken in reliance on the judgment.

Derived from Probate Code § 89C(b).


§ 257.102. Authority of Certain Persons Acting in Accordance with Order

(a) An order admitting a will to probate as a muniment of title constitutes sufficient legal authority for each person who owes money to the testator’s estate, has custody of property, acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with the estate, to pay or transfer without administration the applicable asset without liability to a person described in the will as entitled to receive the asset.

(b) A person who is entitled to property under the provisions of a will admitted to probate as a muniment of title is entitled to deal with and treat the property in the same manner as if the record of title to the property was vested in the person’s name.

Derived from Probate Code § 89C(c).


§ 257.103. Report by Applicant After Probate

(a) Except as provided by Subsection (b), not later than the 180th day after the date a will is admitted to probate as a muniment of title, the applicant for the probate of the will shall file with the court clerk a sworn affidavit stating specifically the terms of the will that have been fulfilled and the terms that have not been fulfilled.

(b) The court may:

(1) waive the requirement under Subsection (a); or

(2) extend the time for filing the affidavit under Subsection (a).

(c) The failure of an applicant for probate of a will to file the affidavit required by Subsection (a) does not affect title to property passing under the terms of the will.

Derived from Probate Code § 89C(d).


§ 257.151. Appointment of Personal Representative and Opening of Administration After Will Admitted to Probate as Muniment of Title

A court order admitting a will to probate as a muniment of title under this chapter does not preclude the subsequent appointment of a personal representative and opening of an administration for the testator’s estate if:

(1) an application under Chapter 301 is filed not later than the fourth anniversary of the testator’s death; or

(2) the administration of the testator’s estate is necessary for a reason provided by Section 301.002(b).

New.

Added by Acts 2019, 86th Leg., ch. 1141, § 16, eff. Sept. 1, 2019.

§ 257.152. Computation of Certain Periods

If a personal representative is appointed for a testator’s estate after the testator’s will has been admitted to probate as a muniment of title, the periods described by the following sections begin to run from the date of qualification of the personal representative rather than from the date the will is admitted to probate as a muniment of title:

(1) Section 306.001;

(2) Section 306.002(a)(2)(B)(ii);

(3) Section 308.002; and

(4) Section 308.004.

New.

Added by Acts 2019, 86th Leg., ch. 1141, § 16, eff. Sept. 1, 2019.

Chapter 258. Citations and Notices Relating to Probate of Will

Subchapter A. Citations with Respect to Applications for Probate of Will

§ 258.001. Citation on Application for Probate of Will Produced in Court

§ 258.002. Citation on Application for Probate of Will Not Produced in Court

§ 258.003. Court Action Prohibited Before Service of Citation

Subchapter B. Notices with Respect to Application to Probate Will After the Period for Probate

§ 258.051. Notice to Heirs

§ 258.052. Appointment of Attorney Ad Litem

§ 258.053. Previously Probated Will

Subchapter C. Service by Publication or Other Substituted Service

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 258.101. Service by Publication or Other Substituted Service

Chapter 258. Citations and Notices Relating to Probate of Will

Subchapter A. Citations with Respect to Applications for Probate of Will

Statutes in Context
Chapter 258, Subchapter A

Notice of an application for the probate of a written will produced in court and for letters of administration is served by posting under § 258.001. The notice of the action is merely placed on the courthouse door or a nearby location under § 51.053. Unlike in many states, will beneficiaries and heirs do not receive personal service or service by mail. The posting procedure has been deemed to satisfy the due process requirements of the U.S. Constitution. See Estate of Ross, 672 S.W.2d 315 (Tex. App. — Eastland 1984, writ ref'd n.r.e.), cert. denied, Holmes v. Ross, 470 U.S. 1084 (1985).

Methods of service more likely to give actual (as contrasted to constructive) notice are required if the proponent is attempting to probate a written will not produced in court or a will more than 4 years after the testator's death (see § 258.051).

§ 258.001. Citation on Application for Probate of Will Produced in Court

(a) On the filing with the clerk of an application for the probate of a written will produced in court, the clerk shall issue a citation to all parties interested in the estate.

(b) The citation required by Subsection (a) shall be served by posting and must state:

(1) that the application has been filed;
(2) the nature of the application;
(3) the testator's name;
(4) the applicant's name;
(5) the time when the court will act on the application; and
(6) that any person interested in the estate may appear at the time stated in the citation to contest the application.

Derived from Probate Code § 128(a).


§ 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.

(d) An heir who is 16 years of age or older may waive citation required by this section to be served on the heir.

(e) The parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of an heir who is younger than 16 years of age may waive citation required by this section to be served on the heir.

Derived from Probate Code § 128(b).


§ 258.003. Court Action Prohibited Before Service of Citation

A court may not act on an application for the probate of a will until service of citation has been made in the manner provided by this subchapter.

Derived from Probate Code § 128(c).


Subchapter B. Notices with Respect to Application to Probate Will After the Period for Probate

Statutes in Context
§ 258.051

See Statutes in Context to Chapter 258, Subchapter A.

§ 258.051. Notice to Heirs

(a) Except as provided by Subsection (c), an applicant for the probate of a will under Section 256.003(a) must give notice by service of process to each of the testator's heirs whose address can be ascertained by the applicant with reasonable diligence.

(b) The notice required by Subsection (a) must:

(1) contain a statement that:

(A) the testator's property will pass to the testator's heirs if the will is not admitted to probate; and

(B) the person offering the testator's will for probate may not be in default for failing to present...
the will for probate during the four-year period immediately following the testator’s death; and
(2) be given before the probate of the testator’s will.
(c) Notice otherwise required by Subsection (a) is not required to be given to an heir who has delivered to the court an affidavit signed by the heir that:
(1) contains the statement described by Subsection (b)(1); and
(2) states that the heir does not object to the offer of the testator’s will for probate.

Derived from Probate Code §§ 128B(a), (b), (c).

§ 258.052. Appointment of Attorney Ad Litem
If an applicant described by Section 258.051(a) cannot, with reasonable diligence, ascertain the address of any of the testator’s heirs, the court shall appoint an attorney ad litem to protect the interests of the testator’s unknown heirs after an application for the probate of a will is made under Section 256.003(a).
Derived from Probate Code § 128B(d).

§ 258.053. Previously Probated Will
With respect to an application under Section 256.003(a) for the probate of a will of a testator who has had another will admitted to probate, this subchapter applies so as to require notice to the beneficiaries of the testator’s probated will instead of to the testator’s heirs.
Derived from Probate Code § 128B(e).

Subchapter C. Service by Publication or Other Substituted Service

§ 258.101. Service by Publication or Other Substituted Service
Notwithstanding any other provision of this chapter, if an attempt to make service under this chapter is unsuccessful, service may be made in the manner provided by Rule 109 or 109a, Texas Rules of Civil Procedure, for the service of a citation on a party by publication or other substituted service.
Derived from Probate Code § 129A.

SUBTITLE G. INITIAL APPOINTMENT OF PERSONAL REPRESENTATIVE AND OPENING OF ADMINISTRATION

Chapter 301. Application for Letters Testamentary or of Administration

Subchapter A. Period for Application for Letters

§ 301.001. Administration Before Death Void
§ 301.002. Period for Filing Application for Letters Testamentary or of Administration

Subchapter B. Application Requirements
§ 301.051. Eligible Applicants for Letters
§ 301.052. Contents of Application for Letters of Administration

Subchapter C. Opposition to Certain Applications
§ 301.101. Opposition to Application for Letters of Administration

Subchapter D. Required Proof for Issuance of Letters
§ 301.151. General Proof Requirements
§ 301.152. Additional Proof Required for Letters Testamentary
§ 301.153. Additional Proof Required for Letters of Administration; Effect of Finding No Necessity for Administration Exists
§ 301.154. Proof Required when Letters Have Previously Been Granted
§ 301.155. Authorized Methods of Proof

Subchapter E. Prevention of Administration
§ 301.201. Method of Preventing Administration Requested by Creditor
§ 301.202. Suit on Bond
§ 301.203. Bond Secured by Lien

Chapter 301. Application for Letters Testamentary or of Administration

Subchapter A. Period for Application for Letters

§ 301.001. Administration Before Death Void
The administration of an estate of a living person is void.
Derived from Probate Code § 72(a).

161
Section 301.002 provides that the application for the administration of an estate must usually be filed within 4 years of the decedent’s death. A “late” administration is allowed if it is necessary to recover property due to the estate of the decedent.

§ 301.002. Period for Filing Application for Letters Testamentary or of Administration

(a) Except as provided by Subsection (b) and Section 501.006 with respect to a foreign will, 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:

(1) receive or recover property due a decedent’s estate; or
(2) prevent real property in a decedent’s estate from becoming a danger to the health, safety, or welfare of the general public and the applicant for the issuance of letters testamentary or of administration is a home-rule municipality that is a creditor of the estate.

 Derived from Probate Code § 74.

§ 301.052. Contents of Application for Letters of Administration

(a) 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;
(1-a) the last three numbers of:
(A) the applicant’s driver’s license number, if the applicant has been issued one; and
(B) the applicant’s social security number, if the applicant has been issued one;
(2) the decedent’s name and that the decedent died intestate;
(2-a) if known by the applicant at the time the applicant files the application, the last three numbers of the decedent’s driver’s license number and social security number;
(3) the fact, date, 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, a statement of the property’s probable value;
(6) the name and address, if known, whether the heir is an adult or minor, 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 the decedent was ever divorced and, if so, when and from whom;
(8) if known by the applicant at the time the applicant files the application, whether the decedent’s estate and an allegation of the facts that show that necessity; and
(9) that a necessity exists for administration of the decedent’s estate and an allegation of the facts that show that necessity; and
(10) that the applicant is not disqualified by law from acting as administrator.

Derived from Probate Code § 76.


Subchapter B. Application Requirements

§ 301.051. Eligible Applicants for Letters

An executor named in a will, an administrator designated as authorized under Section 254.006, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b) or 401.003, or an interested person may file an application with the court for:

(1) the appointment of the executor named in the will;
(1-a) the appointment of the designated administrator; or
(2) the appointment of an administrator, if:
(A) there is a will, but:
(i) no executor is named in the will;
(ii) the executor named in the will is disqualified, refuses to serve, is dead, or resigns;
(iii) a person designated to serve as administrator under Section 254.006 is disqualified, refuses to serve, is dead, or resigns;
(iv) an authorized person other than the executor has not designated any person to serve as administrator under Section 254.006 as of the date of the filing of the application and the applicant notifies the court that the authorized person has no intention of doing so; or
(B) there is no will.

Derived from Probate Code § 74.

§ 301.052. Contents of Application for Letters of Administration

(a) 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;
(1-a) the last three numbers of:
(A) the applicant’s driver’s license number, if the applicant has been issued one; and
(B) the applicant’s social security number, if the applicant has been issued one;
(2) the decedent’s name and that the decedent died intestate;
(2-a) if known by the applicant at the time the applicant files the application, the last three numbers of the decedent’s driver’s license number and social security number;
(3) the fact, date, 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 and address, if known, whether the heir is an adult or minor, 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.

Electronic copy available at: https://ssrn.com/abstract=4537861
(b) If an applicant does not state the last three numbers of the decedent’s driver’s license number or social security number under Subsection (a)(2-a), the application must state the reason the numbers are not stated.

Derived from Probate Code § 82.


§ 301.152. Additional Proof Required for Letters Testamentary

If letters testamentary are to be granted, it must appear to the court that:

(1) the proof required for the probate of the will has been made; and

(2) the person to whom the letters are to be granted is named as executor in the will.

Derived from Probate Code § 88(c).


§ 301.153. Additional Proof Required for Letters of Administration; Effect of Finding No Necessity for Administration Exists

(a) If letters of administration are to be granted, the applicant for the letters must prove to the court’s satisfaction that a necessity for an administration of the estate exists.

(b) If an application is filed for letters of administration but the court finds that no necessity for an administration of the estate exists, the court shall recite in the court’s order refusing the application that no necessity for an administration exists.

(c) A court order containing a recital that no necessity for an administration of the estate exists constitutes sufficient legal authority for each person who owes money, has custody of property, or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to each person purchasing or otherwise dealing with the estate, for payment or transfer to the distributees.

(d) A distributee is entitled to enforce by suit the distributee’s right to payment or transfer described by Subsection (c).

Derived from Probate Code §§ 88(d), 180.


§ 301.154. Proof Required when Letters Have Previously Been Granted

If letters testamentary or of administration have previously been granted with respect to an estate, an applicant for the granting of subsequent letters must show only that the person for whom the letters are sought is entitled by law to the letters and is not disqualified.

Derived from Probate Code § 88(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
Statutes in Contest
§ 301.155
Section 301.155 provides that any fact that must be provided, e.g., in applications for the issuance of letters, may be provided by live testimony, or if the witness is unavailable, by disposition on written questions.

§ 301.155. Authorized Methods of Proof
A fact contained in an application for issuance of letters testamentary or of administration or any other fact required to be proved by this subchapter may be proved by the sworn testimony of a witness with personal knowledge of the fact that is:
(1) taken in open court; or
(2) if proved under oath to the satisfaction of the court that the witness is unavailable, taken by deposition on written questions in accordance with Section 51.203 or the Texas Rules of Civil Procedure.

New.
Added by Acts 2013, 83rd Leg., ch. 1136, § 34, eff. Jan. 1, 2014.

Subchapter E. Prevention of Administration

Statutes in Context
§ 301.201
If a creditor seeks an administration, § 301.201 provides a means for an interested person to defeat the application.

§ 301.201. Method of Preventing Administration Requested by Creditor
(a) If a creditor files an application for letters of administration of an estate, another interested person who does not desire the administration can defeat the application by:
(1) paying the creditor’s claim;
(2) proving to the court’s satisfaction that the creditor’s claim is fictitious, fraudulent, illegal, or barred by limitation; or
(3) executing a bond that is:
   (A) payable to, and to be approved by, the judge in an amount that is twice the amount of the creditor’s claim; and
   (B) conditioned on the obligors paying the claim on the establishment of the claim by suit in any court in the county having jurisdiction of the amount.
(b) A bond executed and approved under Subsection (a)(3) must be filed with the county clerk.

Derived from Probate Code §§ 80(a), (b).

§ 301.202. Suit on Bond
Any creditor for whose protection a bond is executed under Section 301.201(a)(3) may sue on the bond in the creditor’s own name to recover the creditor’s claim.

Derived from Probate Code § 80(b).

§ 301.203. Bond Secured by Lien
If a bond is executed and approved under Section 301.201(a)(3), a lien exists on all of the estate in the possession of the distributees, and those claiming under the distributees with notice of the lien, to secure the ultimate payment of the bond.

Derived from Probate Code § 80(c).

Chapter 303. Citations and Notices in General on Opening of Administration

§ 303.001. Citation on Application for Issuance of Letters of Administration

(a) On the filing with the clerk of an application for letters of administration, the clerk shall issue a citation to all parties interested in the estate.
(b) The citation required by Subsection (a) shall be served by posting and must state:
   (1) that the application has been filed;
   (2) the nature of the application;
   (3) the decedent’s name;
   (4) the applicant’s name;
   (5) the time when the court will act on the application; and
   (6) that any person interested in the estate may appear at the time stated in the citation to contest the application.

Derived from Probate Code § 128(a).

§ 303.002. Court Action Prohibited Before Service of Citation

A court may not act on an application for the issuance of letters of administration until service of citation has been made in the manner provided by this chapter.

Derived from Probate Code § 128(c).
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
Chapter 304. Persons Who May Serve as Personal Representatives

§ 304.001. Order of Persons Qualified to Serve as Personal Representative

(a) The court shall grant letters testamentary or of administration to persons qualified to act, in the following order:

(1) the person named as executor in the decedent’s will;
(1-a) the person designated as administrator as authorized under Section 254.006;
(2) the decedent’s surviving spouse;
(3) the principal devisee of the decedent;
(4) any devisee of the decedent;
(5) the next of kin of the decedent;
(6) a creditor of the decedent;
(7) any person of good character residing in the county who applies for the letters;
(8) any other person who is not disqualified under Section 304.003; and
(9) any appointed public probate administrator.

(b) For purposes of Subsection (a)(5), the decedent’s next of kin:

(1) is determined in accordance with order of descent, with the person nearest in order of descent first, and so on; and

(2) includes a person and the person’s descendants who legally adopted the decedent or who have been legally adopted by the decedent.

(c) If persons are equally entitled to letters testamentary or of administration, the court:

(1) shall grant the letters to the person who, in the judgment of the court, is most likely to administer the estate advantageously; or

(2) may grant the letters to two or more of those persons.

Derived from Probate Code § 77.


§ 304.002. Renouncing Right to Serve as Personal Representative

A decedent’s surviving spouse, or, if there is no surviving spouse, the heirs or any one of the heirs of the decedent to the exclusion of any person not equally entitled to letters testamentary or of administration, may renounce the right to the letters in favor of another qualified person in open court or by a power of attorney authenticated and filed with the county clerk of the county where the application for the letters is filed. After the right to the letters has been renounced, the court may grant the letters to the other qualified person.

Derived from Probate Code § 79.


Statutes in Context
§ 304.001

To serve as a personal representative of a decedent’s estate, the person must be qualified under § 304.001 and not disqualified under § 304.003. Section 304.001 provides a list in priority order of the persons who are qualified to serve. Note that the court may appoint co-personal representatives.

A non-marital partner lacks priority over an intestate’s next of kin to be appointed as the administrator of an intestate’s estate. See Matter of Estate of Tovar, No. 08-22-00028-CV, 2023 WL 2373496 (Tex. App.—El Paso Mar. 6, 2023, pet. filed).

§ 304.003. Persons Disqualified to Serve as Executor or Administrator

(a) Except as provided by Subsection (b), 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.

(b) A person described by Subsection (a)(2) is not disqualified from serving as an executor of a decedent’s estate under Subsection (a)(2) if:
   (1) the person is named as executor in the decedent’s will;
   (2) the person is otherwise qualified to serve as an executor; and
   (3) the court approves the person serving as an executor.

Derived from Probate Code § 78.


Chapter 305. Qualification of Personal Representatives

Subchapter A. General Provisions

§ 305.001. Definitions
§ 305.002. Manner of Qualification of Personal Representative
§ 305.003. Period for Taking Oath or Making and Signing Declaration
§ 305.004. Period for Giving Bond

Subchapter B. Oaths or Declarations

§ 305.051. Oath or Declaration of Executor or Administrator with Will Annexed
§ 305.052. Oath or Declaration of Administrator
§ 305.053. Oath or Declaration of Temporary Administrator
§ 305.054. Administration of Oath
§ 305.055. Filing and Recording of Oath or Declaration

Subchapter C. General Provisions Relating to Bonds

§ 305.101. Bond Generally Required; Exceptions
§ 305.102. Bond Required From Executor Otherwise Exempt
§ 305.103. Bonds of Joint Personal Representatives
§ 305.104. Bond of Married Person
§ 305.105. Bond of Married Person Under 18 Years of Age
§ 305.106. General Formalities
§ 305.107. Subscription of Bond by Principals and Sureties

§ 305.108. Form of Bond
§ 305.109. Filing of Bond
§ 305.110. Failure to Give Bond
§ 305.111. Bond Not Void on First Recovery

Subchapter D. Amount of Bond and Associated Deposits

§ 305.151. General Standard Regarding Amount of Bond
§ 305.152. Evidentiary Hearing on Amount of Bond
§ 305.153. Specific Bond Amount
§ 305.154. Agreement Regarding Deposit of Estate Assets
§ 305.155. Deposit of Estate Assets on Terms Prescribed by Court
§ 305.156. Deposits of Personal Representative
§ 305.157. Receipt for Deposits of Personal Representative
§ 305.158. Bond Required Instead of Deposits by Personal Representative
§ 305.159. Withdrawal of Deposits on Closing of Administration
§ 305.160. Increased or Additional Bonds in Certain Circumstances

Subchapter E. Bond Sureties

§ 305.201. Personal or Authorized Corporate Sureties
§ 305.202. Sureties for Certain Bonds
§ 305.203. Affidavit of Personal Surety
§ 305.204. Lien on Real Property Owned by Personal Sureties
§ 305.205. Subordination of Lien on Real Property Owned by Personal Sureties
§ 305.206. Release of Lien on Real Property Owned by Personal Sureties
§ 305.207. Deposits by Personal Surety

Subchapter F. New Bonds

§ 305.251. Grounds for Requiring New Bond
§ 305.252. Court Order or Citation on New Bond Requirement
§ 305.253. Show Cause Hearing on New Bond Requirement
§ 305.254. Effect of Order Requiring New Bond
§ 305.255. New Bond in Decreased Amount
§ 305.256. Request by Surety for New Bond
§ 305.257. Discharge of Former Sureties on Execution of New Bond

Chapter 305. Qualification of Personal Representatives

Subchapter A. General Provisions
§ 305.001. Definitions
In this chapter:

(1) “Bond” means a bond required by this chapter to be given by a person appointed to serve as a personal representative.

(2) “Declaration” means a written declaration that may be made and signed by a person appointed to serve as a personal representative.

(3) “Oath” means an oath that may be taken by a person appointed to serve as a personal representative.

New.

Statutes in Context
§ 305.002
Section 305.002 explains that a personal representative is “qualified” after (1) filing any required bond and (2) taking the oath of office or filing a proper declaration.

§ 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 or made, signed, and filed the declaration prescribed by Subchapter B;

(2) filed the required bond with the clerk; and

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

(b) An executor who is not required to give a bond is considered to have qualified when the executor has taken and filed the oath prescribed by Subchapter B or made, signed, and filed the declaration prescribed by Subchapter B.

Derived from Probate Code § 189.

Statutes in Context
§ 305.003
The personal representative should take the oath or file the declaration and post any required bond within 20 days of the order granting letters.

§ 305.003. Period for Taking Oath or Making and Signing Declaration
An oath may be taken and subscribed or a declaration may be made and signed at any time before:

(1) the 21st day after the date of the order granting letters testamentary or of administration, as applicable; or

(2) the letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

Derived from Probate Code § 192.

§ 305.004. Period for Giving Bond
(a) A bond may be filed with the clerk at any time before:

(1) the 21st day after:

(A) the date of the order granting letters testamentary or of administration, as applicable; or

(B) the date of any order modifying the bond requirement; or

(2) the date letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

(b) The court shall act promptly to review a bond filed as provided by Subsection (a) and, if acceptable, shall approve the bond.

(c) If no action has been taken by the court on the bond before the 21st day after the date the bond is filed, the person appointed personal representative may file a motion requiring the judge of the court in which the bond was filed to specify on the record the reason or reasons for the judge’s failure to act on the bond. The hearing on the motion must be held before the 11th day after the date the motion is filed.

New.
Added by Acts 2013, 83rd Leg., ch. 1136, § 38, eff. Jan. 1, 2014.

Subchapter B. Oaths or Declarations

Statutes in Context
Chapter 305, Subchapter B
Subchapter B sets forth the oaths and declarations which personal representatives must take and file before receiving letters.

§ 305.051. Oath or Declaration of Executor or Administrator with Will Annexed
(a) 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:

(1) take and subscribe an oath as prescribed by Subsection (b); or

(2) make and sign a declaration as prescribed by Subsection (c).
§ 305.052. Oath or Declaration


(b) If the person named as executor or appointed as administrator with the will annexed elects to take an oath under this section, the person shall take and subscribe an oath in substantially the following form:

My name is (insert name of administrator as it appears on the order appointing the person as administrator), my date of birth is (insert date of birth of “administrator”), and my address is (insert street, city, state, zip code, and country of “administrator”). I declare under penalty of perjury 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. I also solemnly declare that I will well and truly perform all 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.

(c) If the person appointed as temporary administrator elects to make a declaration under this section, the person shall make and sign a declaration in substantially the following form:

My name is (insert name of temporary administrator as it appears on the order appointing the person as temporary administrator), my date of birth is (insert date of birth of “temporary administrator”), and my address is (insert street, city, state, zip code, and country of “temporary administrator”). I solemnly declare that I will well and truly perform all the duties of temporary administrator of the estate of (insert name of decedent), deceased, in accordance with the law, and with the order of the court appointing me as temporary administrator.

Derived from Probate Code § 190(b).


§ 305.053. Oath or Declaration of Temporary Administrator

(a) Before the issuance of temporary letters of administration, the person appointed as temporary administrator shall:

(1) take and subscribe an oath as prescribed by Subsection (b); or

(2) make and sign a declaration as prescribed by Subsection (c).

(b) If the person appointed as temporary administrator elects to take an oath under this section, the person 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.

(c) If the person appointed as temporary administrator elects to make a declaration under this section, the person shall make and sign a declaration in substantially the following form:

My name is (insert name of temporary administrator as it appears on the order appointing the person as temporary administrator), my date of birth is (insert date of birth of “temporary administrator”), and my address is (insert street, city, state, zip code, and country of “temporary administrator”). I solemnly declare that I will well and truly perform all the duties of temporary administrator of the estate of (insert name of decedent), deceased, in accordance with the law, and with the order of the court appointing me as temporary administrator.

Derived from Probate Code § 190(c).


168
§ 305.054. Administration of Oath
An oath may be taken before any person authorized to administer oaths under the laws of this state.
Derived from Probate Code §§ 190(d), 192.

§ 305.055. Filing and Recording of Oath or Declaration
An oath or declaration shall be:
(1) filed with the clerk of the court granting the letters testamentary or of administration, as applicable; and
(2) recorded in the judge’s probate docket.
Derived from Probate Code § 190(d).

Subchapter C. General Provisions Relating to Bonds

Statutes in Context
§ 305.101
A personal representative is excused from the requirement of posting bond in the following situations: (1) the testator waived bond in the testator’s will (§ 305.101(a)), (2) a corporate fiduciary is serving as the personal representative (§ 305.101(b)), or (3) the court waives bond for an independent executor (§ 401.005). It is very common for a testator to waive bond in the will to save the estate, and hence the beneficiaries, the cost of the bond and the court proceedings to set the amount of the bond.

§ 305.102. 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, misuse, 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.

Statutes in Context
§ 305.103
The court may require a personal representative to give bond even if bond was not originally needed, e.g., the testator’s will waived bond. See § 305.102.

§ 305.101. Bond Generally Required; Exceptions
(a) Except as otherwise provided by this title, a person to whom letters testamentary or of administration will be issued must enter into a bond before issuance of the letters.
(b) Letters testamentary shall be issued without the requirement of a bond to a person named as executor in a will probated in a court of this state if:
(1) the will directs that no bond or security be required of the person; and
(2) the court finds that the person is qualified.
(c) A bond is not required if a personal representative is a corporate fiduciary.
Derived from Probate Code §§ 194, 195.

169
§ 305.103. Bonds of Joint Personal Representatives
If two or more persons are appointed as personal representatives of an estate and are required by this chapter or by the court to give a bond, the court may require:
(1) a separate bond from each person; or
(2) a joint bond from all of the persons.
Derived from Probate Code § 198.

§ 305.104. Bond of Married Person
(a) A married person appointed as a personal representative may execute a bond required by law:
(1) jointly with the person’s spouse; or
(2) separately without the person’s spouse.
(b) A bond executed by a married person binds the person’s separate estate, but does not bind the person’s spouse unless the spouse signed the bond.
Derived from Probate Code § 199.

§ 305.105. Bond of Married Person Under 18 Years of Age
Any bond required to be executed by a person who is under 18 years of age, is or has been married, and accepts and qualifies as an executor or administrator is as valid and binding for all purposes as if the person were of legal age.
Derived from Probate Code § 200.

§ 305.106. General Formalities
A bond required under Section 305.101(a) must:
(1) be conditioned as required by law;
(2) be payable to the judge and the judge’s successors in office;
(3) bear the written approval of the judge in the judge’s official capacity; and
(4) be executed and approved in accordance with this chapter.
Derived from Probate Code § 194.

§ 305.107. Subscription of Bond by Principals and Sureties
A bond required under Section 305.101 shall be subscribed by both principals and sureties.
Derived from Probate Code § 197.

§ 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 will,” “administrator with the will annexed of the estate,” “administrator of the estate,” or “temporary administrator of the estate,” as applicable) of _______ (insert name of decedent), deceased, shall well and truly perform all of the duties required of the principal or principals by law under that appointment.
Derived from Probate Code § 196.

§ 305.109. Filing of Bond
A bond required under Section 305.101 shall be filed with the clerk after the court approves the bond.
Derived from Probate Code § 197.

§ 305.110. Failure to Give Bond
Another person may be appointed as personal representative to replace a personal representative who at any time fails to give a bond as required by the court in the period prescribed by this chapter.
Derived from Probate Code § 213.

§ 305.111. Bond Not Void on First Recovery
A personal representative’s bond does not become void on the first recovery but may be put in suit and prosecuted from time to time until the entire amount of the bond has been recovered.
Derived from Probate Code § 218.

Subchapter D. Amount of Bond and Associated Deposits
bond unless one of the exceptions in § 305.101 applies. The bond is to protect the estate creditors, beneficiaries, and heirs from the personal representative wasting, mismanaging, or misapplying the estate. Section 305.106 explains how the court establishes the amount of the bond and the methods for posting the bond.

§ 305.151. General Standard Regarding Amount of Bond
(a) The judge shall set the amount of a bond, in an amount considered sufficient to protect the estate and the estate’s creditors, as provided by this chapter.

(b) Notwithstanding Subsection (a) or other provisions generally applicable to bonds of personal representatives, if the person to whom letters testamentary or of administration are granted is entitled to all of the decedent’s estate after payment of debts, a bond shall be in an amount sufficient to protect creditors only.

Derived from Probate Code § 194, Subdivs. 1, 2.

§ 305.152. Evidentiary Hearing on Amount of Bond
Before setting the amount of a bond, the court shall hear evidence and determine:

(1) the amount of cash on hand and where that cash is deposited;
(2) the amount of cash estimated to be needed for administrative purposes, including operation of a business, factory, farm, or ranch owned by the estate, and expenses of administration for one year;
(3) the revenue anticipated to be received in the succeeding 12 months from dividends, interest, rentals, or use of property belonging to the estate and the aggregate amount of any installments or periodic payments to be collected;
(4) the estimated value of certificates of stock, bonds, notes, or other securities of the estate and the name of the depository, if any, in which those assets are deposited;
(5) the face value of life insurance or other policies payable to the person on whose estate administration is sought or to the estate;
(6) the estimated value of other personal property owned by the estate; and
(7) the estimated amount of debts due and owing by the estate.

Derived from Probate Code § 194, Subdiv. 3.

§ 305.153. Specific Bond Amount
(a) Except as otherwise provided by this section, the judge shall set the bond in an amount equal to the sum of:

(1) the estimated value of all personal property belonging to the estate; and
(2) an additional amount to cover revenue anticipated to be derived during the succeeding 12 months from:
   (A) interest and dividends;
   (B) collectible claims;
   (C) the aggregate amount of any installments or periodic payments, excluding income derived or to be derived from federal social security payments; and
   (D) rentals for the use of property.

(b) The judge shall reduce the amount of the original bond under Subsection (a) in proportion to the amount of cash or the value of securities or other assets:

(1) authorized or required to be deposited by court order; or
(2) voluntarily deposited by the personal representative or the sureties on the representative’s bond, as provided by Sections 305.155 and 305.156.

(c) A bond required to be given by a temporary administrator shall be in the amount that the judge directs.

Derived from Probate Code § 194, Subdivs. 4, 13.

§ 305.154. Agreement Regarding Deposit of Estate Assets
(a) A personal representative may agree with the surety or sureties on a bond, either corporate or personal, for the deposit of any cash and other estate assets in a depository described by Subsection (c), if the deposit is otherwise proper, in a manner that prevents the withdrawal of the cash or other assets without:

(1) the written consent of the surety or sureties; or
(2) a court order entered after notice to the surety or sureties as directed by the court.

(b) The court may require the action described by Subsection (a) if the court considers that action to be in the best interest of the estate.

(c) Cash and assets must be deposited under this section in a financial institution, as defined by Section 201.101, Finance Code, that:

(1) has its main office or a branch office in this state; and
(2) is qualified to act as a depository in this state under the laws of this state or the United States.

(d) An agreement under this section may not release the principal or sureties from liability, or change the liability of the principal or sureties, as established by the terms of the bond.

Derived from Probate Code § 194, Subdiv. 5.

§ 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
§ 305.156. Deposits of Personal Representative
(a) Instead of giving a surety or sureties on a bond, or to reduce the amount of a bond, a personal representative may deposit the representative’s own cash or securities acceptable to the court with a depository described by Subsection (b), if the deposit is otherwise proper.
(b) Cash or securities must be deposited under this section:
(1) a depository described by Section 305.154(c);
(2) any other corporate depository approved by the court;
(3) 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.
(c) A deposit 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.
(d) 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.

§ 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.

§ 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.

§ 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.
§ 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.


Subchapter E.  Bond Sureties

§ 305.201.  Personal or Authorized Corporate Sureties

(a) The surety or sureties on a bond may be personal or authorized corporate sureties.

(b) A bond with sureties who are individuals must have at least two sureties, each of whom must:
   (1) execute an affidavit in the manner provided by this subchapter; and
   (2) own property in this state, excluding property exempt by law, that the judge is satisfied is sufficient to qualify the person as a surety as required by law.

(c) A bond with an authorized corporate surety is only required to have one surety, except as provided by law.

Derived from Probate Code § 194, Subdivs. 10, 12.


§ 305.202.  Sureties for Certain Bonds

(a) If the amount of a bond exceeds $50,000, the court may require that the bond be signed by:
   (1) at least two authorized corporate sureties; or
   (2) one authorized corporate surety and at least two good and sufficient personal sureties.

(b) The estate shall pay the cost of a bond with corporate sureties.

Derived from Probate Code § 194, Subdiv. 11.


§ 305.203.  Affidavit of Personal Surety

(a) Before a judge may consider a bond with personal sureties, each person offered as surety must execute an affidavit stating the amount by which the person’s assets that are reachable by creditors exceeds the person’s liabilities, and each affidavit must be presented to the judge for consideration.

(b) The total worth of the personal sureties on a bond must equal at least twice the amount of the bond.

(c) An affidavit presented to and approved by the judge under this section shall be attached to and form part of the bond.

Derived from Probate Code § 201(a).


§ 305.204.  Lien on Real Property Owned by Personal Sureties

(a) If a judge finds that the estimated value of personal property of the estate that cannot be deposited, as provided by Subchapter D, is such that personal sureties cannot be accepted without the creation of a specific lien on real property owned by each of the sureties, the judge shall enter an order requiring each surety to:
   (1) designate real property that:
       (A) is owned by the surety and located in this state;
       (B) is subject to execution; and
       (C) has a value that exceeds all liens and unpaid taxes by an amount at least equal to the amount of the bond; and
   (2) give an adequate legal description of the real property designated under Subdivision (1).

(b) The surety shall incorporate the information required in the order under Subsection (a) in an affidavit. Following approval by the judge, the affidavit shall be attached to and form part of the bond.

(c) A lien arises as security for the performance of the obligation of the bond only on the real property designated in the affidavit.

(d) Before letters testamentary or of administration are issued to the personal representative whose bond includes an affidavit under this section, the court clerk shall mail a statement to the office of the county clerk of each county in which any real property designated in the affidavit is located. The statement must be signed by the court clerk and include:
   (1) a sufficient description of the real property located in that county;
   (2) the names of the principal and sureties on the bond;
   (3) the amount of the bond; and
   (4) the name of the estate and court in which the bond is given.

(e) Each county clerk who receives a statement required by Subsection (d) shall record the statement in the county deed records. Each recorded statement shall be indexed in a manner that permits the convenient determination of the existence and character of the liens described in the statements.

(f) The recording and indexing required by Subsection (e) constitutes constructive notice to all persons regarding the existence of the lien on real property located in the county, effective as of the date of the indexing.
(g) If each personal surety subject to a court order under this section does not comply with the order, the judge may require that the bond be signed by:
(1) an authorized corporate surety; or
(2) an authorized corporate surety and at least two personal sureties.
Derived from Probate Code §§ 201(b), 202.

§ 305.205. Subordination of Lien on Real Property Owned by Personal Sureties

(a) A personal surety required to create a lien on specific real property under Section 305.204 who wishes to lease the real property for mineral development may file a written application in the court in which the proceedings are pending requesting subordination of the lien to the proposed lease.
(b) The judge may enter an order granting the application.
(c) A certified copy of the order, filed and recorded in the deed records of the proper county, is sufficient to subordinate the lien to the rights of a lessee under the proposed lease.
Derived from Probate Code § 201(c).

§ 305.206. Release of Lien on Real Property Owned by Personal Sureties

(a) A personal surety who has given a lien under Section 305.204 may apply to the court to have the lien released.
(b) The court shall order the lien released if:
(1) the court is satisfied that the bond is sufficient without the lien; or
(2) sufficient other real or personal property of the surety is substituted on the same terms required for the lien that is to be released.
(c) If the personal surety does not offer a lien on other substituted property under Subsection (b)(2) and the court is not satisfied that the bond is sufficient without the substitution of other property, the court shall order the personal representative to appear and give a new bond.
(d) A certified copy of the court’s order releasing the lien and describing the property that was subject to the lien has the effect of cancelling the lien if the order is filed with the county clerk of the county in which the property is located and recorded in the deed records of that county.
Derived from Probate Code §§ 211, 212.

§ 305.207. Deposits by Personal Surety

Instead of executing an affidavit under Section 305.203 or creating a lien under Section 305.204 when required, a personal surety may deposit the surety’s own cash or securities instead of pledging real property as security. The deposit:
(1) must be made in the same manner a personal representative deposits the representative’s own cash or securities; and
(2) is subject, to the extent applicable, to the provisions governing the same type of deposits made by personal representatives.
Derived from Probate Code § 194, Subdiv. 12.

Subchapter F. New Bonds

§ 305.251. Grounds for Requiring New Bond

(a) A personal representative may be required to give a new bond if:
(1) a surety on a bond dies, removes beyond the limits of this state, or becomes insolvent;
(2) in the court’s opinion:
(A) the sureties on a bond are insufficient; or
(B) a bond is defective;
(3) the amount of a bond is insufficient;
(4) a surety on a bond petitions the court to be discharged from future liability on the bond; or
(5) a bond and the record of the bond have been lost or destroyed.
(b) Any person interested in the estate may have the personal representative cited to appear and show cause why the representative should not be required to give a new bond by filing a written application with the county clerk of the county in which the probate proceedings are pending. The application must allege that:
(1) the bond is insufficient or defective; or
(2) the bond and the record of the bond have been lost or destroyed.
Derived from Probate Code §§ 203, 204.

§ 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) may 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
§ 305.253. Show Cause Hearing on New Bond Requirement

(a) On the return of a citation ordering a personal representative to show cause why the representative should not be required to give a new bond, the judge shall, on the date specified for the hearing of the matter, inquire into the sufficiency of the reasons for requiring a new bond.

(b) If the judge is satisfied that a new bond should be required, the judge shall enter an order requiring a new bond. The order must state:

(1) the amount of the new bond; and

(2) the period within which the new bond must be given, which may not be later than the 20th day after the date of the order.

Derived from Probate Code § 206(b).


§ 305.254. Effect of Order Requiring New Bond

(a) An order requiring a personal representative to give a new bond has the effect of suspending the representative’s powers.

(b) After the order is entered, the personal representative may not pay out any of the estate’s money or take any other official action, except to preserve estate property, until the new bond is given and approved.

Derived from Probate Code § 207.


§ 305.255. New Bond in Decreased Amount

(a) A personal representative required to give a bond may at any time file with the clerk a written application requesting that the court reduce the amount of the bond.

(b) On the filing of an application under Subsection (a), the clerk shall promptly issue and have notice posted to all interested persons and the sureties on the bond. The notice must inform the interested persons and sureties of:

(1) the fact that the application has been filed;

(2) the nature of the application; and

(3) the time the judge will hear the application.

(c) The judge may permit the filing of a new bond in a reduced amount if:

(1) proof is submitted that a bond in an amount less than the bond in effect will be adequate to meet the requirements of law and protect the estate; and

(2) the judge approves an accounting filed at the time of the application.

Derived from Probate Code § 208.


§ 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.


§ 305.257. Discharge of Former Sureties on Execution of New Bond

When a new bond has been given and approved, the court shall enter an order discharging the sureties on the former bond from all liability for the future acts of the principal on the bond.

Derived from Probate Code § 209.


Chapter 306. Granting and Issuance of Letters

§ 306.001. Granting of Letters Testamentary

§ 306.002. Granting of Letters of Administration

§ 306.003. Order Granting Letters

§ 306.004. Issuance of Original Letters

§ 306.005. Form and Content of Letters

§ 306.006. Replacement and Other Additional Letters

§ 306.007. Effect of Letters or Certificate

Chapter 306. Granting and Issuance of Letters

Statutes in Context

Chapter 306

Letters are typically one-page documents issued under the seal of the court which indicate that the personal representative has been appointed by the court and has qualified. See § 306.005. The personal representative may then show this certificate as evidence of the representative’s authority when dealing with estate matters or collecting estate property. Third parties who deal with a person who has letters are usually protected from liability to the heirs or beneficiaries if the executor mismanages the property. See § 307.001. Consequently, third parties often want to retain an original letter for their files. Because the cost of letters is nominal, often under $10.00 per copy, the
personal representative should estimate the number of letters needed before qualifying and obtain all the necessary letters at the same time to prevent multiple trips to the courthouse and the associated time and monetary cost.

Sections 306.001 – 306.002 enumerate the circumstances under which the court will grant either letters testamentary or letters of administration. Note that if letters of administration are issued with respect to a testate decedent, the administration is said to be with the will annexed (also called an administration c.t.a. (cum testamento annexo)).

§ 306.001. Granting of Letters Testamentary
(a) Before the 21st day after the date a will has been probated, the court shall grant letters testamentary, if permitted by law, to each executor appointed by the will who:
   (1) is not disqualified; and
   (2) is willing to accept the trust and qualify according to law.
(b) Failure of the court to issue letters testamentary within the period prescribed by this section does not affect the validity of any letters testamentary issued in accordance with law after that period.
Derived from Probate Code §§ 178(a), (c).

§ 306.002. Granting of Letters of Administration
(a) Subject to Subsection (b), the court hearing an application under Chapter 301 shall grant:
   (1) the administration of a decedent’s estate if the decedent died intestate; or
   (2) the administration of the decedent’s estate with the will annexed if the decedent died leaving a will but:
      (A) the will does not name an executor; or
      (B) the executor named in the will:
         (i) is deceased;
         (ii) fails to accept and qualify before the 21st day after the date the will is probated; or
         (iii) fails to present the will for probate before the 31st day after the date of the decedent’s death and the court finds there was no good cause for that failure.
   (b) The court may not grant any administration of an estate unless a necessity for the administration exists, as determined by the court.
   (c) The court may find other instances of necessity for an administration based on proof before the court, but a necessity is considered to exist if:
      (1) there are two or more debts against the estate;
      (2) there is a desire for the county court to partition the estate among the distributees;
      (3) the administration is necessary to receive or recover funds or other property due the estate; or
      (4) the administration is necessary to prevent real property in a decedent’s estate from becoming a danger to the health, safety, or welfare of the general public.
Derived from Probate Code § 178(b).

§ 306.003. Order Granting Letters
When letters testamentary or of administration are granted, the court shall enter an order to that effect stating:
   (1) the name of the decedent;
   (2) the name of the person to whom the letters are granted;
   (3) the amount of any required bond;
   (4) the name of at least one but not more than three disinterested persons appointed to appraise the estate and return the appraisement to the court, if:
      (A) any interested person applies to the court for the appointment of an appraiser; or
      (B) the court considers an appraisement to be necessary; and
   (5) that the clerk shall issue letters in accordance with the order when the person to whom the letters are granted has qualified according to law.
Derived from Probate Code § 181.

§ 306.004. Issuance of Original Letters
When an executor or administrator has qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall promptly issue and deliver the letters to the executor or administrator. If more than one person qualifies as executor or administrator, the clerk shall issue the letters to each person who qualifies.
Derived from Probate Code § 182.

§ 306.005. Form and Content of Letters
Letters testamentary or of administration shall be in the form of a certificate of the clerk of the court granting the letters, attested by the court’s seal, that states:
   (1) the executor or administrator, as applicable, has qualified as executor or administrator in the manner required by law;
   (2) the date of the qualification; and
   (3) the name of the decedent.
Derived from Probate Code § 183.
§ 306.006. Replacement and Other Additional Letters
When letters testamentary or of administration have been destroyed or lost, the clerk shall issue other letters to replace the original letters, which have the same effect as the original letters. The clerk shall also issue any number of letters as and when requested by the person or persons who hold the letters.

Derived from Probate Code § 187.


§ 306.007. Effect of Letters or Certificate
Letters testamentary or of administration or a certificate of the clerk of the court that granted the letters, under the court’s seal, indicating that the letters have been issued, is sufficient evidence of:
(1) the appointment and qualification of the personal representative of an estate; and
(2) the date of qualification.

Derived from Probate Code § 186.


Chapter 307. Validity of Certain Acts of Executors and Administrators

§ 307.001. Rights of Good Faith Purchasers
(a) This section applies only to an act performed by a qualified executor or administrator in that capacity and in conformity with the law and the executor’s or administrator’s authority.

(b) An act continues to be valid for all intents and purposes in regard to the rights of an innocent purchaser who purchases any of the estate property from the executor or administrator for valuable consideration, in good faith, and without notice of any illegality in the title to the property, even if the act or the authority under which the act was performed is subsequently set aside, annulled, and declared invalid.

Derived from Probate Code § 188.


§ 307.002. Joint Executors or Administrators
(a) Except as provided by Subsection (b), if there is more than one executor or administrator of an estate at the same time, the acts of one of the executors or administrators in that capacity are valid as if all the executors or administrators had acted jointly. If one of the executors or administrators dies, resigns, or is removed, a co-executor or co-administrator of the estate shall proceed with the administration as if the death, resignation, or removal had not occurred.

(b) If there is more than one executor or administrator of an estate at the same time, all of the qualified executors or administrators who are acting in that capacity must join in the conveyance of real estate unless the court, after due hearing, authorizes fewer than all to act.

Derived from Probate Code § 240.


Chapter 308. Notice to Beneficiaries and Claimants

Subchapter A. Notice to Certain Beneficiaries After Probate of Will
§ 308.001. Definition
§ 308.0015. Application
§ 308.002. Required Notice to Certain Beneficiaries After Probate of Will
§ 308.003. Contents of Notice
§ 308.004. Affidavit or Certificate

Subchapter B. Notice to Claimants
§ 308.051. Required Notice Regarding Presentment of Claims in General
§ 308.052. Proof of Publication
§ 308.053. Required Notice to Secured Creditor
§ 308.054. Permissive Notice to Unsecured Creditor
§ 308.055. One Notice Sufficient
§ 308.056. Liability for Failure to Give Required Notice

Chapter 308. Notice to Beneficiaries and Claimants
Subchapter A. Notice to Certain Beneficiaries After Probate of Will

§ 308.001. Definition

In this subchapter, “beneficiary” means a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust entitled to receive property under the terms of a decedent’s will, to be determined for purposes of this subchapter with the assumption that each person who is alive on the date of the decedent’s death survives any period required to receive the bequest as specified by the terms of the will. The term does not include a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust that would be entitled to receive property under the terms of a decedent’s will on the occurrence of a contingency that has not occurred as of the date of the decedent’s death.

Derived from Probate Code § 128A(a).


§ 308.0015. Application

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

Derived from Probate Code § 128A(a-1).


§ 308.002. Required Notice to Certain Beneficiaries After Probate of Will

(a) Except as provided by Subsection (c), not later than the 60th day after the date of an order admitting a decedent’s will to probate, the personal representative of the decedent’s estate, including an independent executor or independent administrator, shall give notice that complies with Section 308.003 to each beneficiary named in the will whose identity and address are known to the representative or, through reasonable diligence, can be ascertained. If, after the 60th day after the date of the order, the representative becomes aware of the identity and address of a beneficiary who was not given notice on or before the 60th day, the representative shall give the notice as soon as possible after becoming aware of that information.

(b) Notwithstanding the requirement under Subsection (a) that the personal representative give the notice to the beneficiary, the representative shall give the notice with respect to a beneficiary described by this subsection as follows:

(1) if the beneficiary is a trustee of a trust, to the trustee, unless the representative is the trustee, in which case the representative shall, except as provided by Subsection (b-1), give the notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in existence on the date of the decedent’s death;

(2) if the beneficiary has a court-appointed guardian or conservator, to that guardian or conservator;

(3) if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor; and

(4) if the beneficiary is a charity that for any reason cannot be notified, to the attorney general.

(b-1) The personal representative is not required to give the notice otherwise required by Subsection (b)(1) to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

(1) the representative has given the notice to an ancestor of the person who has a similar interest in the trust; and

(2) no apparent conflict exists between the ancestor and the person eligible to receive trust income.

(c) A personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

(1) has made an appearance in the proceeding with respect to the decedent’s estate before the will was admitted to probate;

(2) is entitled to receive aggregate gifts under the will with an estimated value of $2,000 or less;

(3) has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent’s will to probate; or

(4) has received a copy of the will that was admitted to probate or a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that:

(A) either acknowledges the receipt of the copy of the will or includes the written summary of the gifts to the beneficiary under the will;

(B) is signed by the beneficiary; and

(C) is filed with the court.

(d) The notice required by this section must be sent by a qualified delivery method [registered or certified mail, return receipt requested].
§ 308.003. Contents of Notice
The notice required by Section 308.002 must include:

(1) the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Section 308.002(b), the name and address of the beneficiary for whom the notice is given and of the person to whom the notice is given;
(2) the decedent’s name;
(3) a statement that the decedent’s will has been admitted to probate;
(4) a statement that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will;
(5) the personal representative’s name and contact information; and
(6) either:
   (A) a copy of the will that was admitted to probate and of the order admitting the will to probate; or
   (B) a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

§ 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 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 subchapter, the name of the beneficiary to whom the representative gave the notice or, for a beneficiary described by Section 308.002(b), the name of the beneficiary and of the person to whom the notice was given;
   (2) the name of each beneficiary to whom notice was not required to be given under Section 308.002(c)(2), (3), or (4);
   (3) the name of each beneficiary whose identity or address could not be ascertained despite the representative’s exercise of reasonable diligence; and
   (4) any other information necessary to explain the representative’s inability to give the notice to or for any beneficiary as required by this subchapter.
(b) The affidavit or certificate required by Subsection (a) may be included with any pleading or other document filed with the court clerk, including the inventory, appraisement, and list of claims, an affidavit in lieu of the inventory, appraisement, and list of claims, or an application for an extension of the deadline to file the inventory, appraisement, and list of claims or an affidavit in lieu of the inventory, appraisement, and list of claims, provided that the pleading or other document is filed not later than the date the affidavit or certificate is required to be filed under Subsection (a).

Subchapter B. Notice to Claimants

Statutes in Context
Chapter 308, Subchapter B

The personal representative must alert the decedent’s creditors that the decedent has died and that the court has appointed a personal representative. This information permits the creditors to take the proper steps to present their claims so they can get paid. There are four types of notice.

1. Notice to Comptroller of Public Accounts. The personal representative must give notice to the comptroller of public accounts within one month of receiving letters if the decedent remitted or should have remitted taxes administered by the comptroller. Service is by a qualified delivery method. See § 308.051(a)(2). Because the personal representative may not yet know whether the decedent remitted or should have remitted these taxes, it may be good practice to give the notice in all cases.

2. General Notice to Creditors. Within one month of receiving letters, the personal representative must publish notice in a newspaper of general circulation in the county where letters were issued. See § 308.051(a)(1). In large population counties, this notice is often published in specialized legal newspapers rather than the local paper.

3. Notice to Unsecured Creditors. The personal representative has the option to give notice by a qualified delivery method to the unsecured creditors of the estate (e.g., credit card issuers and utility providers). If the creditor does not present a claim within four months of receipt of the notice, the creditor is barred from pursuing the claim even if the statute of limitations on the claim has not otherwise
TEXAS ESTATES CODE

§ 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 of general circulation 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 a qualified delivery method [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 there is no newspaper of general circulation in the county in which the letters testamentary or of administration were issued, the notice must be posted and the return made and filed as otherwise required by this title.

Derived from Probate Code §§ 294(a), (c).

§ 308.052. Proof of Publication
A copy of the published notice required by Section 308.051(a)(1), together with the publisher’s affidavit, sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this title for the service of citation or notice by publication, shall be filed in the court in which the cause is pending.

Derived from Probate Code § 294(b).

§ 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 a qualified delivery method [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 or other proof of delivery receipt; and
   (2) the personal representative’s affidavit stating:
      (A) that the notice was sent [mailed] as required by law; and
      (B) the name of the person to whom the notice was sent [mailed], if that name is not shown on the notice or receipt.

Derived from Probate Code § 295.

§ 308.054. Permissive Notice to Unsecured Creditor
(a) At any time before an estate administration is closed, a personal representative may give notice by a qualified delivery method [certified or registered mail, return receipt requested] to an unsecured creditor who has a claim for money against the estate.
(b) Notice given under Subsection (a) must:
   (1) expressly state that the creditor must present the claim before the 121st day after the date of the receipt of the notice or the claim is barred, if the claim is not barred by the general statutes of limitation; and
   (2) include:
      (A) the date the letters testamentary or of administration held by the personal representative were issued to the representative;
TEXAS ESTATES CODE

(B) the address to which the claim may be presented; and
(C) an instruction of the representative’s choice that the claim be addressed in care of:
   (i) the representative;
   (ii) the representative’s attorney; or
   (iii) “Representative, Estate of _______” (naming the estate).

Derived from Probate Code § 294(d).


§ 308.055. One Notice Sufficient

A personal representative is not required to give a notice required by Section 308.051 or 308.053 if another person also appointed as personal representative of the estate or a former personal representative of the estate has given that notice.

Derived from Probate Code § 296.


§ 308.056. Liability for Failure to Give Required Notice

A personal representative who fails to give a notice required by Section 308.051 or 308.053, or to cause the notice to be given, and the sureties on the representative’s bond are liable for any damage a person suffers due to that neglect, unless it appears that the person otherwise had notice.

Derived from Probate Code § 297.


Subchapter B. Requirements for Inventory, Appraisement, and List of Claims; Affidavit in Lieu of Inventory, Appraisement, and List of Claims

Subchapter A. Appraisers

§ 309.001. Appointment of Appraisers
§ 309.002. Appraisers’ Fees
§ 309.003. Failure or Refusal to Act by Appraisers

Subchapter B. Requirements for Inventory, Appraisement, and List of Claims

§ 309.051. Inventory and Appraisement
§ 309.052. List of Claims
§ 309.053. Affidavit of Personal Representative
§ 309.054. Approval or Disapproval by the Court
§ 309.055. Failure of Joint Personal Representatives to File Inventory, Appraisement, and List of Claims or Affidavit in Lieu of

§ 309.056. Affidavit in Lieu of Inventory, Appraisement, and List of Claims
§ 309.057. Penalty for Failure to Timely File Inventory, Appraisement, and List of Claims or Affidavit In Lieu of
§ 309.0575. Penalty for Misrepresentation in Affidavit in Lieu of Inventory, Appraisement, and List of Claims

Subchapter C. Changes to Inventory, Appraisement, and List of Claims

§ 309.101. Discovery of Additional Property or Claims
§ 309.102. Additional Inventory and Appraisement or List of Claims
§ 309.103. Correction of Inventory, Appraisement, or List of Claims for Erroneous or Unjust Item
§ 309.104. Reappraisal

Subchapter D. Use of Inventory, Appraisement, and List of Claims as Evidence

§ 309.151. Use of Inventory, Appraisement, and List of Claims as Evidence

Chapter 309. Inventory, Appraisement, and List of Claims

Subchapter A. Appraisers

Statutes in Context

§ 309.001

If an interested person applies or if the court deems it necessary, the court will appoint appraisers to value the property in the decedent’s estate. These values will be included on the inventory required by § 309.051. The appraiser’s fee is provided for in § 309.002.

Good cause be shown before a court may appoint appraisers, either on the court’s own motion or upon the application of an interested party.

§ 309.001. Appointment of Appraisers

(a) At any time after letters testamentary or of administration are granted, the court, for good cause, on the court’s own motion or on the motion of an interested 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.

(b) If the court makes an appointment under Subsection (a) and part of the estate is located in a county other than the county in which the letters were granted,
the court, if the court considers necessary, may appoint at
least one but not more than three disinterested persons
who are residents of the county in which the relevant part
of the estate is located to appraise the estate property
located in that county.
Derived from Probate Code § 248.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014. Amended by Acts 2015, 84th Leg., ch. 995, § 32, eff.
Sept. 1, 2015.

§ 309.002. Appraisers’ Fees
An appraiser appointed by the court as herein
authorized is entitled to receive compensation, payable
out of the estate, of at least $5 for each day the appraiser
actually serves in performing the appraiser’s duties.
Derived from Probate Code § 253.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 309.003. Failure or Refusal to Act by Appraisers
If an appraiser appointed under Section 309.001 fails
or refuses to act, the court by one or more similar orders
shall remove the appraiser and appoint one or more other
appraisers, as the case requires.
Derived from Probate Code § 249.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

Subchapter B. Requirements for Inventory,
Appraisement, and List of Claims

Statutes in Context
§ 309.051
The personal representative in both dependent
and independent administrations must normally file
an inventory, appraisement, and list of claims within
90 days after qualification. This document helps the
creditors to determine which assets are available to
pay their claims and thus provides them with
valuable insight into how they should proceed to
have the best chance of getting paid. Additionally,
the inventory helps the heirs and beneficiaries to
determine the property to which they may be
entitled.

The inventory must include all real property
located in Texas and all personal property wherever
located. (Out of state real property is not listed
because Texas courts have no jurisdiction over this
property.) Non-probate assets, that is, property
which passes outside of the probate process such
as survivorship interests and life insurance
proceeds, are not included in the inventory.

If the decedent was married at the time of death,
the inventory must designate whether the property is
separate or community.

See Estates Code § 309.056 for the possibility of
using an affidavit in lieu of the inventory,
appraisement, and list of claims.

§ 309.051. Inventory and Appraisement
(a) Except as provided by Subsection (c) or Section
309.056 or unless a longer period is granted by the court,
before the 91st day after the date the personal
representative qualifies, the representative shall prepare
and file with the court clerk a single written instrument
that contains a verified, full, and detailed inventory of all
estate property that has come into the representative’s
possession or of which the representative has knowledge.
The inventory must:
(1) include:
(A) all estate real property located in this
state; and
(B) all estate personal property regardless of
where the property is located; and
(2) specify which portion of the property, if any,
is separate property and which, if any, is community
property.
(b) The personal representative shall:
(1) set out in the inventory the representative’s
appraisement of the fair market value on the date of
the decedent’s death of each item in the inventory; or
(2) if the court has appointed one or more
appraisers for the estate:
(A) determine the fair market value of each
item in the inventory with the assistance of the
appraiser or appraisers; and
(B) set out that appraisement in the inventory.
(c) The court for good cause shown may require the
personal representative to file the inventory and
appraisement within a shorter period than the period
prescribed by Subsection (a).
(d) The inventory, when approved by the court and
filed with the court clerk, is for all purposes the inventory
and appraisement of the estate referred to in this title.
Derived from Probate Code § 250.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch.
1338, § 2.40, eff. Jan. 1, 2014. Subsec. (b) amended by
Acts 2011, 82nd Leg., ch. 91, § 8.014, eff. Jan. 1,
2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch.

Statutes in Context
§ 309.052
The list of claims is part of the inventory and
appraisement. The list is of claims due or owing to
the decedent’s estate, that is, claims on which the
decedent was a creditor. It is not a list of claims
against the decedent’s estate.

§ 309.052. List of Claims
A complete list of claims due or owing to the estate
must be attached to the inventory and appraisement
required by Section 309.051. The list of claims must state:

(1) the name and, if known, address of each person indebted to the estate; and

(2) regarding each claim:

(A) the nature of the debt, whether by note, bill, bond, or other written obligation, or by account or verbal contract;

(B) the date the debt was incurred;

(C) the date the debt was or is due;

(D) the amount of the claim, the rate of interest on the claim, and the period for which the claim bears interest; and

(E) whether the claim is separate property or community property.

Derived from Probate Code § 251.


§ 309.053. Affidavit of Personal Representative

The personal representative shall attach to the inventory, appraisement, and list of claims the representative's sworn affidavit.

Derived from Probate Code § 252.


§ 309.054. Approval or Disapproval by the Court

(a) On the filing of the inventory, appraisement, and list of claims with the court clerk, the judge shall examine and approve or disapprove the inventory, appraisement, and list of claims.

(b) If the judge approves the inventory, appraisement, and list of claims, the judge shall enter an order to that effect.

(c) If the judge does not approve the inventory, appraisement, or list of claims, the judge:

(1) shall enter an order to that effect requiring the filing of another inventory, appraisement, or list of claims, whichever is not approved, within a period specified in the order not to exceed 20 days after the date the order is entered; and

(2) may, if considered necessary, appoint new appraisers.

Derived from Probate Code § 255.


§ 309.055. Failure of Joint Personal Representatives to File Inventory, Appraisement, and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims

(a) If more than one personal representative qualifies to serve, any one or more of the representatives, on the neglect of the other representatives, may make and file an inventory, appraisement, and list of claims or an affidavit in lieu of an inventory, appraisement, and list of claims.

(b) A personal representative who neglects to make or file an inventory, appraisement, and list of claims or an affidavit in lieu of an inventory, appraisement, and list of claims may not interfere with and does not have any power over the estate after another representative makes and files an inventory, appraisement, and list of claims or an affidavit in lieu of an inventory, appraisement, and list of claims.

(c) The personal representative who files the inventory, appraisement, and list of claims or the affidavit in lieu of an inventory, appraisement, and list of claims is entitled to the whole administration unless, before the 61st day after the date the representative files the inventory, appraisement, and list of claims or the affidavit in lieu of an inventory, appraisement, and list of claims, one or more delinquent representatives file with the court a written, sworn, and reasonable excuse that the court considers satisfactory. The court shall enter an order removing one or more delinquent representatives and revoking those representatives’ letters if:

(1) an excuse is not filed; or

(2) the court does not consider the filed excuse sufficient.

Derived from Probate Code § 260.


The 2011 Legislature authorized an independent executor or administrator to file an affidavit in lieu of the inventory, appraisement, and list of claims if no debts other than secured debts, taxes, and administration expenses remain by the inventory due date. This procedure keeps the decedent's property from being listed on the public record and thus helps with privacy concerns. The executor or administrator...
must still prepare a sworn inventory and provide a copy to each beneficiary unless an exception exists. An interested person such as an intestate heir or beneficiary under a prior will, may obtain a copy of the inventory from the executor or administrator upon written request.

The affidavit in lieu of inventory option is available even if the will requires the filing of inventory as long as the will does not specifically prohibit the filing of an affidavit in lieu of inventory.

An executor cannot be held liable for the executor’s decision to file either a traditional inventory or the affidavit in lieu of inventory.

§ 309.056. Affidavit in Lieu of Inventory, Appraisement, and List of Claims

(a) In this section, “beneficiary” means a person, entity, state, governmental agency of the state, charitable organization, or trust entitled to receive property:

(1) under the terms of a decedent’s will, to be determined for purposes of this section with the assumption that each person who is alive on the date of the decedent’s death survives any period required to receive the bequest as specified by the terms of the will; or

(2) as an heir of the decedent.

(b) Notwithstanding Sections 309.051 and 309.052, or any contrary provision in a decedent’s will that does not specifically prohibit the filing of an affidavit described by this subsection, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all claims prescribed by Section 309.051 is considered an affidavit in lieu of the inventory.

The affidavit in lieu of the inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, and show cause for the failure to timely file.

(b-1) Absent a written request by a beneficiary, an independent executor is not required to provide a verified, full, and detailed inventory and appraisement. The affidavit in lieu of the inventory, appraisement, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

The court may compel the independent executor to provide a copy of the inventory, appraisement, and list of claims to the court for an order compelling compliance with Subdivision (1), and the court, in its discretion, may compel the independent executor to provide a copy of the inventory, appraisement, and list of claims to the interested person or may deny the application.

(d) An independent executor is not liable for choosing to file:

(1) an affidavit under this section in lieu of filing an inventory, appraisement, and list of claims, if permitted by law; or

(2) an inventory, appraisement, and list of claims in lieu of filing an affidavit under this section.

(c) Any extension granted by a court of the period in which to file an inventory, appraisement, and list of claims prescribed by Section 309.051 is considered an extension of the filing period for an affidavit under this section.

Derived from Probate Code § 250.


§ 309.057. Penalty for Failure to Timely File Inventory, Appraisement, and List of Claims or Affidavit in Lieu of

(a) This section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, within the period prescribed by Section 309.051 or any extension granted by the court.

(b) Any person interested in the estate on written complaint, or the court on the court’s own motion, may have a personal representative to whom this section applies cited to file the inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, and show cause for the failure to timely file.

(c) If the personal representative does not file the inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, after being cited or does not show good cause for the failure to timely file, the court on hearing may fine the representative in an amount not to exceed $1,000.
Texas Estates Code

§ 309.0575. Penalty for Misrepresentation in Affidavit in Lieu of Inventory, Appraisement, and List of Claims

(a) The court, on its own motion or on motion of any person interested in the estate, and after an independent executor has been cited to answer at a time and place fixed in the notice, may fine an independent executor in an amount not to exceed $1,000 if the court finds that the executor misrepresented in an affidavit in lieu of the inventory, appraisement, and list of claims filed by the executor that all beneficiaries, other than those described by Section 309.056(b-1), received a verified, full, and detailed inventory and appraisement as required by Section 309.056(b).

(b) The independent executor and the executor's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the executor’s failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

Added by Acts 2013, 83rd Leg., ch. 1136, § 42, eff. Jan. 1, 2014.

§ 309.102. Additional Inventory and Appraisement or List of Claims

(a) On the written complaint of any interested person that property or claims of the estate have not been included in the filed inventory, appraisement, and list of claims, the personal representative shall be cited to appear before the court in which the cause is pending and show cause why the representative should not be required to make and file an additional inventory and appraisement or list of claims, or both, as applicable.

(b) After hearing the complaint, if the court is satisfied of the truth of the complaint, the court shall enter an order requiring the personal representative to make and file an additional inventory and appraisement or list of claims, or both, as applicable. The additional inventory and appraisement or list of claims:

(1) must be made and filed in the same manner as the original inventory and appraisement or list of claims within the period prescribed by the court, not to exceed 20 days after the date the order is entered; and

(2) may include only property or claims not previously included in the inventory and appraisement or list of claims.

Derived from Probate Code § 257.


Statutes in Contest

§ 309.103


§ 309.103. Correction of Inventory, Appraisement, or List of Claims for Erroneous or Unjust Item

(a) Any interested person who considers an inventory, appraisement, or list of claims or an affidavit in lieu of the inventory, appraisement, and list of claims to be erroneous or unjust in any particular may:

(1) file a written complaint setting forth the alleged erroneous or unjust item; and

(2) have the personal representative cited to appear before the court and show cause why the item should not be corrected.

(b) On the hearing of the complaint, if the court is satisfied from the evidence that the inventory, appraisement, or list of claims or an affidavit in lieu of the inventory, appraisement, and list of claims is erroneous or unjust as alleged in the complaint, the court shall enter an order:

(1) specifying the erroneous or unjust item and the corrections to be made; and
(2) if the complaint relates to an inventory, appraisement, or list of claims, appointing appraisers to make a new appraisement correcting the erroneous or unjust item and requiring the filing of the new appraisement before the 21st day after the date of the order.

(c) The court on the court’s own motion or that of the personal representative may also have a new appraisement made for the purposes described by this section.

Derived from Probate Code § 258.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsecs. (a) and (b) amended by Acts 2013, 83rd Leg., ch. 1136, § 43, eff. Jan. 1, 2014.

§ 309.104. Reappraisement

(a) A reappraisement made, filed, and approved by the court replaces the original appraisement. Not more than one reappraisement may be made.

(b) Notwithstanding Subsection (a), an interested person may object to a reappraisement regardless of whether the court has approved the reappraisement. If the court finds that the reappraisement is erroneous or unjust, the court shall appraise the property on the basis of the evidence before the court.

Derived from Probate Code § 259.


Subchapter D. Use of Inventory, Appraisement, and List of Claims as Evidence

§ 309.151. Use of Inventory, Appraisement, and List of Claims as Evidence

Each inventory, appraisement, and list of claims that has been made, filed, and approved in accordance with law, the record of the inventory, appraisement, and list of claims, or a copy of an original or the record that has been certified under the seal of the county court affixed by the clerk:

(1) may be given in evidence in any court of this state in any suit by or against the personal representative; and

(2) is not conclusive for or against the representative if it is shown that:

(A) any property or claim of the estate is not shown in the originals, the record, or the copies; or

(B) the value of the property or claim of the estate exceeded the value shown in the appraisement or list of claims.

Derived from Probate Code § 261.


Chapter 310. Allocation of Estate Income and Expenses

§ 310.001. Definition

§ 310.002. Applicability of Other Law

§ 310.003. Allocation of Expenses

§ 310.004. Income Determination and Distribution

§ 310.005. Treatment of Income Received by Trustee

§ 310.006. Frequency and Method of Determining Interests in Certain Estate Assets

Chapter 310. Allocation of Estate Income and Expenses

Statutes in Context

Chapter 310

Income from a gifted item that accrues after death but before distribution is given to the beneficiary, less the cost of taxes, repairs, insurance, management fees, etc.

A legacy (cash bequest) in a will earns interest at the legal rate as provided in Finance Code § 302.002. The Uniform Principal and Income Act provides that interest is payable beginning on the first anniversary of the date of the decedent’s death. See Property Code § 116.051(3)(A).

§ 310.001. Definition

In this chapter, “undistributed assets” includes funds used to pay debts, administration expenses, and federal and state estate, inheritance, succession, and generation-skipping transfer taxes until the date the debts, expenses, and taxes are paid.

Derived from Probate Code § 378B(h).


§ 310.002. Applicability of Other Law

Chapter 116, Property Code, controls to the extent of any conflict between this chapter and Chapter 116, Property Code.

Derived from Probate Code § 378B(i).


§ 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 expenses are charged against the principal of the estate.
fees or expenses relating to the administration of the estate and interest relating to estate taxes shall be allocated between the income and principal of the estate as the executor determines in the executor’s discretion to be just and equitable.

Derived from Probate Code § 378B(a).


§ 310.004. Income Determination and Distribution

(a) Unless a will provides otherwise, income from the assets of a decedent’s estate that accrues after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be:

(1) determined according to the rules applicable to a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code); and

(2) distributed as provided by Subsections (b) and (c) and by Chapter 116, Property Code.

(b) Income from property devised to a specific devisee shall be distributed to the devisee after reduction for:

(1) property taxes;

(2) other taxes, including taxes imposed on income that accrues during the period of administration and that is payable to the devisee;

(3) ordinary repairs;

(4) insurance premiums;

(5) interest accrued after the testator’s death; and

(6) other expenses of management and operation of the property.

(c) The balance of the net income shall be distributed to all other devisees after reduction for the balance of property taxes, ordinary repairs, insurance premiums, interest accrued, other expenses of management and operation of all property from which the estate is entitled to income, and taxes imposed on income that accrues during the period of administration and that is payable or allocable to the devisees, in proportion to the devisees’ respective interests in the undistributed assets of the estate.

Derived from Probate Code §§ 378B(b), (c), (d).


§ 310.005. Treatment of Income Received by Trustee

Income received by a trustee under this chapter shall be treated as income of the trust as provided by Section 116.101, Property Code.

Derived from Probate Code § 378B(g).


§ 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 distributees’ 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 distributees.

Derived from Probate Code § 378B(h).


SUBTITLE H. CONTINUATION OF ADMINISTRATION

Chapter 351. Powers and Duties of Personal Representatives in General

Subchapter A. General Provisions

§ 351.001. Applicability of Common Law
§ 351.002. Appeal Bond
§ 351.003. Certain Costs Adjudged Against Personal Representative

Subchapter B. General Authority of Personal Representatives

§ 351.051. Exercise of Authority Under Court Order
§ 351.052. Exercise of Authority Without Court Order
§ 351.053. Authority to Serve Pending Appeal of Appointment
§ 351.054. Authority to Commence Suits

Subchapter C. Possession and Care of Estate Property

§ 351.101. Duty of Care
§ 351.102. Possession of Personal Property and Records
§ 351.103. Possession of Property Held in Common Ownership
§ 351.104. Administration of Partnership Interest
§ 351.105. Holding of Stocks, Bonds, and Other Personal Property in Nominee’s Name
§ 351.106. Digital Assets

Subchapter D. Collection of Claims; Recovery of Property

§ 351.151. Ordinary Diligence Required
§ 351.152. Contingent Interest for Certain Attorney’s Fees; Court Approval
§ 351.153. Recovery of Certain Expenses

Subchapter E. Operation of Business

§ 351.201. Definition
§ 351.202. Order Requiring Personal Representative to Operate Business
§ 351.203. Powers of Personal Representative Regarding Business
§ 351.204. Fiduciary Duties of Personal Representative Regarding Business
§ 351.205. Real Property of Business; Notice

Subchapter F. Authority to Engage in Certain Borrowing
§ 351.251. Mortgage or Pledge of Estate Property Authorized in Certain Circumstances
§ 351.252. Application; Order
§ 351.253. Term of Loan or Lien Extension

Subchapter G. Payment of Income of Certain Estates During Administration
§ 351.301. Applicability of Subchapter
§ 351.302. Application and Order for Payment of Certain Estate Income
§ 351.303. Treatment of Certain Amounts Received from Mineral Lease

Subchapter H. Certain Administered Estates
§ 351.351. Applicability
§ 351.352. Ensuring Compliance With Law
§ 351.353. Annual Examination of Certain Estates; Bond of Personal Representative
§ 351.354. Judge’s Liability
§ 351.355. Identifying Information

Chapter 351. Powers and Duties of Personal Representatives in General

Subchapter A. General Provisions
§ 351.001. Applicability of Common Law

The rights, powers, and duties of executors and administrators are governed by common law principles to the extent that those principles do not conflict with the statutes of this state. Derived from Probate Code § 32. Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.002. Appeal Bond
(a) Except as provided by Subsection (b), an appeal bond is not required if an appeal is taken by an executor or administrator.

(b) An executor or administrator must give an appeal bond if the appeal personally concerns the executor or administrator. Derived from Probate Code § 29. Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.003. Certain Costs Adjudged Against Personal Representative

If a personal representative neglects to perform a required duty or is removed for cause, the representative and the sureties on the representative’s bond are liable for:

1. The costs of removal and other additional costs incurred that are not expenditures authorized by this title; and

2. Reasonable attorney’s fees incurred in:
   A. Removing the representative; or

Subchapter B. General Authority of Personal Representatives

§ 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;
TEXAS ESTATES CODE

(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.

§ 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).

§ 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.

§ 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.

Subchapter C. Possession and Care of Estate Property

Statutes in Context
§ 351.101
The standard of care which a personal representative must use when dealing with estate property is that of a prudent person. See McLendon v. McLendon, 862 S.W.2d 662 (Tex. App. — Dallas 1993, writ denied).

§ 351.102. 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.

Statutes in Context
§ 351.102
The personal representative has a duty to collect all of the decedent’s property under § 351.102. This right is superior to that of the heirs or beneficiaries. See § 101.001.

§ 351.103. Possession of Personal Property and Records
(a) Immediately after receiving letters testamentary or of administration, the personal representative of an estate shall collect and take possession of the estate’s personal property, record books, title papers, and other business papers.
(b) The personal representative shall deliver the property, books, and papers described by Subsection (a) that are in the representative’s possession to the person or persons legally entitled to the property, books, and papers when:
(1) the administration of the estate is closed; or
(2) a successor personal representative receives letters testamentary or of administration.
Derived from Probate Code § 232.

§ 351.103. Possession of Property Held in Common Ownership
If an estate holds or owns any property in common or as part owner with another, the personal representative of the estate is entitled to possession of the property in common with the other part owner or owners in the same manner as other owners in common or joint owners are entitled to possession of the property.
Derived from Probate Code § 235.

§ 351.104. Administration of Partnership Interest
(a) If a decedent was a partner in a general partnership and the partnership agreement or articles of partnership provide that, on the death of a partner, the partner’s personal representative is entitled to that partner’s place in the partnership, a personal representative accordingly contracting to enter the partnership under the partnership agreement or articles of partnership is, to the extent allowed by law, liable to a third person only to the extent of:
(1) the deceased partner’s capital in the partnership; and
(2) the estate’s assets held by the representative.
(b) This section does not exonerate a personal representative from liability for the representative’s negligence.
Derived from Probate Code § 238A.

§ 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 (e.g., a stock broker).
(b) Any property registered in the manner described by Subsection (a) shall be kept:
(1) in the possession and control of the personal representative at all times; and
(2) separate from the representative’s individual property.
Derived from Probate Code § 398A.

§ 351.106. Digital Assets
A personal representative of a decedent’s estate may apply for and obtain a court order, either at the time the personal representative is appointed or at any time before the administration of the estate is closed, that:
(1) directs disclosure of the content of electronic communications of the decedent to the personal representative as provided by Section 2001.101 and that contains any court finding described by Section 2001.101(b)(3);
(2) with respect to a catalog of electronic communications sent or received by the decedent and other digital assets of the decedent, other than the content of an electronic communication, contains any court finding described by Section 2001.102(b)(4); or
(3) directs under Section 2001.231 a custodian to comply with a request to disclose digital assets under Chapter 2001.
New.
Added by Acts 2019, 86th Leg., ch. 1141, § 21, eff. Sept. 1, 2019.

Subchapter D. Collection of Claims; Recovery of Property

Statutes in Context
Chapter 351, Subchapter D
Subchapter D provides the personal representative with guidance in collecting the decedent’s property. This subchapter also explains when and how the personal representative may hire an attorney on a contingency fee basis to assist in the recovery and collection process.

§ 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
Subchapter E. Operation of Business

§ 351.201. Definition

In this subchapter, “business” includes a farm, ranch, or factory.

Derived from Probate Code § 238(a).


§ 351.202. Order Requiring Personal Representative to Operate Business

(a) A court, after notice to all interested persons and a hearing, may order the personal representative of an estate to operate a business that is part of the estate and may grant the representative the powers to operate the business that the court determines are appropriate, after considering the factors listed in Subsection (b), if:

(1) the disposition of the business has not been specifically directed by the decedent’s will;

(2) it is not necessary to sell the business at once for the payment of debts or for any other lawful purpose; and

(3) the court determines that the operation of the business by the representative is in the best interest of the estate.

(b) In determining which powers to grant a personal representative in an order entered under Subsection (a), the court shall consider:

(1) the condition of the estate and the business;

(2) the necessity that may exist for the future sale of the business or of business property to provide for payment of debts or claims against the estate or other lawful expenditures with respect to the estate;

(3) the effect of the order on the speedy settlement of the estate; and

(4) the best interests of the estate.

Derived from Probate Code §§ 238(b), (f).


§ 351.203. Powers of Personal Representative Regarding Business

(a) A personal representative granted authority to operate a business in an order entered under Section 351.202(a) has the powers granted under Section 351.052, regardless of whether the order specifies that the representative has those powers, unless the order specifically provides that the representative does not have one or more of the powers listed in Section 351.052.

(b) In addition to the powers granted to the personal representative under Section 351.052, subject to any specific limitation on those powers in accordance with Subsection (a), an order entered under Section 351.202(a) may grant the representative one or more of the following powers:

(1) the power to hire, pay, and terminate the employment of employees of the business;

(2) the power to incur debt on behalf of the business, including debt secured by liens against
assets of the business or estate, if permitted or directed by the order;

(3) the power to purchase and sell property in the ordinary course of the operation of the business, including the power to purchase and sell real property if the court finds that the principal purpose of the business is the purchasing and selling of real property and the order states that finding;

(4) the power to enter into a lease or contract, the term of which may extend beyond the settlement of the estate, but only to the extent that granting the power appears to be consistent with the speedy settlement of the estate; and

(5) any other power the court finds necessary with respect to the operation of the business.

(c) If the order entered under Section 351.202(a) gives the personal representative the power to purchase, sell, lease, or otherwise encumber property:

(1) the purchase, sale, lease, or encumbrance is governed by the terms of the order; and

(2) the representative is not required to comply with any other provision of this title regarding the purchase, sale, lease, or encumbrance, including any provision requiring citation or notice.

Derived from Probate Code §§ 238(c), (d), (e).

§ 351.204. Fiduciary Duties of Personal Representative Regarding Business

(a) A personal representative who operates a business under an order entered under Section 351.202(a) has the same fiduciary duties as a representative who does not operate a business that is part of an estate.

(b) In operating a business under an order entered under Section 351.202(a), a personal representative shall consider:

(1) the condition of the estate and the business;

(2) the necessity that may exist for the future sale of the business or of business property to provide for payment of debts or claims against the estate or other lawful expenditures with respect to the estate;

(3) the effect of the order on the speedy settlement of the estate; and

(4) the best interests of the estate.

(c) A personal representative who operates a business under an order entered under Section 351.202(a) shall report to the court with respect to the operation and condition of the business as part of the accounts required by Chapters 359 and 362, unless the court orders the reports regarding the business to be made more frequently or in a different manner or form.

Derived from Probate Code § 238(g).

§ 351.205. Real Property of Business; Notice

(a) A personal representative shall file a notice in the real property records of the county in which the real property is located before purchasing, selling, leasing, or otherwise encumbering any real property of the business in accordance with an order entered under Section 351.202(a).

(b) The notice filed under Subsection (a) must:

(1) state:

(A) the decedent’s name;

(B) the county of the court in which the decedent’s estate is pending;

(C) the cause number assigned to the pending estate; and

(D) that one or more orders have been entered under Section 351.202(A); and

(2) include a description of the property that is the subject of the purchase, sale, lease, or other encumbrance.

(c) For purposes of determining a personal representative’s authority with respect to a purchase, sale, lease, or other encumbrance of real property of a business that is part of an estate, a third party who deals in good faith with the representative with respect to the transaction may rely on the notice filed under Subsection (a) and an order entered under Section 351.202(a) and file as part of the estate records maintained by the clerk of the court in which the estate is pending.

Derived from Probate Code §§ 238(h), (i).

Subchapter F. Authority to Engage in Certain Borrowing

Statutes in Context
Chapter 351, Subchapter F
Chapter 351, Subchapter F, explains when and how a personal representative may borrow money for estate administration purposes.

§ 351.251. Mortgage or Pledge of Estate Property Authorized in Certain Circumstances

Under order of the court, a personal representative of an estate may mortgage or pledge by deed of trust or otherwise as security for an indebtedness any property of the estate as necessary for:

(1) the payment of any ad valorem, income, gift, estate, inheritance, or transfer taxes on the transfer of an estate or due from a decedent or the estate, regardless of whether those taxes are assessed by a state, a political subdivision of a state, the federal government, or a foreign country;

(2) the payment of expenses of administration, including amounts necessary for operation of a business, farm, or ranch owned by the estate;

(3) the payment of claims allowed and approved, or established by suit, against the estate; or

(4) the renewal and extension of an existing lien.

Derived from Probate Code § 329(a).
§ 351.252. Application; Order
   (a) If necessary to borrow money for a purpose described by Section 351.251 or to create or extend a lien on estate property as security, the personal representative of the estate shall file a sworn application for that authority with the court. The application must state fully and in detail the circumstances that the representative believes make the granting of the authority necessary.
   (b) On the filing of an application under Subsection (a), the clerk shall issue and have posted a citation to all interested persons, stating the nature of the application and requiring any interested person who chooses to do so to appear and show cause, if any, why the application should not be granted.
   (c) If satisfied by the evidence adduced at the hearing on an application filed under Subsection (a) that it is in the interest of the estate to borrow money or to extend and renew an existing lien, the court shall issue an order to that effect that sets out the terms of the authority granted under the order.
   (d) If a new lien is created on estate property, the court may require, for the protection of the estate and the creditors, that the personal representative’s general bond be increased or an additional bond given, as for the sale of real property belonging to the estate.

Derived from Probate Code § 329(b), (c).

§ 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. If the court determines that renewal of the lien is in the best interest of the estate, it may authorize an extension of the lien for not more than one additional year without further citation or notice.

Derived from Probate Code § 329(c).

Subchapter G. Payment of Income of Certain Estates During Administration

§ 351.301. Applicability of Subchapter
   This subchapter applies only to the estate of a decedent that is being administered under the direction, control, and orders of a court in the exercise of the court’s probate jurisdiction.

Derived from Probate Code § 239.

§ 351.302. Application and Order for Payment of Certain Estate Income
   (a) On the application of the executor or administrator of an estate or of any interested party, and after notice of the application has been given by posting, the court may order and direct the executor or administrator to pay, or credit to the account of, those persons who the court finds will own the estate assets when administration on the estate is completed, and in the same proportions, that part of the annual net income received by or accruing to the estate that the court finds can conveniently be paid to those owners without prejudice to the rights of creditors, legatees, or other interested parties, if:
   (1) it appears from evidence introduced at a hearing on the application, and the court finds, that the reasonable market value of the estate assets on hand at that time, excluding the annual income from the estate assets, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies; and
   (2) no estate creditor or legatee has appeared and objected.
   (b) Except as otherwise provided by this title, nothing in this subchapter authorizes the court to order paid over to the owners of the estate any part of the principal of the estate.

Derived from Probate Code § 239.

§ 351.303. Treatment of Certain Amounts Received from Mineral Lease
   For the purposes of this subchapter, bonuses, rentals, and royalties received for or from an oil, gas, or other mineral lease shall be treated as income rather than as principal.

Derived from Probate Code § 239.

Subchapter H. Certain Administered Estates

Statutes in Context
Chapter 351, Subchapter H
The judge has the duty to use reasonable diligence to make certain that personal representatives in dependent administrations are performing their duties properly. The judge, however, does not have this responsibility with respect to independent personal representatives who are not supervised by the court.

§ 351.351. Applicability
   This subchapter does not apply to:
   (1) the appointment of an independent executor or administrator under Section 401.002 or 401.003(a); or
(2) the appointment of a successor independent administrator under Section 404.005.


§ 351.352. Ensuring Compliance with Law

A county or probate court shall use reasonable diligence to see that personal representatives of estates administered under court orders and other officers of the court perform the duty enjoined on them by law applicable to those estates.

Derived from Probate Code § 36(a).


§ 351.353. Annual Examination of Certain Estates; Bond of Personal Representative

For each estate administered under orders of a county or probate court, the judge shall, if the judge considers it necessary, annually examine the condition of the estate and the solvency of the bond of the estate’s personal representative. If the judge finds the representative’s bond is not sufficient to protect the estate, the judge shall require the representative to execute a new bond in accordance with law. In each case, the judge, as provided by law, shall notify the representative and the sureties on the representative’s bond.

Derived from Probate Code § 36(a).


§ 351.354. Judge’s Liability

A judge is liable on the judge’s bond to those damaged if damage or loss results to an estate administered under orders of a county or probate court from the gross neglect of the judge to use reasonable diligence in the performance of the judge’s duty under this subchapter.

Derived from Probate Code § 36(a).


§ 351.355. Identifying Information

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

(b) The court shall maintain any information required under this section, and the information may not be filed with the clerk.

Derived from Probate Code § 36(b).

§ 352.001. Definition

In this subchapter, “financial institution” means an organization authorized to engage in business under state or federal laws relating to financial institutions, including:

(1) a bank;
(2) a trust company;
(3) a savings bank;
(4) a building and loan association;
(5) a savings and loan company or association; and
(6) a credit union.

Derived from Probate Code § 241(b).


§ 352.002. Standard Compensation

(a) An executor, administrator, or temporary administrator a court finds to have taken care of and managed an estate in compliance with the standards of this title is entitled to receive a five percent commission on all amounts that the executor or administrator actually receives or pays out in cash in the administration of the estate.

(b) The commission described by Subsection (a):

(1) may not exceed, in the aggregate, more than five percent of the gross fair market value of the estate subject to administration; and

(2) is not allowed for:

(A) receiving funds belonging to the testator or intestate that were, at the time of the testator’s or intestate’s death, either on hand or held for the testator or intestate in a financial institution or a brokerage firm, including cash or a cash equivalent held in a checking account, savings account, certificate of deposit, or money market account;

(B) collecting the proceeds of a life insurance policy; or

(C) paying out cash to an heir or legatee in that person’s capacity as an heir or legatee.

Derived from Probate Code § 241(a).


Subchapter B. Expenses of Personal Representatives and Others

Statutes in Context

§ 352.051

Section 352.051 allows the personal representative to be reimbursed for all necessary and reasonable expenses, including attorneys’ fees, incurred in administering the estate.

§ 352.051. Expenses; Attorney’s Fees

On proof satisfactory to the court, a personal representative of an estate is entitled to:

(1) necessary and reasonable expenses incurred by the representative in:

(A) preserving, safekeeping, and managing the estate;

(B) collecting or attempting to collect claims or debts; and

(C) recovering or attempting to recover property to which the estate has a title or claim; and

(2) reasonable attorney’s fees necessarily incurred in connection with the proceedings and management of the estate.

Derived from Probate Code § 242.


Statutes in Context

§ 352.052

Section 352.052 explains when a person may be reimbursed from the estate for expenses incurred in:

(1) attempting to probate a will or (2) defending a will

Electronic copy available at: https://ssrn.com/abstract=4537861
already admitted to probate, provided the actions are both in good faith and with just cause.

§ 352.052. Allowance for Defense or Successful Contest 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 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.

(c) In this subsection, “interested person” does not include a creditor or any other having a claim against the estate. An interested person who, in good faith and with just cause, successfully prosecutes a proceeding to contest the validity of a will or alleged will offered for or admitted to probate may be allowed out of the estate the person’s necessary expenses and disbursements in that proceeding, including reasonable attorney’s fees.

Derived from Probate Code § 244.


§ 352.053. Expense Charges

(a) The court shall act on expense charges in the same manner as other claims against the estate.

(b) All expense charges shall be:

(1) made in writing, showing specifically each item of expense and the date of the expense;

(2) verified by the personal representative’s affidavit;

(3) filed with the clerk; and

(4) entered on the claim docket.

Derived from Probate Code § 244.


Chapter 353. Exempt Property and Family Allowance

Subchapter A. General Provisions

§ 353.001. Treatment of Certain Children

Subchapter B. Exempt Property; Allowance in Lieu of Exempt Property

§ 353.051. Exempt Property to Be Set Aside

§ 353.052. Delivery of Exempt Property

§ 353.053. Allowance in Lieu of Exempt Property

§ 353.054. Payment of Allowance in Lieu of Exempt Property

§ 353.055. Method of Paying Allowance in Lieu of Exempt Property

§ 353.056. Sale of Property to Raise Funds for Allowance in Lieu of Exempt Property

Subchapter C. Family Allowance

§ 353.101. Family Allowance

§ 353.102. Amount and Method of Payment of Family Allowance

§ 353.103. Order Fixing Family Allowance

§ 353.104. Preference of Family Allowance

§ 353.105. Payment of Family Allowance

§ 353.106. Surviving Spouse or Minor Children May Take Personal Property for Family Allowance

§ 353.107. Sale of Estate Property to Raise Funds for Family Allowance

Subchapter D. Liens on and Disposition of Exempt Property and Property Taken as Allowance

§ 353.151. Liens

§ 353.152. Distribution of Exempt Property of Solvent Estate

§ 353.153. Title to Property of Insolvent Estate

§ 353.154. Certain Property Not Considered in Determining Solvency

§ 353.155. Exempt Property Liable for Certain Debts

Chapter 353. Exempt Property and Family Allowance

Subchapter A. General Provisions

§ 353.001. Treatment of Certain Children

For purposes of distributing exempt property and making a family allowance, a child is a child of his or her mother and a child of his or her father, as provided by Sections 201.051, 201.052, and 201.053.

Derived from Probate Code § 42(c).


Subchapter B. Exempt Property; Allowance in Lieu of Exempt Property
§ 353.051. Exempt Property to Be Set Aside

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisement, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisement, and list of claims is filed, the court by order shall set aside:

(1) the homestead for the use and benefit of the decedent’s surviving spouse and minor children; and

(2) all other exempt property described by Section 42.002(a), Property Code, for the use and benefit of the decedent’s:

(A) surviving spouse and minor children;

(B) unmarried adult children remaining with the decedent’s family; and

(C) each other adult child who is incapacitated.

(b) Before the inventory, appraisement, and list of claims of an estate are approved:

(1) the decedent’s surviving spouse or any other person authorized to act on behalf of the decedent’s minor children may apply to the court to have exempt property described by Subsection (a), including the homestead, set aside by filing an application and a verified affidavit listing all exempt property that the applicant claims is exempt property described by Subsection (a); and

(2) any of the decedent’s unmarried adult children remaining with the decedent’s family, any other adult child of the decedent who is incapacitated, or a person who is authorized to act on behalf of the adult incapacitated child may apply to the court to have all exempt property described by Subsection (a), other than the homestead, set aside by filing an application and a verified affidavit listing all the exempt property, other than the homestead, that the applicant claims is exempt property described by Subsection (a).

(c) At a hearing on an application filed under Subsection (b), the applicant has the burden of proof by a preponderance of the evidence. The court shall set aside property of the decedent’s estate that the court finds is exempt.

Derived from Probate Code § 271.


§ 353.052. Delivery of Exempt Property

(a) This section only applies to exempt property described by Section 353.051(a).

(a-1) The executor or administrator of an estate shall deliver, without delay, exempt property that has been set aside for the decedent’s surviving spouse and children in accordance with this section.

(b) If there is a surviving spouse and there are no children of the decedent, or if all the children, including any adult incapacitated children, of the decedent are also the children of the surviving spouse, the executor or administrator shall deliver all exempt property to the surviving spouse.

(c) If there is a surviving spouse and there are children of the decedent who are not also children of the surviving spouse, the executor or administrator shall deliver the share of those children in exempt property, other than the homestead, to:

(1) the children, if the children are of legal age;

(2) the children’s guardian, if the children are minors; or

(3) the guardian of each of the children who is an incapacitated adult, or to another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(d) If there is no surviving spouse and there are children of the decedent, the executor or administrator shall deliver exempt property, other than the homestead, to:

(1) the children, if the children are of legal age;

(2) the children’s guardian, if the children are minors; or

(3) the guardian of each of the children who is an incapacitated adult, or to another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(e) In all cases, the executor or administrator shall deliver the homestead to:

(1) the decedent’s surviving spouse, if there is a surviving spouse; or

(2) the guardian of the decedent’s minor children, if there is not a surviving spouse.

Derived from Probate Code § 272.

§ 353.053. Allowance in Lieu of Exempt Property

(a) If all or any of the specific articles of exempt property described by Section 353.051(a) are not among the decedent’s effects, the court shall make, in lieu of the articles not among the effects, a reasonable allowance to be paid to the decedent’s surviving spouse and children as provided by Section 353.054.

(b) The allowance in lieu of a homestead may not exceed $45,000, and the allowance in lieu of other exempt property may not exceed $30,000, excluding the family allowance for the support of the surviving spouse, minor children, and adult incapacitated children provided by Subchapter C.

Derived from Probate Code § 273.

§ 353.054. Payment of Allowance in Lieu of Exempt Property

(a) The executor or administrator of an estate shall pay an allowance in lieu of exempt property in accordance with this section.

(b) If there is a surviving spouse and there are no children of the decedent, or if all the children, including any adult incapacitated children, of the decedent are also the children of the surviving spouse, the executor or administrator shall pay the entire allowance to the surviving spouse.

(c) If there is a surviving spouse and there are children of the decedent who are not also children of the surviving spouse, the executor or administrator shall pay the surviving spouse one-half of the entire allowance plus the shares of the decedent’s children of whom the surviving spouse is the parent. The remaining shares must be paid to:

(1) the decedent’s adult children of whom the surviving spouse is not a parent and who are not incapacitated;

(2) the guardian of the children of whom the surviving spouse is not a parent and who are minors; or

(3) the guardian or another appropriate person, as determined by the court, if there is no guardian, of each child who is an incapacitated adult.

(d) If there is no surviving spouse and there are children of the decedent, the executor or administrator shall divide the entire allowance equally among the children and pay the children’s shares to:

(1) each of those children who are adults and who are not incapacitated;

(2) the guardian of each of those children who are minors; or

(3) the guardian or another appropriate person, as determined by the court, if there is no guardian, of each of those children who is an incapacitated adult.

Derived from Probate Code § 275.

§ 353.055. Method of Paying Allowance in Lieu of Exempt Property

(a) An allowance in lieu of any exempt property shall be paid in the manner selected by the decedent’s surviving spouse or children of legal age, or by the guardian of the decedent’s minor children, or by the guardian of the surviving spouse, as follows:

(1) in money out of estate funds that come into the executor’s or administrator’s possession;

(2) in any of the decedent’s property or a part of the property chosen by those individuals at the appraisement; or

(3) part in money described by Subdivision (1) and part in property described by Subdivision (2).

(b) Property specifically devised to another may be taken as provided by Subsection (a) only if other available property is insufficient to pay the allowance.

Derived from Probate Code § 274.

§ 353.056. Sale of Property to Raise Funds for Allowance in Lieu of Exempt Property

(a) On the written application of the decedent’s surviving spouse and children, or of a person authorized to represent any of those children, the court shall order the
sale of estate property for cash in an amount that will be sufficient to raise the amount of the allowance provided under Section 353.053 or a portion of that amount, as necessary, if:

(1) the decedent had no property that the surviving spouse or children are willing to take for the allowance or the decedent had insufficient property; and

(2) there are not sufficient estate funds in the executor's or administrator's possession to pay the amount of the allowance or a portion of that amount, as applicable.

(b) Property specifically devised to another may be sold to raise cash as provided by Subsection (a) only if other available property is insufficient to pay the allowance.

The family allowance is available not just to provide necessities but to provide the standard of living to which the surviving spouse was accustomed while both spouses were alive. See In re Estate of Rhea, 257 S.W.3d 787 (Tex. App.—Fort Worth 2008, no pet.); In re Estate of Wolfe, 268 S.W.3d 780 (Tex. App.—Fort Worth 2008, no pet.).

The family allowance is treated as a debt of the estate. In other words, it does not reduce the value of property the surviving spouse and children receive under the will or by intestacy (that is, the family allowance is not an advancement or a satisfaction).

§ 353.101. Family Allowance
(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisement, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisement and list of claims is filed, the court shall fix a family allowance for the support of the decedent's surviving spouse, minor children, and adult incapacitated children.

(b) Before the inventory, appraisement, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisement, and list of claims is filed, the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children or adult incapacitated children may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing:

(1) the amount necessary for the maintenance of the surviving spouse, the decedent's minor children, and the decedent's adult incapacitated children for one year after the date of the decedent's death; and

(2) the surviving spouse's separate property and any property that the decedent's minor children or adult incapacitated children have in their own right.

(c) At a hearing on an application filed under Subsection (b), the applicant has the burden of proof by a preponderance of the evidence. The court shall fix a family allowance for the support of the decedent's surviving spouse, minor children, and adult incapacitated children.

(d) A family allowance may not be made for:

(1) the decedent's surviving spouse, if the surviving spouse has separate property adequate for the surviving spouse's maintenance;

(2) the decedent's minor children, if the minor children have property in their own right adequate for the children's maintenance; or

(3) any of the decedent's adult incapacitated children, if:

(A) the adult incapacitated child has property in the person's own right adequate for the person's maintenance; or

(B) at the time of the decedent's death, the decedent was not supporting the adult incapacitated child.
year of maintenance as long as that property was not the surviving spouse’s separate property prior to the deceased spouse’s death.

§ 353.102. Amount and Method of Payment of Family Allowance

(a) The amount of the family allowance must be sufficient for the maintenance of the decedent’s surviving spouse, minor children, and adult incapacitated children for one year from the date of the decedent’s death.

(b) The allowance must be fixed with regard to the facts and circumstances then existing and the facts and circumstances anticipated to exist during the first year after the decedent’s death.

(c) The allowance may be paid in a lump sum or in installments, as ordered by the court.

Derived from Probate Code § 287.

§ 353.103. Order Fixing Family Allowance

When a family allowance has been fixed, the court shall enter an order that:

1. states the amount of the allowance;
2. provides how the allowance shall be payable; and
3. directs the executor or administrator to pay the allowance in accordance with law.

Derived from Probate Code § 289.

Statutes in Context
§ 353.104

The family allowance has priority over the claims of other creditors except for the first $30,000 of funeral and last illness expenses. See § 355.102 (defining "Class 1" claims).

§ 353.105. Payment of Family Allowance

(a) The executor or administrator of an estate shall apportion and pay the family allowance in accordance with this section.

(b) If there is a surviving spouse and there are no minor children or adult incapacitated children of the decedent, the executor or administrator shall pay the entire family allowance to the surviving spouse.

(c) If there is a surviving spouse and all of the minor children and adult incapacitated children of the decedent are also the children of the surviving spouse, the executor or administrator shall pay the entire family allowance to the surviving spouse for use by the surviving spouse, the decedent’s minor children, and adult incapacitated children.

(d) If there is a surviving spouse and some or all of the minor children or adult incapacitated children of the decedent are not also children of the surviving spouse, the executor or administrator shall pay:

1. the portion of the entire family allowance necessary for the support of those minor children to the guardian of those children; and
2. the portion of the entire family allowance necessary for the support of each of those adult incapacitated children to the guardian of the adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(e) If there is no surviving spouse and there are minor children or adult incapacitated children of the decedent, the executor or administrator shall pay the family allowance:

1. for the minor children, to the guardian of those children; and
2. for each adult incapacitated child, to the guardian of the adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

Derived from Probate Code § 291.

§ 353.106. Surviving Spouse or Minor Children May Take Personal Property for Family Allowance

(a) A decedent’s surviving spouse, the guardian of the decedent’s minor children, or the guardian of an adult incapacitated child of the decedent or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian, is entitled to take, at the property’s appraised value as shown by the appraisement, any of the estate’s personal property in full or partial payment of the family allowance.

(b) Property specifically devised to another may be taken as provided by Subsection (a) only if other available property is insufficient to pay the allowance.

Derived from Probate Code § 292.

§ 353.107. Sale of Estate Property to Raise Funds for Family Allowance

(a) The court shall, as soon as the inventory,
appraisement, and list of claims are returned and approved or the affidavit in lieu of the inventory, appraisement, and list of claims is filed, order the sale of estate property for cash in an amount that will be sufficient to raise the amount of the family allowance, or a portion of that amount, as necessary, if:

(1) the decedent had no personal property that the surviving spouse, the guardian of the decedent’s minor children, or the guardian of the decedent’s adult incapacitated child or other appropriate person acting on behalf of the adult incapacitated child is willing to take for the family allowance, or the decedent had insufficient personal property; and

(2) there are not sufficient estate funds in the executor’s or administrator’s possession to pay the amount of the family allowance or a portion of that amount, as applicable.

(b) Property specifically devised to another may be sold to raise cash as provided by Subsection (a) only if other available property is insufficient to pay the family allowance.

Derived from Probate Code §§ 292, 293.

§ 353.152. Distribution of Exempt Property of Solvent Estate

If on final settlement of an estate it appears that the estate is solvent, the exempt property, other than the homestead or any allowance made in lieu of the homestead, is subject to partition and distribution among the heirs of the decedent and the distributees in the same manner as other estate property.

Derived from Probate Code § 278.

Statutes in Context

§ 353.153

If the estate is insolvent, the surviving spouse and children retain the exempt property free and clear of the claims of creditors as well as of the decedent’s beneficiaries or heirs. This rule does not, however, actually deprive the beneficiaries or heirs of their property because if the property were not given to the surviving spouse and children, the estate creditors would have been able to reach it and the beneficiaries and heirs would not have received it anyway.

§ 353.154. Certain Property Not Considered in Determining Solvency

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 distributees are entitled to distribution of any remaining exempt property held by the executor or administrator in the same manner as other estate property. The property and allowances set aside or paid to the decedent’s surviving spouse or children, and any remaining exempt property held by the executor or administrator, may not be taken for any of the estate debts except as provided by Section 353.155.

Derived from Probate Code § 279.

Statutes in Context

§ 353.152

If the estate is solvent, the exempt personal property passes to the heirs or beneficiaries. Although this may seem to harm the surviving spouse and minor children, it actually does not because if the estate is solvent, there will be property to award a family allowance under § 353.101.
§ 353.155. Exempt Property Liable for Certain Debts
The exempt property, other than the homestead or any allowance made in lieu of the homestead:
(1) is liable for the payment of Class 1 claims; and
(2) is not liable for any estate debts other than the claims described by Subdivision (1).

Derived from Probate Code § 281.

Chapter 354. Summary Proceedings for, or Withdrawal From Administration of, Certain Estates

Subchapter A. Summary Proceedings for Certain Small Estates
§ 354.001. Summary Proceedings for Certain Small Estates
(a) If, after a personal representative of an estate has filed the inventory, appraisement, and list of claims or the affidavit in lieu of the inventory, appraisement, and list of claims as provided by Chapter 309, it is established that the decedent’s estate, excluding any homestead, exempt property, and family allowance to the decedent’s surviving spouse, minor children, and adult incapacitated children, does not exceed the amount sufficient to pay the claims against the estate classified as Classes 1 through 4 under Section 355.102, the representative shall:
(1) on order of the court, pay those claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of those claims; and
(2) after paying the claims in accordance with Subdivision (1), present to the court the representative’s account with an application for the settlement and allowance of the account.
(b) On presentation of the personal representative’s account and application under Subsection (a), the court, with or without notice, may adjust, correct, settle, allow, or disallow the account.
(c) If the court settles and allows the personal representative’s account under Subsection (b), the court may:
(1) decree final distribution;
(2) discharge the representative; and
(3) close the administration.

Derived from Probate Code § 143.

Subchapter B. Withdrawal from Administration of Certain Estates

§ 354.051. Required Report on Condition of Estate
After the filing of the inventory, appraisement, and list of claims, a person entitled to the estate may ask the court to withdraw the estate from administration by posting a bond at least double the gross appraised value of the estate.

§ 354.051. Required Report on Condition of Estate
At any time after the return of the inventory,
appraisement, and list of claims of an estate required by Chapter 309, anyone entitled to a portion of the estate, by a written complaint filed in the court in which the case is pending, may have the estate’s executor or administrator cited to appear and render under oath an exhibit of the condition of the estate.

Derived from Probate Code § 262.

**§ 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:
   - pay all unpaid debts against the estate that have been or are:
     - (i) allowed by the executor or administrator and approved by the court; or
     - (ii) established by suit against the estate; and
   - (B) pay to the executor or administrator any balance that the court in its judgment on the exhibit finds to be due the executor or administrator;

2. payable to the judge and the judge’s successors in office in an amount equal to at least twice the gross appraised value of the estate as shown by the inventory, appraisement, and list of claims returned under Chapter 309; and

3. approved by the court.

Derived from Probate Code § 263.

**§ 354.053. Order for Delivery of Estate**

On the giving and approval of the bond under Section 354.052, the court shall enter an order requiring the executor or administrator to promptly deliver to each person entitled to any portion of the estate that portion to which the person is entitled.

Derived from Probate Code § 264.

**§ 354.054. Order of Discharge**

After an estate has been withdrawn from administration under Section 354.053, the court shall enter an order:

1. discharging the executor or administrator; and
2. declaring the administration closed.

Derived from Probate Code § 265.

**§ 354.055. Lien on Property of Estate Withdrawn from Administration**

A lien exists on all of the estate withdrawn from administration under Section 354.053 and in the possession of the distributees and those claiming under the distributees with notice of that lien, to secure the ultimate payment of:

1. the bond under Section 354.052; and
2. debts and claims secured by the bond.

Derived from Probate Code § 266.

**§ 354.056. Partition of Estate Withdrawn from Administration**

On written application to the court, any person entitled to any portion of an estate withdrawn from administration under Section 354.053 may cause a partition and distribution of the estate to be made among those persons entitled to the estate in accordance with the provisions of this title that relate to the partition and distribution of an estate.

Derived from Probate Code § 267.

**§ 354.057. Creditors Entitled to Sue on Bond**

A creditor of an estate withdrawn from administration under Section 354.053 whose debt or claim against the estate is unpaid and not barred by limitation is entitled to:

1. commence a suit in the person’s own name on the bond under Section 354.052; and
2. obtain a judgment on the bond for the debt or claim the creditor establishes against the estate.

Derived from Probate Code § 268.

**§ 354.058. Creditors May Sue Distributees**

(a) A creditor of an estate withdrawn from administration under Section 354.053 whose debt or claim against the estate is unpaid and not barred by limitation may sue:

1. any distributee who has received any of the estate; or
2. all the distributees jointly.

(b) A distributee is not liable for more than the distributee’s just proportion according to the amount of the estate the distributee received in the distribution.

Derived from Probate Code § 269.

**Chapter 355. Presentment and Payment of Claims**
§ 355.001. Presentment of Claim to Personal Representative
§ 355.002. Presentment of Claim to Clerk
§ 355.003. Inclusion of Attorney’s Fees in Claim
§ 355.004. Affidavit Authenticating Claim for Money in General
§ 355.005. Affidavit Authenticating Claim of Corporation or Other Entity
§ 355.006. Lost or Destroyed Evidence Concerning Claim
§ 355.007. Waiver of Certain Defects of Form or Claims of Insufficiency
§ 355.008. Effect on Statutes of Limitation of Presentment of or Suit on Claim

§ 355.051. Allowance or Rejection of Claim
§ 355.052. Failure to Timely Allow or Reject Claim
§ 355.053. Claim Entered on Claim Docket
§ 355.054. Contest of Claim
§ 355.055. Court’s Action on Claim
§ 355.056. Hearing on Certain Claims
§ 355.057. Court Order Regarding Action on Claim
§ 355.058. Allowance and Approval Prohibited Without Affidavit
§ 355.060. Unsecured Claims Barred Under Certain Circumstances
§ 355.061. Allowing Barred Claim Prohibited: Court Disapproval
§ 355.062. Certain Actions on Claims With Lost or Destroyed Evidence Void
§ 355.063. Claims Not Allowed After Order for Partition and Distribution
§ 355.064. Suit on Rejected Claim
§ 355.065. Presentment of Claim Prerequisite for Judgment
§ 355.066. Judgment in Suit on Rejected Claim

§ 355.101. Approval or Establishment of Claim Required for Payment
§ 355.102. Claims Classification; Priority of Payment
§ 355.103. Priority of Certain Payments
§ 355.104. Payment of Proceeds from Sale of Property Securing Debt
§ 355.105. Claimant’s Petition for Allowance and Payment of Claim
§ 355.106. Order for Payment of Claim Obtained by Personal Representative

§ 355.107. Order for Payment of Claim Obtained by Creditor
§ 355.108. Payment When Assets Insufficient to Pay Claims of Same Class
§ 355.109. Abatement of Bequests
§ 355.110. Allocation of Funeral Expenses
§ 355.111. Payment of Court Costs Relating to Claim
§ 355.112. Joint Obligation for Payment of Certain Debts
§ 355.113. Liability for Nonpayment of Claim

§ 355.201. Claim by Personal Representative
§ 355.202. Claims Against Personal Representatives
§ 355.203. Purchase of Claim by Personal Representative Prohibited

Statutes in Context
§ 355.001

Normally, a creditor may present a claim anytime before the estate is closed. There are two main exceptions to this rule: (1) if the statute of limitations on the claim has run or (2) an unsecured creditor did not present the claim within four months after receiving notice. See § 355.001. (See also Civil Practice & Remedies Code § 16.062 which extends
the running of a limitations period for 12 months after
the decedent’s death, unless a personal
representative is appointed sooner, in which case
limitations resumes running at the time the personal
representative qualifies.)

§ 355.001. Presentment of Claim to Personal
Representative
A claim may be presented to a personal representative
of an estate at any time before the estate is closed if suit
on the claim has not been barred by the general statutes of
limitation.
Derived from Probate Code § 298(a).
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 355.002. Presentment of Claim to Clerk
(a) A claim may also be presented by depositing the
claim with the clerk with vouchers and the necessary
exhibits and affidavit attached to the claim. On receiving a
claim deposited under this subsection, the clerk shall
advise the personal representative or the representative’s
attorney of the deposit of the claim by a letter mailed to
the representative’s last known address.
(b) A claim deposited under Subsection (a) is
presumed to be rejected if the personal representative fails
to act on the claim on or before the 30th day after the date
the claim is deposited.
(c) Failure of the clerk to give the notice required
under Subsection (a) does not affect the validity of the
presentment or the presumption of rejection because the
personal representative does not act on the claim within
the 30-day period prescribed by Subsection (b).
(d) The clerk shall enter a claim deposited under
Subsection (a) on the claim docket.
Derived from Probate Code § 308.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 355.003. Inclusion of Attorney’s Fees in Claim
If the instrument evidencing or supporting a claim
provides for attorney’s fees, the claimant may include as a
part of the claim the portion of attorney’s fees the
claimant has paid or contracted to pay to an attorney to
prepare, present, and collect the claim.
Derived from Probate Code § 307.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 355.004. Affidavit Authenticating Claim for Money
in General
(a) Except as provided by Section 355.005, a claim
for money against an estate must be supported by an
affidavit that states:
(1) that the claim is just;
(2) that all legal offsets, payments, and credits
known to the affiant have been allowed; and
(3) if the claim is not founded on a written
instrument or account, the facts on which the claim is
founded.
(b) A photostatic copy of an exhibit or voucher
necessary to prove a claim may be offered with and
attached to the claim instead of attaching the original.
Derived from Probate Code § 301.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 355.005. Affidavit Authenticating Claim of
Corporation or Other Entity
(a) An authorized officer or representative of a
corporation or other entity shall make the affidavit
required to authenticate a claim of the corporation or
entity.
(b) In an affidavit made by an officer of a corporation,
or by an executor, administrator, trustee, assignee, agent,
representative, or attorney, it is sufficient to state that the
affiant has made diligent inquiry and examination and
believes the claim is just and that all legal offsets,
payments, and credits made known to the affiant have
been allowed.
Derived from Probate Code § 304.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 355.006. Lost or Destroyed Evidence Concerning
Claim
If evidence of a claim is lost or destroyed, the
claimant or an authorized representative or agent of the
claimant may make an affidavit to the fact of the loss or
destruction. The affidavit must state:
(1) the amount, date, and nature of the claim;
(2) the due date of the claim;
(3) that the claim is just;
(4) that all legal offsets, payments, and credits
known to the affiant have been allowed; and
(5) that the claimant is still the owner of the
claim.
Derived from Probate Code § 303.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 355.007. Waiver of Certain Defects of Form or
Claims of Insufficiency
A defect of form or a claim of insufficiency of a
presented exhibit or voucher is considered waived by the
personal representative unless a written objection to the
defect or insufficiency is made not later than the 30th day

Statutes in Context
§ 355.004
The creditor must submit a sworn affidavit
supporting the claim under § 355.004.
after the date the claim is presented and is filed with the county clerk.

Derived from Probate Code § 302.


Statutes in Context

§ 355.008
Section 355.008 provides that the statute of limitations is tolled when a creditor files or deposits a claim for money.

§ 355.008. Effect on Statutes of Limitation of Presentment of or Suit on Claim

The general statutes of limitation are tolled on the date:

1. a claim for money is filed or deposited with the clerk; or
2. suit is brought against the personal representative of an estate with respect to a claim of the estate that is not required to be presented to the representative.

Derived from Probate Code § 299.


Subchapter B. Action on Claims

Statutes in Context

§ 355.051
A personal representative in a dependent administration has three options once a creditor presents a claim.

1. Accept. The personal representative may accept the claim which means that the personal representative agrees that the creditor's claim is valid. It does not mean that the claim will actually get paid; the claim merely goes in the stack of valid claims to be paid according to the priority rules set forth in the Code.

2. Reject. The personal representative may reject the claim, that is, indicate that the personal representative will not pay the claim. The creditor in a dependent (but not independent) administration must then bring suit within 90 days of the rejection or else the claim is barred. See § 355.064. See also Statutes in Context to § 403.051.

3. Do Nothing. If the personal representative takes no action with respect to the claim within 30 days, the claim is deemed rejected. See § 355.052. This then triggers the running of the creditor's obligation in a dependent administration to bring suit within 90 days under § 355.064.

This section does not apply to independent administrations. See Bunting v. Pearson, 430 S.W.2d 470 (Tex. 1968).

§ 355.051. Allowance or Rejection of Claim

A personal representative of an estate shall, not later than the 30th day after the date an authenticated claim against the estate is presented to the representative, or deposited with the clerk as provided under Section 355.002, endorse on the claim, attach to the claim, or file with the clerk a memorandum signed by the representative stating:

1. the date the claim was presented or deposited; and
2. whether the representative allows or rejects the claim, or if the representative allows or rejects a part of the claim, the portion the representative allows or rejects.

Derived from Probate Code § 309.


Statutes in Context

§ 355.052
Section 355.052 does not apply to independent administrations. See Bunting v. Pearson, 430 S.W.2d 470 (Tex. 1968).

§ 355.052. Failure to Timely Allow or Reject Claim

The failure of a personal representative to timely allow or reject a claim under Section 355.051 constitutes a rejection of the claim. If the claim is established by suit after that rejection:

1. the costs shall be taxed against the representative, individually; or
2. the representative may be removed on the written complaint of any person interested in the claim after personal service of citation, hearing, and proof, as in other cases of removal.

Derived from Probate Code § 310.


§ 355.053. Claim Entered on Claim Docket

After a claim against an estate has been presented to the personal representative and allowed or rejected, wholly or partly, by the representative, the claim must be filed with the county clerk of the proper county. The clerk shall enter the claim on the claim docket.

Derived from Probate Code § 311.


§ 355.054. Contest of Claim

(a) A person interested in an estate may, at any time before the court has acted on a claim, appear and object in
writing to the approval of the claim or any part of the claim.

(b) If a person objects under Subsection (a):
(1) the parties are entitled to process for witnesses; and
(2) the court shall hear evidence and render judgment as in ordinary suits.

Derived from Probate Code § 312(a).


§ 355.055. Court’s Action on Claim
The court shall:
(1) act on each claim that has been allowed and entered on the claim docket for a period of 10 days either approving the claim wholly or partly or disapproving the claim; and
(2) concurrently classify the claim.

Derived from Probate Code § 312(b).


§ 355.056. Hearing on Certain Claims
(a) If a claim is properly authenticated and allowed but the court is not satisfied that the claim is just, the court shall:
(1) examine the claimant and the personal representative under oath; and
(2) hear other evidence necessary to determine the issue.

(b) If after conducting the examination and hearing the evidence under Subsection (a) the court is not convinced that the claim is just, the court shall disapprove the claim.

Derived from Probate Code § 312(c).


§ 355.057. Court Order Regarding Action on Claim
(a) The court acting on a claim shall state the exact action taken on the claim, whether the claim is approved or disapproved, or approved in part and disapproved in part, and the classification of the claim by endorsing on or attaching to the claim a written memorandum that is dated and officially signed.

(b) An order under Subsection (a) has the effect of a final judgment.

Derived from Probate Code § 312(d).


§ 355.058. Appeal of Court’s Action on Claim
A claimant or any person interested in an estate who is dissatisfied with the court’s action on a claim may appeal the action to the court of appeals in the manner other judgments of the county court in probate matters are appealed.

Derived from Probate Code § 312(e).


§ 355.059. Allowance and Approval Prohibited Without Affidavit
A personal representative of an estate may not allow, and the court may not approve, a claim for money against the estate unless the claim is supported by an affidavit that meets the applicable requirements of Sections 355.004(a) and 355.005.

Derived from Probate Code § 301.


§ 355.060. Unsecured Claims Barred Under Certain Circumstances
If a personal representative gives a notice permitted by Section 308.054 to an unsecured creditor for money and the creditor’s claim is not presented before the 121st day after the date of receipt of the notice, the claim is barred.

Derived from Probate Code § 298(a).


§ 355.061. Allowing Barred Claim Prohibited: Court Disapproval
(a) A personal representative may not allow a claim for money against a decedent or the decedent’s estate if a suit on the claim is barred:
(1) under Section 355.060, 355.064, or 355.201(b); or
(2) by an applicable general statute of limitation.

(b) A claim for money that is allowed by the personal representative shall be disapproved if the court is satisfied that the claim is barred, including because the limitation has run.

Derived from Probate Code § 298(b).


§ 355.062. Certain Actions on Claims With Lost or Destroyed Evidence Void
(a) Before a claim the evidence for which is lost or destroyed is approved, the claim must be proved by disinterested testimony taken in open court or by oral or written deposition.

(b) The allowance or approval of a claim the evidence for which is lost or destroyed is void if the claim is:
(1) allowed or approved without the affidavit under Section 355.006; or
(2) approved without satisfactory proof.

Derived from Probate Code § 303.

§ 355.063. Claims Not Allowed After Order for Partition and Distribution

After an order for final partition and distribution of an estate has been made:

1. a claim for money against the estate may not be allowed by a personal representative;
2. a suit may not be commenced against the representative on a claim for money against the estate; and
3. the owner of any claim that is not barred by the laws of limitation has a right of action on the claim against the heirs, devisees, or creditors of the estate, limited to the value of the property received by those heirs, devisees, or creditors in distributions from the estate.

Derived from Probate Code § 318.


Statutes in Context

§ 355.064

Section 355.064 does not apply to independent administrations. See Bunting v. Pearson, 430 S.W.2d 470 (Tex. 1968).

§ 355.064. Suit on Rejected Claim

(a) A claim or part of a claim that has been rejected by the personal representative is barred unless not later than the 90th day after the date of rejection the claimant commences suit on the claim in the court of original probate jurisdiction in which the estate is pending.

(b) In a suit commenced on the rejected claim, the memorandum endorsed on or attached to the claim, or any other memorandum of rejection filed with respect to the claim, is taken to be true without further proof unless denied under oath.

Derived from Probate Code § 313.


Statutes in Context

§ 355.065

A claim for money must first be presented and rejected before the creditor may sue on the claim. However, this requirement does not apply to a claim which is not “for money” such as an unliquidated tort claim or a claim based on quantum meruit for services rendered.

§ 355.065. Presentment of Claim Prerequisite for Judgment

A judgment may not be rendered in favor of a claimant on a claim for money that has not been:

1. legally presented to the personal representative of an estate; and
2. wholly or partly rejected by the representative or disapproved by the court.

Derived from Probate Code § 314.


§ 355.066. Judgment in Suit on Rejected Claim

No execution may issue on a rejected claim or part of a claim that is established by suit. The judgment in the suit shall be:

1. filed in the court in which the estate is pending;
2. entered on the claim docket;
3. classified by the court; and
4. handled as if originally allowed and approved in due course of administration.

Derived from Probate Code § 313.


Subchapter C. Payment of Claims, Allowances, and Expenses

Statutes in Context

Chapter 355, Subchapter C

Sections 355.102 and 355.103 provide the priority order for the payment of claims. However, other factors may come into play in determining the payment order. Below is a priority order which attempts to combine the priority rules in a unified list.

1. Federal government claims, e.g., the federal tax lien. 31 U.S.C. § 3713(a). However, federal claims do not have priority over funeral expenses, expenses of administration, or the family allowance because the decedent did not owe those while alive. (Federal claims do have priority over expenses of last illness because those expenses were obligations of the decedent.) See Rev. Rul. 80-112, 1980-1 C.B. 306.

2. Secured creditor who has preferred debt and lien status vis-à-vis the collateral only. See § 355.151(a)(2).

3. Homestead (or the allowance in lieu thereof). See § 353.155.

4. Funeral expenses up to $15,000 and expenses of last sickness up to $15,000. See §§ 355.103(a)(1) and 355.102 (Class 1).

5. Exempt personal property. See § 353.155.


7. Administration and related expenses. See §§ 355.103(a)(3) and 355.102 (Class 2).
§ 355.101. Approval or Establishment of Claim Required for Payment
A claim or any part of a claim for money against an estate may not be paid until the claim or part of the claim has been approved by the court or established by the judgment of a court of competent jurisdiction.

Derived from Probate Code § 319.


§ 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, including claims for reimbursement of those expenses for a reasonable amount approved by the court, not to exceed $15,000 for funeral expenses and $15,000 for expenses of the decedent’s last illness. Any excess shall be classified and paid as other unsecured claims.

(c) Class 2 claims are composed of:

(1) expenses of administration;

(2) expenses incurred in preserving, safekeeping, and managing the estate, including fees and expenses awarded under Section 352.052;

(3) unpaid expenses of administration awarded in a guardianship of the decedent; and

(4) for an estate with respect to which a public probate administrator has taken any action under Chapter 455, court costs and commissions to which the administrator is entitled under Subchapter A, Chapter 352.

(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 the priority of the mortgage, lien, or security interest securing the debt.

(e) Class 4 claims are composed of claims:

(1) for the principal amount of and accrued interest on delinquent child support and child support arrearages that have been:

(A) confirmed as a judgment or a determination of arrearages by a court under Title 5, Family Code; or

(B) administratively determined as evidenced by a certified child support payment record produced by the Title IV-D agency, as defined by Section 101.033, Family Code, in a Title IV-D case, as defined by Section 101.034, Family Code; and

(2) 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, former Section 81.111, Natural Resources Code, the Municipal Sales and Use Tax Act (Chapter 321, Tax Code), Section 451.404, Transportation Code, or Subchapter I, Chapter 452, Transportation Code.

(g) Class 6 claims are composed of claims for the cost of confinement established by the Texas Department of Criminal Justice under Section 501.017, Government Code.

(h) Class 7 claims are composed of claims for repayment of medical assistance payments made by the state under Chapter 32, Human Resources Code, to or for the benefit of the decedent.

(i) Class 8 claims are composed of any other claims not described by Subsections (b)-(h).

Derived from Probate Code § 322.


§ 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;
§ 355.104. Payment of Proceeds from Sale of Property Securing Debt

(a) If a personal representative has the proceeds of a sale made to satisfy a mortgage, lien, or security interest, and the proceeds or any part of the proceeds are not required for the payment of any debts against the estate that have a preference over the mortgage, lien, or security interest, the representative shall pay the proceeds to any holder of a mortgage, lien, or security interest. If there is more than one mortgage, lien, or security interest against the property, the representative shall pay the proceeds to the holders of the mortgages, liens, or security interests in the order of priority of the holders’ mortgages, liens, or security interests.

(b) A holder of a mortgage, lien, or security interest, on proof of a personal representative’s failure to pay proceeds under this section, may obtain an order from the court directing the payment to be made.

Derived from Probate Code § 320(b).


§ 355.105. Claimant’s Petition for Allowance and Payment of Claim

A claimant whose claim has not been paid may:

(1) petition the court for determination of the claim at any time before the claim is barred by an applicable statute of limitations; and

(2) procure on due proof an order for the claim’s allowance and payment from the estate.

Derived from Probate Code § 320(c).


§ 355.106. Order for Payment of Claim Obtained by Personal Representative

After the sixth month after the date letters testamentary or of administration are granted, the court may order a personal representative to pay any claim that is allowed and approved on application by the representative stating that the representative has no actual knowledge of any outstanding enforceable claim against the estate other than the claims already approved and classified by the court.

Derived from Probate Code § 320(d).


§ 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 appear and show cause why the order should not be made.

Derived from Probate Code § 326.


§ 355.108. Payment When Assets Insufficient to Pay Claims of Same Class

(a) If there are insufficient assets to pay all claims of the same class, other than secured claims for money, the claims in that class shall be paid pro rata, as directed by the court, and in the order directed.

(b) A personal representative may not be allowed to pay a claim under Subsection (a) other than with the pro rata amount of the estate funds that have come into the representative’s possession, regardless of whether the estate is solvent or insolvent.

Derived from Probate Code § 321.


§ 355.109. Statutes in Context

A testator may attempt to give away more property in the testator’s will than the testator is actually able to give. This could occur because the testator misjudged the value of the testator’s estate. Just because a testator leaves a $500,000 legacy in the testator’s will does not mean the testator actually has that money to give. The testator may also not have accounted for all of the testator’s debts, including funeral and burial costs and expenses of last illness. In most situations, the claims of creditors have priority over assertions to property by beneficiaries.

Abatement is the reduction or elimination of a testamentary gift to pay an obligation of the estate or a testamentary gift of a higher priority. The abatement order is set forth in § 355.109.
§ 355.109. Abatement of Bequests

(a) Except as provided by Subsections (b), (c), and (d), a decedent’s property is liable for debts and expenses of administration other than estate taxes, and bequests abate in the following order:

(1) property not disposed of by will, but passing by intestacy;
(2) personal property of the residuary estate;
(3) real property of the residuary estate;
(4) general bequests of personal property;
(5) general devises of real property;
(6) specific bequests of personal property; and
(7) specific devises of real property.

(b) This section does not affect the requirements for payment of a claim of a secured creditor who elects to have the claim continued as a preferred debt and lien against specific property under Subchapter D.

(c) A decedent’s intent expressed in a will controls over the abatement of bequests provided by this section.

(d) This section does not apply to the payment of estate taxes under Subchapter A, Chapter 124.

Derived from Probate Code § 322B.

§ 355.110. Allocation of Funeral Expenses

A personal representative paying a claim for funeral expenses and for items incident to the funeral, such as a tombstone, grave marker, crypt, or burial plot:

(1) shall charge all of the claim to the decedent’s estate; and
(2) may not charge any part of the claim to the community share of a surviving spouse.

Derived from Probate Code § 320A.

§ 355.111. Payment of Court Costs Relating to Claim

All costs incurred in the probate court with respect to a claim shall be taxed as follows:

(1) if the claim is allowed and approved, the estate shall pay the costs;
(2) if the claim is allowed but disapproved, the claimant shall pay the costs;
(3) if the claim is rejected but established by suit, the estate shall pay the costs;
(4) if the claim is rejected and not established by suit, the claimant shall pay the costs, except as provided by Section 355.052; and
(5) if the claim is rejected in part and the claimant fails, in a suit to establish the claim, to recover a judgment for a greater amount than was allowed or approved for the claim, the claimant shall pay all costs in the suit.

Derived from Probate Code § 315.

§ 355.112. Joint Obligation for Payment of Certain Debts

On the death of a person jointly bound with one or more other persons for the payment of a debt or for any other purpose, the decedent’s estate shall be charged by virtue of the obligation in the same manner as if the obligors had been bound severally as well as jointly.

Derived from Probate Code § 323.

§ 355.113. Liability for Nonpayment of Claim

(a) A person or claimant, except the state treasury, entitled to payment from an estate of money the court orders to be paid is authorized to have execution issued against the estate property for the amount due, with interest and costs, if:

(1) the personal representative fails to pay the money on demand;
(2) estate funds are available to make the payment; and
(3) the person or claimant makes an affidavit of the demand for payment and the representative’s failure to pay.

(b) The court may cite the personal representative and the sureties on the representative’s bond to show cause why the representative and sureties should not be held liable under Subsection (a) for the debt, interest, costs, and damages:

(1) on return of the execution not satisfied; or
(2) on the affidavit of demand and failure to pay under Subsection (a).

(c) On the return of citation served under Subsection (b), the court shall render judgment against the cited personal representative and sureties, in favor of the claim holder, if good cause why the representative and sureties should not be held liable is not shown. The judgment must be for:

(1) the amount previously ordered to be paid or established by suit that remains unpaid, together with interest and costs; and
(2) damages on the amount neglected to be paid at the rate of five percent per month for each month, or fraction of a month, that the payment was neglected to be paid after demand was made.

(d) Damages ordered under Subsection (c)(2) may be collected in any court of competent jurisdiction.

Derived from Probate Code § 328.

Subchapter D. Presentment and Payment of Secured Claims for Money

Statutes in Context
Chapter 355, Subchapter D

A secured creditor must determine how the
creditor wants the claim handled. The creditor must make this election by the later of (a) 4 months after the receipt of notice or (b) 6 months after letters are issued. See § 355.152

1. Preferred Debt and Lien. If the creditor elects preferred debt and lien status, the creditor receives top priority over the collateral. However, if the value of the collateral is less than the debt, the creditor will not have a right to recover the deficiency from the estate. In other words, the creditor gives up the right to pursue the debtor’s personal liability on the debt. See § 355.154. Preferred debt and lien status is presumed unless the creditor affirmatively elects otherwise. See § 355.152.

2. Matured Secured Claim. If the creditor elects matured secured claim status, the creditor retains the right to seek a deficiency if the value of the collateral is less than the amount owed. However, the creditor must subordinate the claim to (a) the first $15,000 of funeral and last illness expenses, (b) the family allowance, and (c) administration and other expenses. See § 355.153.

Because of the repeal of the common law doctrine of exoneration in 2005 by the Probate Code predecessor to Estates Code §§ 255.301–255.303, the Probate Code predecessor to § 355.153 was added to handle the situation where a secured creditor elects matured secured claim status. First, the personal representative is required to collect from the beneficiary the amount of the debt and pay that amount to the secured creditor. If there is more than one beneficiary of the encumbered property, each pays a pro rata share of the debt.

Second, if the personal representative is unable to collect enough money to pay off the debt, then the property is sold. The proceeds of the sale are first used to pay the debt; and if there is a surplus, it will be divided pro rata among the beneficiaries of the specific gift. If there is a deficiency, the creditor has an unsecured claim for that amount.

(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.


§ 355.152. Period for Specifying Treatment of Secured Claim

(a) A secured creditor may present the creditor’s claim for money and shall specify within the later of six months after the date letters testamentary or of administration are granted, or four months after the date notice required to be given under Section 308.053 is received, whether the claim is to be allowed and approved under Section 355.151(a)(1) or (2).

(b) A secured claim for money that is not presented within the period prescribed by Subsection (a) or that is presented without specifying how the claim is to be paid under Section 355.151 shall be treated as a claim to be paid in accordance with Section 355.151(a)(2).


§ 355.153. Payment of Matured Secured Claim

(a) A claim allowed and approved as a matured secured claim under Section 355.151(a)(1) shall be paid in due course of administration, and the secured creditor is not entitled to exercise any other remedy in a manner that prevents the preferential payment of claims and allowances described by Sections 355.103(1), (2), and (3).

(b) If a claim is allowed and approved as a matured secured claim under Section 355.151(a)(1) for a debt that would otherwise pass with the property securing the debt to one or more devisees in accordance with Section 255.301, the personal representative shall:

(1) collect from the devisees the amount of the debt; and
(2) pay that amount to the claimant in satisfaction of the claim.

(c) Each devisee’s share of the debt under Subsection (b) is an amount equal to a fraction representing the devisee’s ownership interest in the property securing the debt, multiplied by the amount of the debt.

(d) If the personal representative is unable to collect from the devisees an amount sufficient to pay the debt under Subsection (b), the personal 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.

§ 355.151. Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien

(a) If a secured claim for money against an estate is presented, the claimant shall specify in the claim, in addition to all other matters required to be specified in the claim, whether the claimant desires to have the claim:

(1) allowed and approved as a matured secured claim to be paid in due course of administration, in which case the claim shall be paid in that manner if allowed and approved; or
(2) allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract that secured the lien, in which case the claim shall be so allowed and approved if it is a valid lien.
(c) If the sale proceeds under Subsection (d) are insufficient to pay the debt and any expenses associated with the sale, the difference between the sale proceeds and the sum of the amount of the debt and the expenses associated with the sale shall be paid in the manner prescribed by Subsection (a).

Derived from Probate Code §§ 306(c), (c-1).


§ 355.154. Preferred Debt and Lien

When a claim for a debt is allowed and approved under Section 355.151(a)(2):

(1) a further claim for the debt may not be made against other estate assets;
(2) the debt thereafter remains a preferred lien against the property securing the debt; and
(3) the property remains security for the debt in any distribution or sale of the property before final maturity and payment of the debt.

Derived from Probate Code § 306(d).


§ 355.155. Payment of Maturities on Preferred Debt and Lien

(a) If property securing a debt for which a claim is allowed, approved, and fixed under Section 355.151(a)(2) is not sold or distributed within six months from the date letters testamentary or of administration are granted, the personal representative of the estate shall:

(1) promptly pay all maturities that have accrued on the debt according to the terms of the debt; and
(2) perform all the terms of any contract securing the debt.

(b) If the personal representative defaults in payment or performance under Subsection (a), on application of the claim holder, the court shall:

(1) require the sale of the property subject to the unmatured part of the debt and apply the proceeds of the sale to the liquidation of the maturities;
(2) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or
(3) authorize foreclosure by the claim holder as provided by this subchapter.

Derived from Probate Code § 306(e).


Statutes in Context
§ 355.1551

This section, added by the 2015 Legislature, provides that if a creditor in a dependent administration elects or defaults to preferred debt and lien status, and decides to take possession or sell the collateral prior to the maturity of the debt, the creditor must do so within a reasonable time. If the creditor does not, the court may order the property sold free of the debt and the proceeds used to pay the debt. This will assist the estate in obtaining any surplus value the collateral may have over the debt owed.

§ 355.1551. Claim Holder Duty to Possess or Sell Within Reasonable Time

(a) A holder of a claim allowed and approved under Section 355.151(a)(2) who elects to take possession or sell the property securing the debt before final maturity in satisfaction of the holder’s claim must do so within a reasonable time, as determined by the court.

(b) If the claim holder fails to take possession or sell secured property within the time determined by the court under Subsection (a), on application by the personal representative, the court may require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt in full satisfaction of the claim.

(c) This section does not apply to an estate administered as an independent administration under Subtitle I.

New.


§ 355.156. Affidavit Required for Foreclosure

An application by a claim holder under Section 355.155(b)(3) to foreclose the claim holder’s mortgage, lien, or security interest on property securing a claim allowed, approved, and fixed under Section 355.151(a)(2) must be supported by the claim holder’s affidavit that:

(1) describes the property or part of the property to be sold by foreclosure;
(2) describes the amounts of the claim holder’s outstanding debt;
(3) describes the maturities that have accrued on the debt according to the terms of the debt;
(4) describes any other debts secured by a mortgage, lien, or security interest against the property that are known by the claim holder;
(5) contains a statement that the claim holder has no knowledge of the existence of any debt secured by the property other than those described by the application; and
(6) requests permission for the claim holder to foreclose the claim holder’s mortgage, lien, or security interest.

Derived from Probate Code § 306(f).


§ 355.157. Citation on Application

(a) The clerk shall issue citation on the filing of an application by:

(1) personal service to:
(A) the personal representative; and
(B) any person described by the application as having other debts secured by a mortgage, lien, or security interest against the property; and

(2) posting to any other person interested in the estate.

(b) A citation issued under Subsection (a) must require the person cited to appear and show cause why foreclosure should or should not be permitted.

Derived from Probate Code § 306(g).


§ 355.158. Hearing on Application

(a) The clerk shall immediately notify the judge when an application is filed. The judge shall schedule in writing a date for a hearing on the application.

(b) The judge may, by entry on the docket or otherwise, continue a hearing on an application for a reasonable time to allow an interested person to obtain an appraisal or other evidence concerning the fair market value of the property that is the subject of the application. If the interested person requests an unreasonable time for a continuance, the interested person must show good cause for the continuance.

(c) If the court finds at the hearing that there is a default in payment of maturities that have accrued on a debt described by Section 355.155(a) or performance under the contract securing the debt, the court shall:

(1) require the sale of the property subject to the unmatured part of the debt and apply the proceeds of the sale to the liquidation of the maturities;

(2) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or

(3) authorize foreclosure by the claim holder as provided by Section 355.156.

(d) A person interested in the estate may appeal an order issued under Subsection (c)(3).

Derived from Probate Code §§ 306(h), (i)(1), (j).


§ 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;

(2) in any other manner allowed by law.

(b) Based on the evidence presented at the hearing, the court may set a minimum price for the property to be sold by foreclosure that does not exceed the fair market value of the property. If the court sets a minimum price, the property may not be sold at the foreclosure sale for a lower price.

Derived from Probate Code § 306(i)(2).


§ 355.160. Unsuccessful Foreclosure; Subsequent Application

If property that is the subject of a foreclosure sale authorized and conducted under this subchapter is not sold because no bid at the sale met the minimum price set by the court, the claim holder may file a subsequent application for foreclosure under Section 355.155(b)(3). The court may eliminate or modify the minimum price requirement and grant permission for another foreclosure sale.

Derived from Probate Code § 306(k).


Subchapter E. Claims Involving Personal Representatives

§ 355.201. Claim by Personal Representative

(a) The provisions of this chapter regarding the presentment of claims against a decedent’s estate may not be construed to apply to any claim of a personal representative against the decedent.

(b) A personal representative holding a claim against the decedent shall file the claim in the court granting the letters testamentary or of administration, verified by affidavit as required in other cases, within six months after the date the representative qualifies, or the claim is barred.

(c) A claim by a personal representative that has been filed with the court within the required period shall be entered on the claim docket and acted on by the court in the same manner as in other cases.

(d) A personal representative may appeal a judgment of the court acting on a claim under this section as in other cases.

(e) The previous provisions regarding the presentment of claims may not be construed to apply to a claim:

(1) of any heir or devisee who claims in that capacity; or

(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

Electronic copy available at: https://ssrn.com/abstract=4537861
(B) the same county in which the taxes were imposed, if the probate proceedings have been pending for more than four years.

Derived from Probate Code § 317.


§ 355.202. Claims Against Personal Representatives
(a) The naming of an executor in a will does not extinguish a just claim that the decedent had against the person named as executor.
(b) If a personal representative is indebted to the decedent, the representative shall account for the debt in the same manner as if the debt were cash in the representative’s possession.
(c) Notwithstanding Subsection (b), a personal representative is required to account for the debt only from the date the debt becomes due if the debt was not due at the time the representative received letters testamentary or of administration.

Derived from Probate Code § 316.


§ 355.203. Purchase of Claim by Personal Representative Prohibited
(a) It is unlawful, and cause for removal, for a personal representative, whether acting under appointment by will or court orders, to purchase a claim against the estate the representative represents for the representative’s own use or any other purpose.
(b) On written complaint by a person interested in the estate and on satisfactory proof of a violation of Subsection (a), the court after citation and hearing:
   (1) shall enter an order canceling the claim described by Subsection (a); and
   (2) may remove the personal representative who is found to have violated Subsection (a).
(c) No part of a claim canceled under Subsection (b) may be paid out of the estate.

Derived from Probate Code § 324.


Chapter 356. Sale of Estate Property

Subchapter A. General Provisions
§ 356.001. Court Order Authorizing Sale
§ 356.002. Sale Authorized by Will

Subchapter B. Certain Estate Property Required to be Sold
§ 356.051. Sale of Certain Personal Property Required

Subchapter C. Sale of Personal Property
§ 356.101. Order for Sale
§ 356.102. Requirements for Application and Order
§ 356.103. Sale at Public Auction
§ 356.104. Sale on Credit
§ 356.105. Report; Evidence of Title

Subchapter D. Sale of Livestock
§ 356.151. Authority for Sale
§ 356.152. Contents of Application; Hearing
§ 356.153. Grant of Application
§ 356.154. Report; Passage of Title
§ 356.155. Commission Merchant Fees

Subchapter E. Sale of Mortgaged Property
§ 356.201. Application for Sale of Mortgaged Property
§ 356.202. Citation
§ 356.203. Order

Subchapter F. Sale of Real Property: Application and Order for Sale
§ 356.251. Application for Order of Sale
§ 356.252. Contents of Application
§ 356.253. Citation
§ 356.254. Opposition to Sale
§ 356.255. Hearing on Application and Any Opposition
§ 356.256. Order
§ 356.257. Sale for Payment of Debts

Subchapter G. Sale of Real Estate: Terms of Sale
§ 356.301. Permissible Terms
§ 356.302. Sale on Credit

Subchapter H. Reconveyance of Real Estate Following Foreclosure
§ 356.351. Applicability of Subchapter
§ 356.352. Application and Order for Reconveyance
§ 356.353. Exchange for Bonds

Subchapter I. Sale of Real Estate: Public Auction
§ 356.401. Method of Sale; Required Notice
§ 356.402. Completion of Auction
§ 356.403. Time and Place of Auction
§ 356.404. Continuance of Auction
§ 356.405. Failure of Bidder to Comply

Subchapter J. Sale of Real Estate: Contract for Private Sale
§ 356.451. Terms of Sale
Subchapter K. Sale of Easement or Right-of-Way
§ 356.501. Authorization
§ 356.502. Procedure

Subchapter L. Approval of Sale of Real Property and Transfer of Title
§ 356.551. Report
§ 356.552. Action of Court on Report
§ 356.553. Approval of Sale when Bond Not Required
§ 356.554. Sufficiency of Bond
§ 356.555. Increased or Additional Bond Not Required
§ 356.556. Approval or Disapproval Order
§ 356.557. Deed
§ 356.558. Delivery of Deed
§ 356.559. Damages; Removal

Subchapter M. Procedure on Failure to Apply for Sale
§ 356.601. Failure to Apply for Sale
§ 356.602. Court Order

Subchapter N. Purchase of Property by Personal Representative
§ 356.651. General Prohibition on Purchase
§ 356.652. Exception: Authorization in Will
§ 356.653. Exception: Executory Contract
§ 356.654. Exception: Best Interest of Estate
§ 356.655. Purchase in Violation of Subchapter

Chapter 356. Sale of Estate Property

Statutes in Context
Chapter 356

Chapter 356 provides extensive (endless) guidance on how a personal representative sells estate property. The personal representative must ask the court for permission to sell, the court sets a hearing, citation is given to the interested parties, a hearing is conducted, the court authorizes the sale, the personal representative sells the property, the personal representative reports the sale to the court, and then the court approves the sale.

However, if the testator authorized the executor to sell estate property in the will, no court action is necessary. See § 356.002. Accordingly, it is extremely common for a will to grant the executor the power to sell.

The 2007 Legislature made it easier for the dependent personal representative to sell real estate if there is no opposition. See § 356.255.

Subchapter A. General Provisions

§ 356.001. Court Order Authorizing Sale
(a) Except as provided by this chapter, estate property may not be sold without a court order authorizing the sale.
(b) Except as otherwise specially provided by this chapter, the court may order estate property to be sold for cash or on credit, at public auction or privately, as the court considers most advantageous to the estate.

Derived from Probate Code § 331.

§ 356.002. Sale Authorized by Will
(a) Subject to Subsection (b), if a will authorizes the executor to sell the testator’s property:
(1) a court order is not required to authorize the executor to sell the property; and
(2) the executor may sell the property:
(A) at public auction or privately as the executor considers to be in the best interest of the estate; and
(B) for cash or on credit terms determined by the executor.
(b) Any particular directions in the testator’s will regarding the sale of estate property shall be followed unless the directions have been annulled or suspended by court order.

Derived from Probate Code § 332.

Subchapter B. Certain Estate Property Required to be Sold

§ 356.051. Sale of Certain Personal Property Required
(a) After approval of the inventory, appraisement, and list of claims, the personal representative of an estate promptly shall apply for a court order to sell, at public auction or privately, for cash or on credit for a term not to exceed six months, all estate property that is liable to perish, waste, or deteriorate in value, or that will be an expense or disadvantage to the estate if kept.
(b) The following may not be included in a sale under Subsection (a):
(1) property exempt from forced sale;
(2) property that is the subject of a specific legacy; and
(3) personal property necessary to carry on a farm, ranch, factory, or other business that is thought best to operate.
(c) In determining whether to order the sale of an asset under Subsection (a), the court shall consider:
(1) the personal representative’s duty to take care of and manage the estate in the manner a person of ordinary prudence, discretion, and intelligence would manage the person’s own affairs; and
(2) whether the asset constitutes an asset that a trustee is authorized to invest under Subchapter F, Chapter 113, Property Code, or Chapter 117, Property Code.

Derived from Probate Code § 333.


Subchapter C. Sale of Personal Property

§ 356.101. Order for Sale

(a) Except as provided by Subsection (b), on the application of the personal representative of an estate or any interested person, the court may order the sale of any estate personal property not required to be sold by Section 356.051, including livestock or growing or harvested crops, if the court finds that the sale of the property is in the estate’s best interest to pay, from the proceeds of the sale:

(1) expenses of administration;
(2) the decedent’s funeral expenses;
(3) expenses of the decedent’s last illness;
(4) allowances; or
(5) claims against the estate.

(b) The court may not order under this section the sale of exempt property or property that is the subject of a specific legacy.

Derived from Probate Code § 334.


§ 356.102. Requirements for Application and Order

To the extent possible, an application and order for the sale of personal property under Section 356.101 must conform to the requirements under Subchapter F for an application and order for the sale of real estate.

Derived from Probate Code § 334.


§ 356.103. Sale at Public Auction

Unless the court directs otherwise, before estate personal property is sold at public auction, notice must be:

(1) issued by the personal representative of the estate; and
(2) posted in the manner notice is posted for original proceedings in probate.

Derived from Probate Code § 336.


§ 356.104. Sale on Credit

(a) Estate personal property may not be sold on credit at public auction for a term of more than six months from the date of sale.

(b) Estate personal property purchased on credit at public auction may not be delivered to the purchaser until the purchaser gives a note for the amount due, with good and solvent personal security. The requirement that security be provided may be waived if the property will not be delivered until the note, with interest, has been paid.

Derived from Probate Code § 337.


§ 356.105. Report; Evidence of Title

(a) A successful bid or contract for the sale of estate personal property shall be reported to the court. The laws regulating the approval or disapproval of a sale of real estate apply to the sale, except that a conveyance is not required.

(b) The court’s order approving the sale of estate personal property:

(1) vests the right and title of the intestate’s estate in the purchaser who has complied with the terms of the sale; and
(2) is prima facie evidence that all requirements of the law in making the sale have been met.

(c) The personal representative of an estate, on request, may issue a bill of sale without warranty to the purchaser of estate personal property as evidence of title. The purchaser shall pay for the issuance of the bill of sale.

Derived from Probate Code § 339.


Subchapter D. Sale of Livestock

§ 356.151. Authority for Sale

(a) A personal representative of an estate who has possession of livestock and who considers selling the livestock to be necessary or to the estate’s advantage may, in addition to any other method provided by law for the sale of personal property, obtain authority from the court in which the estate is pending to sell the livestock through:

(1) a bonded livestock commission merchant; or
(2) a bonded livestock auction commission merchant.

(b) The court may authorize the sale of livestock in the manner described by Subsection (a) on a written and sworn application by the personal representative or any person interested in the estate.

Derived from Probate Code § 335.


§ 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:
TEXAS ESTATES CODE

(1) shall promptly consider the application; and
(2) may hear evidence for or against the application, with or without notice, as the facts warrant.
Derived from Probate Code § 335.

§ 356.153. Grant of Application
If the court grants an application for the sale of livestock, the court shall:
(1) enter an order to that effect; and
(2) authorize delivery of the livestock to a commission merchant described by Section 356.151 for sale in the regular course of business.
Derived from Probate Code § 335.

§ 356.154. Report; Passage of Title
The personal representative of the estate shall promptly report to the court a sale of livestock authorized under this subchapter, supported by a verified copy of the commission merchant’s account of the sale. A court order of confirmation is not required to pass title to the purchaser of the livestock.
Derived from Probate Code § 335.

Subchapter F. Sale of Real Property: Application and Order for Sale

§ 356.251. Application for Order of Sale
An application may be made to the court for an order to sell estate property if the sale appears necessary or advisable to:
(1) pay:
(A) expenses of administration;
(B) the decedent’s funeral expenses;
(C) expenses of the decedent’s last illness;
(D) allowances; and
(E) claims against the estate; or
(2) dispose of an interest in estate real property if selling the interest is considered in the estate’s best interest.
Derived from Probate Code § 334.

§ 356.252. Contents of Application
An application for the sale of real estate must:
(1) be in writing;
(2) describe:
(A) the real estate sought to be sold; or
(B) the interest in or part of the real estate sought to be sold; and
(3) be accompanied by an exhibit, verified by an affidavit, showing:
(A) the estate’s condition fully and in detail;
(B) the charges and claims that have been approved or established by suit or that have been rejected and may yet be established;
(C) the amount of each claim described by Paragraph (B);
(D) the estate property remaining on hand that is liable for the payment of the claims described by Paragraph (B); and
(E) any other facts showing the necessity for or advisability of the sale.
Derived from Probate Code § 342.


§ 356.253. Citation
On the filing of an application and exhibit described by Section 356.252, the clerk shall issue a citation to all persons interested in the estate. The citation must:
(1) describe the real estate or the interest in or part of the real estate sought to be sold;
(2) inform the interested persons of the right under Section 356.254 to file an opposition to the sale during the period prescribed by the court in the citation; and
(3) be served by posting.
Derived from Probate Code § 344.


§ 356.254. Opposition to Sale
During the period prescribed in a citation issued under Section 356.253, any person interested in the estate may file:
(1) a written opposition to the sale; or
(2) an application for the sale of other estate property.
Derived from Probate Code § 345.


§ 356.255. Hearing on Application and Any Opposition
(a) The clerk of the court in which an application for an order of sale is filed shall immediately call to the judge’s attention any opposition to the sale that is filed during the period prescribed in the citation issued under Section 356.253. The court shall hold a hearing on the application if an opposition to the sale is filed during the period prescribed in the citation.
(b) A hearing on an application for an order of sale is not required under this section if no opposition to the application is filed during the period prescribed in the citation. The court may determine that a hearing on the application is necessary even if no opposition is filed during that period.
(c) If the court orders a hearing under Subsection (a) or (b), the court shall designate in writing a date and time for the hearing on the application and any opposition, together with the evidence pertaining to the application and any opposition. The clerk shall issue a notice of the date and time of the hearing to the applicant and to each person who files an opposition to the sale, if applicable.
(d) The judge, by entries on the docket, may continue a hearing held under this section from time to time until the judge is satisfied concerning the application.
Derived from Probate Code § 345A.


§ 356.256. Order
(a) The court shall order the sale of the estate property described in an application for an order of sale if the court is satisfied that the sale is necessary or advisable. Otherwise, the court may deny the application and, if the court considers it best, may order the sale of other estate property the sale of which would be more advantageous to the estate.
(b) An order for the sale of real estate under this section must specify:
(1) the property to be sold, including a description that identifies that property;
(2) whether the property is to be sold at public auction or private sale and, if at public auction, the time and place of the sale;
(3) the necessity or advisability of, and the purpose of, the sale;
(4) except in a case in which a personal representative was not required to give a general bond, that the court, after examining the general bond given by the representative, finds that:
(A) the bond is sufficient as required by law; or
(B) the bond is insufficient;
(5) if the court finds that the general bond is insufficient under Subdivision (4)(B), the amount of the necessary or increased bond, as applicable;
(6) that the sale is to be made and the report returned in accordance with law; and
(7) the terms of the sale.
Derived from Probate Code § 346.


§ 356.257. Sale for Payment of Debts
Estate real property selected to be sold for the payment of expenses or claims must be that property the sale of which the court considers most advantageous to the estate.
Derived from Probate Code § 340.


Subchapter G. Sale of Real Estate: Terms of Sale

§ 356.301. Permissible Terms
Real estate of an estate may be sold for cash, part cash and part credit, or the equity in land securing an indebtedness may be sold subject to the indebtedness, or with an assumption of the indebtedness, at public or private sale, as appears to the court to be in the estate’s best interest.
Derived from Probate Code § 348(a).


Electronic copy available at: https://ssrn.com/abstract=4537861
§ 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 default to make the payments provided in the deed and the note.
(c) At the election of the holder of a note executed by a purchaser under Subsection (a), default in the payment of principal, interest, or any part of the principal or interest, when due matures the entire debt.

Derived from Probate Code § 348(a).

Subchapter H. Reconveyance of Real Estate Following Foreclosure
§ 356.351. Applicability of Subchapter
This subchapter applies only to real estate owned by an estate as a result of the foreclosure of a vendor’s lien or mortgage belonging to the estate:
(1) by a judicial sale;
(2) by a foreclosure suit;
(3) through a sale under a deed of trust; or
(4) by acceptance of a deed in cancellation of a lien or mortgage owned by the estate.

Derived from Probate Code § 348(b).

§ 356.352. Application and Order for Reconveyance
On proper application and proof, the court may dispense with the requirements for a credit sale prescribed by Section 356.302 and order the reconveyance of foreclosed real estate to the former mortgage debtor or former owner if it appears to the court that:
(1) an application to redeem the real estate has been made by the former owner to a corporation or agency created by an Act of the United States Congress or of this state in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate; and
(2) owning bonds of one of those federal or state corporations or agencies instead of the real estate would be in the estate’s best interest.

Derived from Probate Code § 348(b).

§ 356.353. Exchange for Bonds
(a) If a court orders the reconveyance of foreclosed real estate as provided by Section 356.352, vendor’s lien notes shall be reserved for the total amount of the indebtedness due or for the total amount of bonds that the corporation or agency to which the application to redeem the real estate was submitted as described by Section 356.352(1) is allowed to advance under the corporation’s or agency’s rules or regulations.
(b) On obtaining the order for reconveyance, it shall be proper for the personal representative of the estate to indorse and assign the reserved vendor’s lien notes over to any one of the corporations or agencies described by Section 356.352(1) in exchange for bonds of that corporation or agency.

Derived from Probate Code § 348(b).

Subchapter I. Sale of Real Estate: Public Auction
§ 356.401. Method of Sale; Required Notice
(a) A public sale of real estate of an estate shall be made at public auction. Except as otherwise provided by Section 356.403(c), the personal representative of an estate shall advertise a public auction of real estate by a notice published in the county in which the estate is pending, as provided by this title for publication of notices or citations. The notice must:
(1) include a reference to the order of sale;
(2) include the time, place, and required terms of sale; and
(3) briefly describe the real estate to be sold.
(b) The notice required by Subsection (a) is not required to contain field notes, but if the real estate to be sold is rural property, the notice must include:
(1) the name of the original survey of the real estate;
(2) the number of acres comprising the real estate;
(3) the location of the real estate in the county; and
(4) any name by which the real estate is generally known.

Derived from Probate Code § 349(a).

§ 356.402. Completion of Auction
A public auction of real estate of an estate shall be completed on the bid of the highest bidder.

Derived from Probate Code § 349(b).
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
§ 356.403. Time and Place of Auction

(a) Except as provided by Subsection (c), a public auction of real estate of an estate shall be held at:

(1) the courthouse door in the county in which the real estate is located, or if the real estate is located in more than one county, the courthouse door in any county in which the real estate is located; or
(2) another place in a county described by Subdivision (1) at which auctions of real estate are specifically authorized to be held as designated by the commissioners court of the county under Section 51.002(a), Property Code.

(b) Except as otherwise provided by this subsection, the auction must occur between 10 a.m. and 4 p.m. on the first Tuesday of the month after publication of notice has been completed. If the first Tuesday of the month occurs on January 1 or July 4, the auction must occur between 10 a.m. and 4 p.m. on the first Wednesday of the month.

(c) If the court considers it advisable, the court may order the auction to be held in the county in which the proceedings are pending, in which event notice shall be published both in that county and in the county in which the real estate is located.

§ 356.404. Continuance of Auction

(a) A public auction 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 auction each day.

(b) A continued auction must occur within the hours prescribed by Section 356.403(b).

(c) The continuance of an auction under this section shall be shown in the report made to the court under Section 356.551.

§ 356.405. Failure of Bidder to Comply

(a) If a person bids off real estate of the estate offered at public auction and fails to comply with the terms of the bid, the property shall be readvertised and auctioned 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 auction.

(c) The personal representative may recover the amounts under Subsection (b) by suit in any court in the county in which the auction was made that has jurisdiction of the amount claimed.

Subchapter J. Sale of Real Estate: Contract for Private Sale

§ 356.451. Terms of Sale

The personal representative of an estate may enter into a contract for the private sale of real estate of the estate 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.

Subchapter K. Sale of Easement or Right-of-Way

§ 356.501. Authorization

Easements and rights-of-way on, under, and over the land of an estate that is being administered under court order may be sold and conveyed regardless of whether the sale proceeds are required to pay charges or claims against the estate or for other lawful purposes.

§ 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 private sale of estate real property by contract.

Subchapter L. Approval of Sale of Real Property and Transfer of Title

§ 356.551. Report

A successful bid or contract for the sale of estate real property shall be reported to the court ordering the sale not later than the 30th day after the date the bid is made or the property is placed under contract. The report must:
Section 356.556(a).

(d) An increase in the amount of the general bond, or the additional bond, as applicable under Subsection (c), must be equal to the sum of:

(1) the amount for which the real estate is sold; and

(2) any additional amount the court finds necessary and sets for the estate’s protection.

Derived from Probate Code § 354.


§ 356.555. Increased or Additional Bond Not Required

Notwithstanding Sections 356.554(c) and (d), if the real estate sold is encumbered by a lien to secure a claim against the estate and is sold to the owner or holder of the secured claim in full payment, liquidation, and satisfaction of the claim, an increased general bond or additional bond may not be required except for the amount of any cash paid to the personal representative of the estate in excess of the amount necessary to pay, liquidate, and satisfy the claim in full.

Derived from Probate Code § 354.


§ 356.556. Approval or Disapproval Order

(a) If the court is satisfied that the proposed sale of real property reported under Section 356.551 is 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) approving the sale;

(2) showing conformity with this chapter;

(3) detailing the terms of the sale; and

(4) authorizing the personal representative to convey the property on the purchaser’s compliance with the terms of the sale.

(b) If the court is not satisfied that the proposed sale of real property is for a fair price, properly made, and in conformity with law, the court shall enter an order setting aside the bid or contract and ordering a new sale to be made, if necessary.

(c) The court’s action in approving or disapproving a report under Section 356.551 has the effect of a final judgment. Any person interested in the estate or in the sale is entitled to have an order entered under this section reviewed as in other final judgments in probate proceedings.

Derived from Probate Code § 355.

**Texas Estates Code**

**§ 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 approving the sale. The deed:

(1) vests in the purchaser all right and title of the estate to, and all interest of the estate in, the property; and

(2) is prima facie evidence that the sale has met all applicable requirements of the law.

Derived from Probate Code § 356.


**§ 356.558. Delivery of Deed**

(a) After the court has approved 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 securing a lien in the proper county, in which the land is located.

Derived from Probate Code § 357.


**§ 356.559. Damages; Removal**

(a) If the personal representative of an estate neglects to comply with Section 356.558, including to file the deed of trust securing a lien in the proper county, the representative and the sureties on the representative’s bond shall, after complaint and citation, be held liable for the use of the estate and for all damages resulting from the representative’s neglect, and the court may remove the representative.

(b) Damages under this section may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 358.


**Subchapter M. Procedure on Failure to Apply for Sale**

**§ 356.601. Failure to Apply for Sale**
If the personal representative of an estate neglects to apply for an order to sell sufficient estate property to pay charges and claims against the estate that have been allowed and approved or established by suit, any interested person, on written application, may have the representative cited to appear and make a full exhibit of the estate’s condition and show cause why a sale of the property should not be ordered.

Derived from Probate Code § 347.


**§ 356.602. Court Order**
On hearing an application under Section 356.601, if the court is satisfied that a sale of estate property is necessary or advisable to satisfy the charges and claims described by Section 356.601, the court shall enter an order of sale as provided by Section 356.256.

Derived from Probate Code § 347.


**Subchapter N. Purchase of Property by Personal Representative**

### Statutes in Context

**Chapter 356, Subchapter N**

Self-dealing is generally not allowed, that is, the personal representative may not purchase estate property. However, the personal representative may purchase if (1) the testator granted express permission in the will, or (2) the court finds that it is in the best interest of the estate to permit the personal representative to purchase estate property after giving notice the distributees and creditors.

**§ 356.651. General Prohibition on Purchase**
Except as otherwise provided by this subchapter, the personal representative of an estate may not purchase directly or indirectly, any estate property sold by the representative or any co-representative of the estate.

Derived from Probate Code § 352(a).


**§ 356.652. Exception: Authorization in Will**
A personal representative of an estate may purchase estate property if the representative was appointed in a will that:

(1) has been admitted to probate; and

(2) expressly authorizes the sale.

Derived from Probate Code § 352(b).
§ 356.653. Exception: Executory Contract
A personal representative of a decedent’s estate may purchase estate property in compliance with the terms of a written executory contract signed by the decedent, including:
(1) a contract for deed;
(2) an earnest money contract;
(3) a buy/sell agreement; and
(4) a stock purchase or redemption agreement.
Derived from Probate Code § 352(c).

§ 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 a qualified delivery method, unless the court requires another form of notice, to:
(1) each distributee of the estate; and
(2) each creditor whose claim remains unsettled after being presented within six months of the date letters testamentary or of administration are originally granted.
(c) The court may require additional notice or allow for the waiver of the notice required for a sale made under this section.
Derived from Probate Code § 352(d).

§ 356.655. Purchase in Violation of Subchapter
(a) If a personal representative of an estate purchases estate property in violation of this subchapter, any person interested in the estate may file a written complaint with the court in which the proceedings are pending.
(b) On service of citation on the personal representative on a complaint filed under Subsection (a) and after hearing and proof, the court shall:
(1) declare the sale void;
(2) set aside the sale; and
(3) order the reconveyance of the property to the estate.
(c) The court shall adjudge against the personal representative all costs of the sale, protest, and suit found necessary.
Derived from Probate Code § 352(e).

Chapter 357. Renting Estate Property

Subchapter A. Rental and Return of Estate Property
§ 357.001. Renting Estate Property Without Court Order
§ 357.002. Renting Estate Property with Court Order
§ 357.003. Estate Property Rented on Credit
§ 357.004. Condition of Returned Estate Property
§ 357.005. Complaint for Failure to Rent

Subchapter B. Report on Rented Estate Property
§ 357.051. Reports Concerning Rentals
§ 357.052. Court Action on Report

Chapter 357 provides guidance to the personal representative who wishes to rent estate property. Short-term leases are permitted without court order under § 357.001 while court permission is needed for leases more than one year in length. See § 357.002.

Subchapter A. Rental and Return of Estate Property

§ 357.001. Renting Estate Property Without Court Order
(a) The personal representative of an estate, without a court order, may rent any of the estate property for one year or less, at public auction or privately, as is considered to be in the best interest of the estate.
(b) On the sworn complaint of any person interested in the estate, the court shall require a personal representative who, without a court order, rents estate property to account to the estate for the reasonable value of the rent of the property, to be ascertained by the court on satisfactory evidence.
Derived from Probate Code §§ 359, 360.

§ 357.002. Renting Estate Property with Court Order
(a) The personal representative of an estate may, if the representative prefers, and shall, if the proposed rental period is more than one year, file a written application with the court setting forth the property the representative seeks to rent.
(b) If the court finds that granting an application filed under Subsection (a) is in the interest of the estate, the court shall grant the application and issue an order that:
(1) describes the property to be rented; and
(2) states whether the property will be rented at public auction or privately, whether for cash or on credit, and if on credit, the extent of the credit and the period for which the property may be rented.

(c) If, under Subsection (b), the court orders property to be rented at public auction, the court shall prescribe whether notice of the auction shall be published or posted.

Derived from Probate Code § 361.


§ 357.003. Estate Property Rented on Credit

Possession of estate property rented on credit may not be delivered until the renter executes and delivers to the personal representative a note with good personal security for the amount of the rent. If the property is delivered without the representative receiving the required security, the representative and the sureties on the representative’s bond are liable for the full amount of the rent. When a rental is payable in installments, in advance of the period to which the installments relate, this section does not apply.

Derived from Probate Code § 363.


§ 357.004. Condition of Returned Estate Property

(a) Estate property that is rented, with or without a court order, must be returned to the estate’s possession in as good a condition, except for reasonable wear and tear, as when the property was rented.

(b) The personal representative of an estate shall:

(1) ensure that rented estate property is returned in the condition required by Subsection (a);
(2) report to the court any damage to, or loss or destruction of, the property; and
(3) ask the court for the authority to take any necessary action.

(c) A personal representative who fails to act as required by this section and the sureties on the representative’s bond are liable to the estate for any loss or damage suffered as a result of the representative’s failure.

Derived from Probate Code § 364.


§ 357.005. Complaint for Failure to Rent

(a) Any person interested in an estate may:

(1) file a written and sworn complaint in the court in which the estate is pending; and
(2) have the personal representative cited to appear and show cause why the representative did not rent any estate property.

(b) The court, on hearing the complaint, shall issue an order that appears to be in the best interest of the estate.

Derived from Probate Code § 362.


Subchapter B. Report on Rented Estate Property

§ 357.051. Reports Concerning Rentals

(a) A personal representative of an estate who rents estate property with an appraised value of $3,000 or more shall, not later than the 30th day after the date the property is rented, file with the court a sworn and written report stating:

(1) the property rented and the property’s appraised value;
(2) the date the property was rented and whether the rental occurred at public auction or privately;
(3) the name of each person renting the property;
(4) the rental amount; and
(5) whether the rental was for cash or on credit and, if on credit, the length of time, the terms, and the security received for the credit.

(b) A personal representative of an estate who rents estate property with an appraised value of less than $3,000 may report the rental in the next annual or final account that must be filed as required by law.

Derived from Probate Code § 365.


§ 357.052. Court Action on Report

(a) At any time after the fifth day after the date the report of renting is filed, the court shall:

(1) examine the report; and
(2) by order approve and confirm the report if found just and reasonable.

(b) If the court disapproves the report, the estate is not bound and the court may order another offering for rent of the property that is the subject of the report, in the same manner and subject to the provisions of this chapter.

(c) If the court approves the report and it later appears that, by reason of any fault of the personal representative, the property was not rented for the property’s reasonable value, the court shall have the representative and the sureties on the representative’s bond appear and show cause why the reasonable value of the rent of the property should not be adjudged against the representative.

Derived from Probate Code § 366.


Chapter 358. Matters Relating to Mineral Properties

Subchapter A. General Provisions

§ 358.001. Definitions
Subchapter B. Mineral Leases After Public Notice
§ 358.051. Authorization for Leasing of Minerals
§ 358.052. Lease Application
§ 358.053. Scheduling of Hearing on Application; Continuance
§ 358.054. Notice of Hearing on Application
§ 358.055. Requirements Regarding Order and Notice Mandatory
§ 358.056. Hearing on Application; Order
§ 358.057. Bond Requirements
§ 358.058. Term of Lease Binding
§ 358.059. Amendment of Lease Regarding Effect of Shut-In Gas Well

Subchapter C. Mineral Leases at Private Sale
§ 358.101. Authorization for Leasing of Minerals at Private Sale
§ 358.102. Action of Court if Public Advertising Not Required

Subchapter D. Pooling or Unitization of Royalties or Minerals
§ 358.151. Authorization for Pooling or Unitization
§ 358.152. Pooling or Unitization Application
§ 358.153. Notice Not Required
§ 358.154. Hearing on Application
§ 358.155. Action of Court and Contents of Order

Subchapter E. Special Ancillary Instruments that May Be Executed Without Court Order
§ 358.201. Authorization for Execution of Agreements

Subchapter F. Procedure if Personal Representative of Estate Neglects to Apply for Authority
§ 358.251. Application to Show Cause
§ 358.252. Hearing on Application
§ 358.253. Order
§ 358.254. Procedure to be Followed After Entry of Order

Chapter 358. Matters Relating to Mineral Properties
with or without a pooling provision or unitization clause.

(b) The lease application must:
   (1) describe the property fully by reference to the amount of acreage, the survey name or number, or the abstract number, or by another method adequately identifying the property and the property’s location in the county in which the property is situated;
   (2) specify the interest thought to be owned by the estate, if less than the whole, but requesting authority to include all of the interest owned by the estate, if that is the intention; and
   (3) set out the reasons the estate property described in the application should be leased.

(c) The lease application is not required to set out or suggest:
   (1) the name of any proposed lessee; or
   (2) the terms, provisions, or form of any desired lease.

Derived from Probate Code § 367(c).


§ 358.053. Scheduling of Hearing on Application; Continuance

(a) Immediately after the filing of a lease application under Section 358.052, the county clerk shall call the filing of the application to the court’s attention, and the judge shall promptly make and enter a brief order designating the time and place for hearing the application.

(b) If the hearing is not held at the time originally designated by the court or by a timely continuance order entered, the hearing shall be continued automatically without further notice to the same time on the following day, other than Sundays and holidays on which the county courthouse is officially closed, and from day to day until the lease application is finally acted on and disposed of by court order. Notice of an automatic continuance is not required.

Derived from Probate Code § 367(c).


§ 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 directed to all persons interested in the estate;
   (2) be directed to all persons interested in the estate;
   (3) state the date on which the lease application was filed;
   (4) describe briefly the property sought to be leased, specifying the fractional interest sought to be leased if less than the entire interest in the tract or tracts identified; and
   (5) state the time and place designated by the judge for the hearing.

Derived from Probate Code § 367(c).


§ 358.055. Requirements Regarding Order and Notice Mandatory

An order of the judge or court authorizing any act to be performed under a lease application filed under Section 358.052 is void in the absence of:

(1) a written order originally designating a time and place for hearing;

(2) a notice issued by the personal representative of the estate in compliance with the order described by Subdivision (1); and

(3) proof of the publication or posting of the notice as required under Section 358.054.

Derived from Probate Code § 367(c).


§ 358.056. Hearing on Application; Order

(a) At the time and place designated for the hearing on a lease application filed under Section 358.052, the judge shall:
   (1) hear a lease application filed under Section 358.052; and
   (2) require proof as to the necessity or advisability of leasing for mineral development the property described in the application and the notice.

(b) The judge shall enter an order authorizing one or more leases affecting and covering the property or portions of property described in the application, with or without pooling provisions or unitization clauses, and with or without cash consideration if considered by the court to be in the best interest of the estate, if the judge is satisfied that:
   (1) the application is in proper form;
   (2) notice has been given in the manner and for the time required by law;
   (3) proof of necessity or advisability of leasing is sufficient; and
   (4) the application should be granted.

(c) The order must contain:
   (1) the name of the lessee;
   (2) any actual cash consideration to be paid by the lessee;
   (3) a finding that the requirements of Subsection (b) have been satisfied; and
   (4) 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

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 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.

§ 358.058. Bond Requirements
(a) Unless the personal representative of the estate is not required to give a general bond, a lease for which a cash consideration is required, although ordered, executed, and delivered, is not valid:

(1) unless the order authorizing the lease makes findings with respect to the general bond; and

(2) if the general bond has been found insufficient, unless and until:

(A) the bond has been increased or an additional bond given, as required by the order, with the sureties required by law; and

(B) the increased bond or additional bond has been approved by the judge and filed with the clerk of the court in which the proceedings are pending.

(b) If two or more leases of different land are authorized by the same order, the general bond must be increased, or additional bonds given, to cover all of the leases.

Derived from Probate Code § 367(c).


§ 358.059. Term of Lease Binding
(a) A lease executed and delivered in compliance with this subchapter is valid and binding on the property or interest in property owned by the estate and covered by the lease for the full term provided by the lease, subject only to the lease’s terms and conditions, even if the primary term extends beyond the date the estate is closed in accordance with law.

(b) The authorized primary term of the lease may not exceed five years, subject to the lease terms and provisions extending the lease beyond the primary term by:

(1) paying production;

(2) bona fide drilling or reworking operations, whether in or on the same well or wells or an additional well or wells, without a cessation of operations of more than 60 consecutive days before production has been restored or obtained; or

(3) a shut-in gas well.

Derived from Probate Code § 367(c).


§ 358.060. Amendment of Lease Regarding Effect of Shut-In Gas Well
(a) An oil, gas, and mineral lease executed by a personal representative may be amended by an instrument that provides that a shut-in gas well on the land covered by the lease or on land pooled with all or part of the land covered by the lease continues the lease in effect after the lease’s five-year primary term.

(b) The personal representative, with the approval of the court, shall execute the instrument according to the terms and conditions prescribed by the instrument.

Derived from Probate Code § 367(c).

Subchapter C. Mineral Leases at Private Sale

§ 358.101. Authorization for Leasing of Minerals at Private Sale

(a) Notwithstanding the mandatory requirements of Subchapter B for setting a time and place for hearing of a lease application filed under Section 358.052 and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale without public notice or advertising if, in the court’s opinion, facts are set out in the application required by Subchapter B sufficient to show that it would be more advantageous to the estate that a lease be made privately and without compliance with those mandatory requirements.

(b) Leases authorized by this section may include pooling provisions or unitization clauses as in other cases. Derived from Probate Code § 368(a).


§ 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 completion of the lease without the necessity of advertising, notice, or citation. The order must comply in all other respects with the requirements essential to the validity of mineral leases as set out in Subchapter B, as if advertising or notice were required.

(c) The issuance of an order confirming a lease or leases made at private sale is not required, but such a lease is not valid until any increased or additional bond required by the court has been approved by the court and filed with the court clerk.

Derived from Probate Code § 368(b).


Subchapter D. Pooling or Unitization of Royalties or Minerals

§ 358.151. Authorization for Pooling or Unitization

(a) If an existing lease or leases on property owned by an estate being administered do not adequately provide for pooling or unitization, the court in which the proceedings are pending may, in the manner provided by this subchapter, authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas, gaseous elements, and other minerals, or any one or more of them, owned by the estate, to agreements that provide for the operation of areas as a pool or unit for the exploration for, development of, and production of all of those minerals, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement; and
(2) it is in the best interest of the estate to execute the agreement.

(b) An agreement authorized under Subsection (a) may, among other things, provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit shall be conducted as provided in the lease on any part of 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;
   (C) there is a shut-in gas well on any part of the pooled or unitized area, if the presence of the shut-in gas well is a ground for continuation of the lease under the terms of the lease;
(3) the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled on the tract;
(4) the royalties provided for on production from any tract or portion of a tract within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement;
(5) the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any land or leases committed to the agreement, and that royalties are not required to be paid on the gas returned; and
(6) gas obtained from other sources or other land may be injected into a formation underlying any land or leases committed to the agreement, and that royalties are not required to be paid on the gas injected when the gas is produced from the unit.

Derived from Probate Code §§ 369(a), (b).


§ 358.152. Pooling or Unitization Application

(a) The personal representative of an estate shall file with the county clerk of the county in which the probate
proceeding is pending a written application for authority to:

(1) enter into pooling or unitization agreements supplementing, amending, or otherwise relating to any existing lease or leases covering property owned by the estate; or

(2) commit royalties or other interests in minerals, whether or not subject to a lease, to a pooling or unitization agreement.

(b) The pooling or unitization application must also:

(1) sufficiently describe the property as required in an original lease application;

(2) describe briefly any lease or leases to which the interest of the estate is subject; and

(3) set out the reasons the proposed agreement concerning the property should be entered into.

(c) A copy of the proposed agreement must be attached to the application and made a part of the application by reference.

(d) The agreement may not be recorded in the judge’s probate docket.

(e) Immediately after the pooling or unitization application is filed, the clerk shall call the application to the judge’s attention.

Derived from Probate Code § 369(b).


§ 358.153. Notice Not Required

Notice by advertising, citation, or otherwise of the filing of a pooling or unitization application under Section 358.152 is not required.

Derived from Probate Code § 369(b).


§ 358.154. Hearing on Application

(a) The judge may hold a hearing on a pooling or unitization application filed under Section 358.152 at any time agreeable to the parties to the proposed agreement.

(b) The judge shall hear evidence and determine to the judge’s satisfaction whether it is in the best interest of the estate that the proposed agreement be authorized.

(c) The hearing may be continued from day to day and from time to time as the court finds necessary.

Derived from Probate Code § 369(b).


§ 358.155. Action of Court and Contents of Order

(a) The court shall enter an order setting out the court’s findings and authorizing execution of the proposed pooling or unitization agreement, with or without payment of cash consideration according to the agreement, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of

oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement;

(2) it is in the best interest of the estate that the agreement be executed; and

(3) the agreement conforms substantially with the permissible provisions of Section 358.151.

(b) If cash consideration is to be paid for the agreement, the court shall also make findings as to the necessity of increased or additional bond, as in the making of leases on payment of the cash bonus for the lease. Such an agreement is not valid until any required increased or additional bond has been approved by the judge and filed with the clerk.

(c) If the effective date of the agreement is not stipulated in the agreement, the effective date of the agreement is the date of the court’s order.

Derived from Probate Code § 369(b).


Subchapter E. Special Ancillary Instruments that May be Executed Without Court Order

§ 358.201. Authorization for Execution of Agreements

As to any mineral lease or pooling or unitization agreement, executed on behalf of an estate or by a former owner of land, minerals, or royalty affected by the lease or agreement, the personal representative of the estate being administered may, without further court order and without consideration, execute:

(1) division orders;

(2) transfer orders;

(3) instruments of correction;

(4) instruments designating depository banks for the receipt of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of the lease; and

(5) similar instruments relating to the lease or agreement and the property covered by the lease or agreement.

Derived from Probate Code § 370.


Subchapter F. Procedure if Personal Representative of Estate Neglects to Apply for Authority

§ 358.251. Application to Show Cause

If the personal representative of an estate neglects to apply for authority to subject estate property to a lease for mineral development, pooling, or unitization, or to commit royalty or another interest in minerals to pooling or unitization, any person interested in the estate may, on written application filed with the county clerk, have the
representative cited to show cause why it is not in the best interest of the estate to make such a lease or enter into such an agreement.
Derived from Probate Code § 371.

§ 358.252. Hearing on Application
(a) The county clerk shall immediately call the filing of an application under Section 358.251 to the attention of the judge of the court in which the probate proceedings are pending.
(b) The judge shall set a time and place for a hearing on the application, and the personal representative of the estate shall be cited to appear and show cause why the execution of a lease or agreement described by Section 358.251 should not be ordered.
Derived from Probate Code § 371.

§ 358.253. Order
On a hearing conducted under Section 358.252, if satisfied from the evidence that it would be in the best interest of the estate, the court shall enter an order requiring the personal representative promptly to file an application to subject the estate property to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to pooling or unitization, as appropriate.
Derived from Probate Code § 371.

§ 358.254. Procedure to be Followed After Entry of Order
After entry of an order under Section 358.253, the procedure prescribed with respect to an original lease application, or with respect to an original application for authority to commit royalty or minerals to pooling or unitization, whichever is appropriate, shall be followed.
Derived from Probate Code § 371.

Chapter 359. Annual Account and Other Exhibits and Reports

Subchapter A. Annual Account and Other Exhibits
§ 359.001. Account of Estate Required
§ 359.002. Annual Account Required Until Estate Closed
§ 359.003. Supporting Vouchers and Other Documents Attached to Account

Statutes in Context
Chapter 359
Chapter 359 requires that the dependent personal representative prepare detailed accounts each year. The accounting must include all vouchers and receipts and it must be supported by a sworn affidavit.

Subchapter B. Action on Annual Account
§ 359.051. Filing and Consideration of Annual Account
§ 359.052. Correction of Annual Account
§ 359.053. Order for Payment of Claims in Full
§ 359.054. Order for Pro Rata Payment of Claims

Subchapter C. Penalties
§ 359.101. Penalty for Failure to File Annual Account
§ 359.102. Penalty for Failure to File Exhibit or Report

§ 359.004. Method of Proof for Securities and Other Assets
§ 359.005. Verification of Account
§ 359.006. Additional Accounts

Electronic copy available at: https://ssrn.com/abstract=4537861
including the source and nature of the receipts and disbursements, with separate listings for principal and income receipts;

(4) provide a complete, accurate, and detailed description of:
   (A) the property being administered;
   (B) the condition of the property and the use being made of the property; and
   (C) if rented, the terms on which and the price for which the property was rented;

(5) show the cash balance on hand and the name and location of the depository where the balance is kept;

(6) show any other cash held in a savings account or other manner that was deposited subject to court order and the name and location of the depository for that cash;

(7) provide a detailed description of the personal property of the estate that shows how and where the property is held for safekeeping;

(8) provide a statement that during the period covered by the account all tax returns due have been filed and all taxes due and owing have been paid, including:
   (A) a complete account of the amount of the taxes;
   (B) the date the taxes were paid; and
   (C) the governmental entity to which the taxes were paid;

(9) if on the filing of the account a tax return due to be filed or any taxes due to be paid are delinquent, provide the reasons for, and include a description of, the delinquency; and

(10) provide a statement that the representative has paid all the required bond premiums for the accounting period.

c) For bonds, notes, and other securities, the description required by Subsection (b)(7) must include:
   (1) the names of the obligor and obligee or, if payable to bearer, a statement that the bond, note, or other security is payable to bearer;
   (2) the date of issue and maturity;
   (3) the interest rate;
   (4) the serial number or other identifying numbers;
   (5) the manner in which the property is secured; and
   (6) other information necessary to fully identify the bond, note, or other security.

Derived from Probate Code § 399(a).

§ 359.002. Annual Account Required Until Estate Closed

(a) Not later than the 60th day after each anniversary of the date a personal representative of the estate of a decedent qualifies and receives letters testamentary or of administration to administer the decedent’s estate under court order, unless the court authorizes an extension, the representative shall file an annual account conforming to the essential requirements of Section 359.001 regarding changes in the estate assets occurring during the 12-month period after the date the most recent previous account was filed.

(b) The annual account must be filed in a manner that allows the court or an interested person to ascertain the true condition of the estate, with respect to money, securities, and other property, by adding to the balances forwarded from the most recent previous account the amounts received during the period covered by the account and subtracting the disbursements made during that period.

c) The description of property sufficiently described in an inventory or previous account may be made in the annual account by reference to that description.

Derived from Probate Code § 399(b).

§ 359.003. Supporting Vouchers and Other Documents Attached to Account

(a) The personal representative of an estate shall attach to each annual account:
   (1) a voucher for each item of credit claimed in the account or, to support the item in the absence of the voucher, other evidence satisfactory to the court;
   (2) an official letter from the bank or other depository where the estate money on hand is deposited that shows the amounts in general or special deposits; and
   (3) proof of the existence and possession of:
      (A) securities owned by the estate or shown by the account; and
      (B) other assets held by a depository subject to court order.

(b) An original voucher submitted to the court may on application be returned to the personal representative after approval of the account.

c) The court may require:
   (1) additional evidence of the existence and custody of the securities and other personal property as the court considers proper; and
   (2) the personal representative at any time to exhibit the securities and other personal property to the court or another person designated by the court at the place where the securities and other personal property are held for safekeeping.

Derived from Probate Code § 399(c).

§ 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 exhibit is at the personal representative’s own expense and risk.

Derived from Probate Code § 399(c).


§ 359.005. Verification of Account

The personal representative shall attach to the annual account the representative’s affidavit that the account contains a correct and complete statement of the matters to which it relates.

Derived from Probate Code § 399(d).


§ 359.006. Additional Accounts

(a) At any time after the expiration of 15 months from the date original letters testamentary or of administration are granted to an executor or administrator, an interested person may file a written complaint in the court in which the estate is pending to have the representative cited to appear and make a written exhibit under oath that sets forth fully, in connection with previous exhibits, the condition of the estate.

(b) If it appears to the court, from the exhibit or other evidence, that the executor or administrator has estate funds in the representative’s possession that are subject to distribution among the creditors of the estate, the court shall order the funds to be paid out to the creditors in accordance with this title.

(c) A personal representative may voluntarily present to the court the exhibit described by Subsection (a). If the representative has any estate funds in the representative’s possession that are subject to distribution among the creditors of the estate, the court shall issue an order similar to the order entered under Subsection (b).

Derived from Probate Code § 402.


Subchapter B. Action on Annual Account

§ 359.051. Filing and Consideration of Annual Account

(a) The personal representative of an estate shall file an annual account with the county clerk. The county clerk shall promptly note the filing on the judge’s docket.

(b) At any time after the account has remained on file for 10 days following the date the account is filed, the judge shall consider the account and may continue the hearing on the account until fully advised on all account items.

(c) The court may not approve the account unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under court order has been proven as required by law.

Derived from Probate Code §§ 401(a), (b), (c), (d).


§ 359.052. Correction of Annual Account

(a) If the court finds an annual account is incorrect, the account must be corrected.

(b) The court by order shall approve an annual account that is corrected to the satisfaction of the court and shall act with respect to unpaid claims in accordance with Sections 359.053 and 359.054.

Derived from Probate Code § 401(e).


§ 359.053. Order for Payment of Claims in Full

After approval of an annual account as provided by Section 359.052, if it appears to the court from the exhibit or other evidence that the estate is wholly solvent and that the personal representative has in the representative’s possession sufficient funds to pay every character of claims against the estate, the court shall order immediate payment of all claims allowed and approved or established by judgment.

Derived from Probate Code § 401(e).

§ 359.054. Order for Pro Rata Payment of Claims

After approval of an annual account as provided by Section 359.052, if it appears to the court from the account or other evidence that the funds on hand are not sufficient to pay every character of claims against the estate or if the estate is insolvent and the personal representative has any funds on hand, the court shall order the funds to be applied:

(1) first to the payment of any unpaid claims having a preference in the order of their priority; and

(2) then to the pro rata payment of the other claims allowed and approved or established by final judgment, considering:

(A) claims that were presented before the first anniversary of the date administration was granted; and

(B) claims that are in litigation or on which a lawsuit may be filed.

Derived from Probate Code § 401(e).


Subchapter C. Penalties

§ 359.101. Penalty for Failure to File Annual Account

(a) If the personal representative of an estate does not file an annual account required by Section 359.001 or 359.002, any person interested in the estate on written complaint, or the court on the court’s own motion, may have the representative cited to file the account and show cause for the failure.

(b) If the personal representative does not file the account after being cited or does not show good cause for the failure, the court on hearing may:

(1) revoke the representative’s letters testamentary or of administration; and

(2) fine the representative in an amount not to exceed $500.

(c) The personal representative and the representative’s sureties are liable for any fine imposed and for all damages and costs sustained by the representative’s failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 400.


§ 359.102. Penalty for Failure to File Exhibit or Report

(a) If a personal representative does not file an exhibit or report required by this title, any person interested in the estate on written complaint filed with the court clerk may have the representative cited to appear and show cause why the representative should not file the exhibit or report.

(b) On hearing, the court may:

(1) order the personal representative to file the exhibit or report; and

(2) unless good cause is shown for the failure, revoke the representative’s letters testamentary or of administration and fine the representative in an amount not to exceed $1,000.

Derived from Probate Code § 403.


Chapter 360. Partition and Distribution of Estate

Subchapter A. Application for Partition and Distribution

§ 360.001. General Application

§ 360.002. Application for Partial Distribution

Subchapter B. Citation

§ 360.051. Citation of Interested Persons

§ 360.052. Citation of Executor or Administrator

Subchapter C. Proceedings; Expenses

§ 360.101. Hearing on Application

§ 360.102. Court Decree

§ 360.103. Expenses of Partition

Subchapter D. Partition and Distribution if Estate Property is Capable of Division

§ 360.151. Appointment of Commissioners

§ 360.152. Writ of Partition

§ 360.153. Partition by Commissioners

§ 360.154. Commissioners’ Report

§ 360.155. Court Action on Commissioners’ Report

§ 360.156. Delivery of Property

§ 360.157. Commissioners’ Fees

Subchapter E. Partition and Distribution if Estate Property is Incapable of Division

§ 360.201. Court Finding

§ 360.202. Sale of Estate Property

§ 360.203. Applicability of Provisions Relating to Sale of Real Estate

Subchapter F. Certain Types of Estate Property

§ 360.251. Estate Consisting Only of Money or Debts

§ 360.252. Estate Property Located in Another County

§ 360.253. Community Property

§ 360.254. Jointly Owned Property

Subchapter G. Enforcement

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 360.301. Liability for Failure to Deliver Estate Property

Chapter 360. Partition and Distribution of Estate

Subchapter A. Application for Partition and Distribution

Statutes in Context
Chapter 360, Subchapter A

Distribution of the estate is typically done when the administration is finished. However, an heir or beneficiary may request partial distribution at any time or total distribution after 12 months have passed from the date the court issued letters.

§ 360.001. General Application

(a) At any time after the first anniversary of the date original letters testamentary or of administration are granted, an executor, administrator, heir, or devisee of a decedent’s estate, by written application filed in the court in which the estate is pending, may request the partition and distribution of the estate.

(b) An application under Subsection (a) must state:

(1) the decedent’s name;
(2) the name and residence of each person entitled to a share of the estate and whether the person is an adult or a minor;
(3) if the applicant does not know a fact required by Subdivision (2); and
(4) the reasons why the estate should be partitioned and distributed.

Derived from Probate Code §§ 373(a), (b).


§ 360.002. Application for Partial Distribution

(a) At any time after original letters testamentary or of administration are granted and the inventory, appraisement, and list of claims are filed and approved, an executor, administrator, heir, or devisee of a decedent’s estate, by written application filed in the court in which the estate is pending, may request a distribution of any portion of the estate.

(b) All interested parties, including known creditors, must be personally cited as in other distributions.

(c) Except as provided by Subsection (d), the court, on proper citation and hearing, may distribute any portion of the estate the court considers advisable.

(d) If a distribution is to be made to one or more heirs or devisees, but not to all heirs or devisees, the court shall require a refunding bond in an amount determined by the court to be filed with the court, unless a written waiver of the bond requirement is filed with the court by all interested parties. On approving the bond, if required, the court shall order the distribution of the relevant portion of the estate.

(e) This section applies to corpus as well as income, notwithstanding any other provision of this title.

Derived from Probate Code § 373(c).


Subchapter B. Citation

§ 360.051. Citation of Interested Persons

(a) On the filing of the application, the clerk shall issue a citation that:

(1) states:
(A) the decedent’s name; and
(B) the date the court will hear the application; and
(2) requires all persons interested in the estate to appear and show cause why the estate should not be partitioned and distributed.

(b) A citation under this section must be:

(1) personally served on each person residing in the state who is entitled to a share of the estate and whose address is known; and
(2) served by publication on any person entitled to a share of the estate:
(A) whose identity or address is not known;
(B) who is not a resident of this state; or
(C) who is a resident of this state but is absent from this state.

Derived from Probate Code § 374.


§ 360.052. Citation of Executor or Administrator

When a person other than the executor or administrator applies for partition and distribution, the executor or administrator must also be cited to appear and answer the application and file in court a verified exhibit and account of the condition of the estate, as in the case of a final settlement.

Derived from Probate Code § 375.


Subchapter C. Proceedings; Expenses

§ 360.101. Hearing on Application

(a) At the hearing on an application for partition and distribution, the court shall determine:

(1) the residue of the estate that is subject to partition and distribution;
(2) the persons entitled by law to partition and distribution and those persons’ respective shares; and
(3) whether an advancement has been made to any of the persons described by Subdivision (2), and if so, the nature and value of the advancement.
(b) For purposes of Subsection (a)(1), the residue of the estate is determined by deducting from the entire assets of the estate remaining on hand:

(1) the amount of all debts and expenses that:
   (A) have been approved or established by judgment but not paid; or
   (B) may be established by judgment in the future; and
(2) the probable future expenses of administration.
(c) If an advancement described by Subsection (a)(3) has been made, the court shall require the advancement to be placed in hotchpotch as required by the law governing intestate succession.

Derived from Probate Code § 377.

§ 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 minor’s guardian or guardian ad litem; and
   (C) the name of the attorney appointed to represent those persons who are unknown or who are not residents of this state;
(2) the proportional part of the estate to which each person is entitled;
(3) a full description of all the estate to be distributed; and
(4) that the executor or administrator must retain possession of a sufficient amount of money or property to pay all debts, taxes, and expenses of administration and specifying the amount of money or the property to be retained.

Derived from Probate Code § 378.

§ 360.103. Expenses of Partition
(a) The distributees shall pay the expense of the estate’s partition pro rata.
(b) The portion of the estate allotted to a distributee is liable for the distributee’s portion of the partition expense, and, if not paid, the court may order execution for the expense in the names of the persons entitled to payment of the expense.

Derived from Probate Code § 387.

Subchapter D. Partition and Distribution if Estate Property is Capable of Division

§ 360.151. Appointment of Commissioners
If the estate does not consist entirely of money or debts due to the estate and the court has not previously determined that the estate is incapable of partition, the court shall appoint three or more discreet and disinterested persons as commissioners to make a partition and distribution of the estate.

Derived from Probate Code § 380(a).

§ 360.152. Writ of Partition
(a) When commissioners are appointed under Section 360.151, the clerk shall issue a writ of partition directed to the commissioners, commanding the commissioners to:
   (1) proceed promptly to make the partition and distribution in accordance with the court decree; and
   (2) return the writ, with the commissioners’ proceedings under the writ, on a date stated in the writ.
(b) A copy of the court decree must accompany the writ.
(c) The writ must be served by:
   (1) delivering the writ and the accompanying copy of the court decree to one of the commissioners;
   and
   (2) notifying the other commissioners, verbally or otherwise, of the commissioners’ appointment.
(d) Service under Subsection (c) may be made by any person.

Derived from Probate Code § 380(b).

§ 360.153. Partition by Commissioners
(a) The commissioners shall make a fair, just, and impartial partition and distribution of the estate in the following order and manner:
   (1) if the real estate is capable of being divided without manifest injury to all or any of the distributees, the commissioners shall partition and distribute the land or other property by allotting to each distributee:
      (A) a share in each parcel;
      (B) shares in one or more parcels; or
      (C) one or more parcels separately, with or without the addition of a share of other parcels;
   (2) if the real estate is not capable of a fair, just, and equal division in kind, but may be made capable of a fair, just, and equal division in kind by allotting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency, the commissioners may make, as nearly as possible, an equal division of the real estate and supply the deficiency of any share from the money or other personal property; and
   (3) the commissioners shall:
(A) make a like division in kind, as nearly as possible, of the money and other personal property; and
(B) determine by lot, among equal shares, to whom each share shall belong.

(b) The commissioners shall allot the land or other property under Subsection (a)(1) in the manner described by that subsection that is most in the interest of the distributees.

Derived from Probate Code § 380(c).


§ 360.154. Commissioners’ Report

(a) After dividing all or any part of the estate, at least a majority of the commissioners shall make a written, sworn report to the court that:

(1) states the property divided by the commissioners; and
(2) describes in particular the property allotted to each distributee and the value of that property.

(b) If real estate was divided, the report must also contain a general plat of the land with:

(1) the division lines plainly set down; and
(2) the number of acres in each share.

Derived from Probate Code § 380(d).


§ 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 of the estate, including all the title deeds and documents belonging to the distributees.

Derived from Probate Code § 380(f).


§ 360.157. Commissioners’ Fees

A commissioner who partitions and distributes an estate under this subchapter is entitled to $5 for each day the commissioner necessarily engages in performing the commissioner’s duties, to be taxed and paid as other costs in cases of partition.

Derived from Probate Code § 380(g).


Subchapter E. Partition and Distribution if Estate Property Is Incapable of Division

§ 360.201. Court Finding

If, in the court’s opinion, all or part of an estate is not capable of a fair and equal partition and distribution, the court shall make a special written finding specifying the property incapable of division.

Derived from Probate Code § 381(a).


§ 360.202. Sale of Estate Property

(a) When the court has found that all or part of an estate is not capable of fair and equal division, the court shall order the sale of all estate property not capable of fair and equal division.

(b) The sale must be made by the executor or administrator in the manner provided for the sale of real estate to satisfy estate debts.

(c) The court shall distribute the proceeds collected from the sale to the persons entitled to the proceeds.

(d) A distributee who buys property at the sale is required to pay or secure only the amount by which the distributee’s bid exceeds the amount of the distributee’s share of the property.

Derived from Probate Code §§ 381(b), (c).


§ 360.203. Applicability of Provisions Relating to Sale of Real Estate

The provisions of this title relating to reports of sales of real estate, the giving of an increased general or additional bond on the sale of real estate, and the vesting of title to property sold by decree or by deed apply to sales made under this subchapter.

Derived from Probate Code § 381(d).

Subchapter F. Certain Types of Estate Property

§ 360.251. Estate Consisting Only of Money or Debts
If the estate to be distributed consists only of money or debts due to the estate, the court shall:
(1) set the amount to which each distributee is entitled; and
(2) order the executor or administrator to pay and deliver that amount.
Derived from Probate Code § 379.

§ 360.252. Estate Property Located in Another County
(a) If any portion of the estate to be partitioned is located in another county and cannot be fairly partitioned without prejudice to the distributees’ interests, the commissioners may report those facts to the court in writing.
(b) On the making of a report under Subsection (a), if the court is satisfied that the property cannot be fairly divided or that the sale of the property would be more advantageous to the distributees, the court may order a sale of the property. The sale must be conducted in the manner provided by Subchapter E for the sale of property that is not capable of fair and equal division.
(c) If the court is not satisfied that the property cannot be fairly and advantageously divided, or that the sale of the property would be more advantageous to the distributees, the court may appoint three or more commissioners in each county in which the property is located. If the court appoints commissioners under this subsection, the proceedings under Subchapter D for partition by commissioners must be followed.
Derived from Probate Code § 382.

§ 360.253. Community Property
(a) If a spouse dies leaving community property, the surviving spouse, at any time after letters testamentary or of administration have been granted and an inventory, appraisement, and list of claims of the estate have been returned or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed, may apply in writing to the court that granted the letters for a partition of the community property.
(b) The surviving spouse shall execute and deliver a bond to the judge of the court described by Subsection (a). The bond must be:
(1) with a corporate surety or at least two good and sufficient personal sureties;
(2) payable to and approved by the judge;
(3) in an amount equal to the value of the surviving spouse’s interest in the community property; and
(4) conditioned for the payment of half of all debts existing against the community property.
(c) The court shall proceed to partition the community property into two equal moieties, one to be delivered to the surviving spouse and the other to be delivered to the executor or administrator of the deceased spouse’s estate.
(d) If a partition is made under this section:
(1) a lien exists on the property delivered to the surviving spouse to secure the payment of the bond required under Subsection (b); and
(2) any creditor of the community estate:
(A) may sue in the creditor’s own name on the bond; and
(B) is entitled:
(i) to have judgment on the bond for half of the debt the creditor establishes; and
(ii) to be paid by the executor or administrator of the deceased spouse’s estate for the other half.
(e) The provisions of this title relating to the partition and distribution of an estate apply to a partition under this section to the extent applicable.
Derived from Probate Code § 385.

§ 360.254. Jointly Owned Property
(a) A person who has a joint interest with a decedent’s estate in any property may apply to the court that granted letters testamentary or of administration on the estate for a partition of the property.
(b) On application under Subsection (a), the court shall partition the property between the applicant and the decedent’s estate.
(c) The provisions of this title relating to the partition and distribution of an estate govern a partition under this section to the extent applicable.
Derived from Probate Code § 386.

Subchapter G. Enforcement

§ 360.301. Liability for Failure to Deliver Estate Property
(a) If an executor or administrator neglects, when demanded, to deliver a portion of an estate ordered to be delivered to a person entitled to that portion, the person may file with the court clerk a written complaint alleging:
(1) the fact of the neglect;
(2) the date of the person’s demand; and
(3) other relevant facts.
(b) On the filing of a complaint under Subsection (a), the court clerk shall issue a citation to be served personally on the executor or administrator. The citation must:
(1) apprise the executor or administrator of the complaint; and
(2) cite the executor or administrator to appear before the court and answer, if the executor or administrator desires, at the time designated in the citation.
(c) If at the hearing the court finds that the citation was properly served and returned and that the executor or administrator is guilty of the neglect alleged, the court shall enter an order to that effect.
(d) An executor or administrator found guilty under Subsection (c) is liable to the complainant for damages at the rate of 10 percent of the amount or the appraised value of the portion of the estate neglectfully withheld, per month, for each month or fraction of a month that the portion is or has been neglectfully withheld after the date of demand. Damages under this subsection may be recovered in any court of competent jurisdiction.

Chapter 361. Death, Resignation, or Removal of Personal Representatives; Appointment of Successors

Subchapter A. Resignation of Personal Representative

§ 361.001. Resignation Application
A personal representative who wishes to resign the representative’s trust shall file a written application with the court clerk, accompanied by a complete and verified exhibit and final account showing the true condition of the estate entrusted to the representative’s care.

§ 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.

Subchapter B. Removal and Reinstatement of Personal Representative

§ 361.051. Removal Without Notice
§ 361.052. Removal With Notice
§ 361.053. Removal Order
§ 361.054. Removal and Reinstatement of Personal Representative Under Certain Circumstances

Subchapter C. Appointment of Successor Representative

§ 361.101. Requirements for Revocation of Letters
§ 361.102. Appointment Because of Death, Resignation, or Removal
§ 361.103. Appointment Because of Existence of Prior Right
§ 361.104. Appointment When Named Executor Becomes an Adult

§ 361.105. Appointment of Formerly Sick or Absent Executor
§ 361.106. Appointment When Will Discovered After Grant of Administration

Subchapter D. Procedures After Death, Resignation, or Removal of Personal Representative

§ 361.151. Payment to Estate While Office of Personal Representative is Vacant
§ 361.152. Further Administration With or Without Notice or Will Annexed
§ 361.153. Rights, Powers, and Duties of Successor Representative
§ 361.154. Successor Executor Also Succeeds to Prior Rights and Duties
§ 361.155. Successor Representative to Return Inventory, Appraisement, and List of Claims

Chapter 361. Death, Resignation, or Removal of Personal Representatives; Appointment of Successors

Subchapter A. Resignation of Personal Representative

Statutes in Context
Chapter 361, Subchapter A

Chapter 361, Subchapter A, addresses issues regarding the resignation of a personal representative.

§ 361.001. Resignation Application

A personal representative who wishes to resign the representative’s trust shall file a written application with the court clerk, accompanied by a complete and verified exhibit and final account showing the true condition of the estate entrusted to the representative’s care.

Derived from Probate Code § 221(a).


§ 361.002. Immediate Appointment of Successor; Discharge and Release

(a) If the necessity exists, the court may immediately accept the resignation of a personal representative and appoint a successor representative.
(b) The court may not discharge a person whose resignation is accepted under Subsection (a), or release the person or the sureties on the person’s bond, until a final order has been issued or judgment has been rendered on the final account required under Section 361.001.

Derived from Probate Code § 221(b).
§ 361.003. Hearing Date; Citation

(a) When an application to resign as personal representative is filed under Section 361.001, supported by the exhibit and final account required under that section, the court clerk shall bring the application to the judge’s attention and the judge shall set a date for a hearing on the matter.

(b) After a hearing is set under Subsection (a), the clerk shall issue a citation to all interested persons, showing:

(1) that an application that complies with Section 361.001 has been filed; and
(2) the time and place set for the hearing at which the interested persons may appear and contest the exhibit and final account supporting the application.

(c) Unless the court directs that the citation under Subsection (b) be published, the citation must be posted.

Derived from Probate Code § 221(c).


§ 361.004. Hearing

(a) At the time set for the hearing under Section 361.003, unless the court continues the hearing, and if the court finds that the citation required under that section has been properly issued and served, the court shall:

(1) examine the exhibit and final account required by Section 361.001;
(2) hear all evidence for and against the exhibit and final account; and
(3) if necessary, restate and audit and settle the exhibit and final account.

(b) If the court is satisfied that the matters entrusted to the personal representative applying to resign have been handled and accounted for in accordance with the law, the court shall:

(1) enter an order approving the exhibit and final account; and
(2) require that any estate property remaining in the applicant’s possession be delivered to the persons entitled by law to receive the property.

Derived from Probate Code § 221(d).


§ 361.005. Requirements for Discharge

(a) A personal representative applying to resign may not be discharged until:

(1) the resignation application has been heard;
(2) the exhibit and final account required under Section 361.001 have been examined, settled, and approved; and
(3) the applicant has satisfied the court that the applicant has:

(A) delivered any estate property remaining in the applicant’s possession; or
(B) complied with all lawful orders of the court with relation to the applicant’s trust as representative.

(b) When a personal representative applying to resign has fully complied with the orders of the court, the court shall enter an order:

(1) accepting the resignation; and
(2) discharging the applicant, and, if the applicant is under bond, the applicant’s sureties.

Derived from Probate Code §§ 221(e), (f).


Subchapter B. Removal and Reinstatement of Personal Representative

Statutes in Context
Chapter 361, Subchapter B

Sections 361.051 – 361.054 explain how a court may remove a personal representative from office. Section 361.051 enumerates when the removal may occur without notice to the personal representative while § 361.052 lists the circumstances where notice to the personal representative is needed before the court may issue an order of removal. See also § 404.003 (removal of independent executor). Reinstatement is thereafter possible under § 361.054.

§ 361.051. Removal Without Notice

The court, on the court’s own motion or on the motion of any interested person, and without notice, may remove a personal representative appointed under this title who:

(1) neglects to qualify in the manner and time required by law;
(2) fails to return, before the 91st day after the date the representative qualifies, an inventory of the estate property and a list of claims that have come to the representative’s knowledge, unless that deadline is extended by court order;
(3) if required, fails to give a new bond within the time prescribed;
(4) is absent from the state for a consecutive period of three or more months without the court’s permission, or moves out of state;
(5) cannot be served with notices or other processes because:

(A) the representative’s whereabouts are unknown;
(B) the representative is eluding service; or
(C) the representative is a nonresident of this state who does not have a resident agent to accept service of process in any probate proceeding or other action relating to the estate; or
(6) subject to Section 361.054(a), has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or
§ 361.053. Removal Order

An order removing a personal representative must:

(1) state the cause of the removal;

(2) require that, if the removed representative has been personally served with citation, any letters testamentary or of administration issued to the removed representative be surrendered, and that, regardless of whether the letters have been delivered, all the letters be canceled of record; and

(3) require the removed representative to deliver any estate property in the representative’s possession to the persons entitled to the property or to the person who has been appointed and has qualified as successor representative.

Derived from Probate Code § 222(b).


Subchapter C. Appointment of Successor Representative
Chapter 361, Subchapter C, explains how the court will appoint a replacement personal representative if the currently serving representative dies, resigns, or is removed. This Subchapter also handles a variety of other situations where a replacement may be appropriate.

§ 361.101. Requirements for Revocation of Letters

Except as otherwise expressly provided by this title, the court may revoke letters testamentary or of administration and grant other letters only:

(1) on application; and
(2) after personal service of citation on the person, if living, whose letters are sought to be revoked, requiring the person to appear and show cause why the application should not be granted.

Derived from Probate Code § 220(f).

§ 361.102. Appointment Because of Death, Resignation, or Removal

(a) If a person appointed as personal representative fails to qualify or, after qualifying, dies, resigns, or is removed, the court may, on application, appoint a successor representative if the appointment of a successor is necessary. The appointment may be made before a final accounting is filed or before any action on a final accounting is taken. In the event of death, the legal representatives of the deceased personal representative shall account for, pay, and deliver all estate property that was entrusted to the deceased personal representative’s care to the persons legally entitled to receive the property, at the time and in the manner ordered by the court.

(b) The court may appoint a successor representative under this section without citation or notice if the court finds that the immediate appointment of a successor representative is necessary.

Derived from Probate Code § 220(a).

§ 361.103. Appointment Because of Existence of Prior Right

If letters testamentary or of administration have been granted to a person and another person applies for letters, the court shall revoke the initial letters and grant letters to the second applicant if the second applicant:

(1) is qualified;
(2) has a prior right to the letters; and
(3) has not waived the prior right to the letters.

Derived from Probate Code § 220(b).

§ 361.104. Appointment when Named Executor Becomes an Adult

(a) A person named as executor in a will who was not an adult when the will was probated is entitled to have letters testamentary or of administration that were granted to another person revoked and appropriate letters granted to the named executor on proof that the named executor has become an adult and is not otherwise disqualified.

(b) This subsection applies only if a will names two or more persons as executor. A person named as an executor in the will who was a minor when the will was probated may, on becoming an adult, qualify and receive letters if:

(1) letters have been issued only to the named executors in the will who were adults when the will was probated; and
(2) the person is not otherwise disqualified from receiving letters.

Derived from Probate Code § 220(c).

§ 361.105. Appointment of Formerly Sick or Absent Executor

(a) This section applies only to a person named as executor in a will who was sick or absent from the state when the testator died or the will was proved and, as a result, could not:

(1) present the will for probate before the 31st day after the date of the testator’s death; or
(2) accept and qualify as executor before the 21st day after the date the will is probated.

(b) A person to whom this section applies may accept and qualify as executor before the 61st day after the date the person returns to the state or recovers from illness if proof is presented to the court that the person was ill or absent.

(c) If a person accepts and qualifies as executor under Subsection (b) and letters testamentary or of administration have been issued to another person, the court shall revoke the other person’s letters.

Derived from Probate Code § 220(d).

§ 361.106. Appointment when Will Discovered After Grant of Administration

If, after letters of administration have been issued, it is discovered that the decedent left a lawful will, the court shall revoke the letters of administration and issue proper letters to any persons entitled to the letters.

Derived from Probate Code § 220(e).

Subchapter D. Procedures After Death, Resignation, or Removal of Personal Representative
§ 361.151. Payment to Estate While Office of Personal Representative Is Vacant

(a) A debtor, obligor, or payor may pay or tender money or another thing of value falling due to an estate while the office of personal representative of the estate is vacant to the court clerk for the credit of the estate.

(b) Payment or tender under Subsection (a) discharges the debtor, obligor, or payor of the obligation for all purposes to the extent and purpose of the payment or tender.

(c) If the court clerk accepts payment or tender under this section, the court clerk shall issue a receipt for the payment or tender.

Derived from Probate Code § 220(g).

§ 361.152. Further Administration with or Without Notice or Will Annexed

(a) If an estate is unrepresented as a result of the death, removal, or resignation of the estate’s personal representative, and on application by a qualified person interested in the estate, the court shall grant further administration of the estate if necessary, and with the will annexed if there is a will.

(b) An appointment under Subsection (a) shall be made on notice and after a hearing, as in the case of an original appointment, except that, if the court finds that the immediate appointment of a successor representative is necessary, the court may appoint the successor on application but without citation or notice.

Derived from Probate Code § 223.

§ 361.153. Rights, Powers, and Duties of Successor Representative

(a) If a personal representative of an estate not administered succeeds another personal representative, the successor representative has all rights, powers, and duties of the predecessor, other than those rights and powers conferred on the predecessor by will that are different from those conferred by this title on personal representatives generally. Subject to that exception, the successor representative shall administer the estate as if the successor’s administration were a continuation of the former administration.

(b) A successor representative shall account for all the estate property that came into the predecessor’s possession, and is entitled to any order or remedy that the court has the power to give to enforce the delivery of the estate property and the liability of the predecessor’s sureties for any portion of the estate property that is not delivered. The successor is not required to account for any portion of the estate property that the successor failed to recover after due diligence.

(c) In addition to the powers granted under Subsections (a) and (b), a successor representative may:

(1) make himself or herself, and may be made, a party to a suit prosecuted by or against the successor’s predecessors;
(2) settle with the predecessor, and receive and give a receipt for any portion of the estate property that remains in the predecessor’s possession; or
(3) commence a suit on the bond or bonds of the predecessor, in the successor’s own name and capacity, for all the estate property that:
   (A) came into the predecessor’s possession; and
   (B) has not been accounted for by the predecessor.

Derived from Probate Code §§ 224, 225.

§ 361.154. Successor Executor Also Succeeds to Prior Rights and Duties

An executor who accepts appointment and qualifies after letters of administration have been granted on the estate shall, in the manner prescribed by Section 361.153, succeed to the previous administrator, and shall administer the estate as if the executor’s administration were a continuation of the former administration, subject to any legal directions of the testator with respect to the estate that are contained in the will.

Derived from Probate Code § 226.

§ 361.155. Successor Representative to Return Inventory, Appraisement, and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims

(a) An appointee who has qualified to succeed a former personal representative, before the 91st day after the date the personal representative qualifies, shall make and return to the court an inventory, appraisement, and list of claims of the estate or, if the appointee is an independent executor, shall make and return to the court an inventory, appraisement, and list of claims, in the manner provided for an original appointee, and shall also return additional inventories, appraisements, and lists of claims and additional affidavits in the manner provided for an original appointee.

(b) Except as otherwise provided by this subsection, an appointee who files an inventory, appraisement, and list of claims under Subsection (a) shall set out in the inventory the appointee’s appraisement of the fair market value of each item in the inventory on the date of the appointee’s qualification. If an inventory, appraisement, and list of claims has not been filed by any former personal representative, the appointee shall set out the inventory as provided by Sections 309.051 and 309.052.

(c) On the application of any person interested in the estate, the court shall, in an order appointing a successor...
representative of an estate, appoint appraisers as in an
original appointment.
Derived from Probate Code § 227.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014. Amended by Acts 2011, 82nd Leg., ch. 823, §§ 2.51
& 2.52, eff. Jan. 1, 2014. Subsecs. (b) amended and (c)
added by Acts 2013, 83rd Leg., ch. 1136, § 46, eff. Jan. 1,
2014.

Chapter 362. Closing Administration of
Estate

Subchapter A. Settling and Closing
Estate

§ 362.001. Settling and Closing Administration of
Estate
The administration of an estate shall be settled and
closed when:
(1) all the debts known to exist against the estate
have been paid, or have been paid to the extent
permitted by the assets in the personal
representative’s possession; and
(2) no further need for administration exists.
Derived from Probate Code § 404.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 362.002. Compelling Settlement of Estate
A person interested in the administration of an estate
for which letters testamentary or of administration have
been granted may proceed, after any period of time, to
compel settlement of the estate if it does not appear from
the record that the administration of the estate has been
closed.
Derived from Probate Code § 92.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 362.003. Verified Account Required
The personal representative of an estate shall present
to the court the representative’s verified account for final
settlement when the administration of the estate is to be
settled and closed.
Derived from Probate Code § 405.
Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,
2014.

§ 362.004. Contents of Account
(a) Except as provided by Subsection (b), it is
sufficient for an account for final settlement to:
(1) refer to the inventory without describing each
item of property in detail; and
(2) refer to and adopt any proceeding had in the
administration concerning a sale, renting, leasing for
mineral development, or any other transaction on
behalf of the estate, including an exhibit, account, or
voucher previously filed and approved, without
restating the particular items thereof.
(b) An account for final settlement must be
accompanied by proper vouchers supporting each item
included in the account for which the personal
representative has not already accounted and, either by
reference to any proceeding described by Subsection (a)
or by a statement of the facts, must show:
(1) the estate property that has come into the
representative’s possession and the disposition of that
property;
(2) the debts that have been paid;
(3) any debts and expenses still owing by the
estate;
(4) any estate property still in the representative’s
possession;

Subchapter B. Failure of Personal
Representative to Act

§ 362.051. Failure to Present Account
§ 362.052. Liability for Failure to Deliver Estate
Property

Chapter 362. Closing Administration of
Estate

Statutes in Context
Chapter 362
Chapter 362 explains how a dependent
administration is closed.

Subchapter A. Settling and Closing Estate

Electronic copy available at: https://ssrn.com/abstract=4537861
(5) the persons entitled to receive that estate and, for each of those persons:

(A) the person’s relationship to the decedent;

(B) the person’s residence, if known; and

(C) whether the person is an adult or a minor and, if the person is a minor, the name of each of the minor’s guardians, if any;

(6) any advancement or payment made by the representative from that estate to any person entitled to receive part of that estate;

(7) the tax returns due that have been filed and the taxes due and owing that have been paid, including:

(A) a complete account of the amount of taxes;

(B) the date the taxes were paid; and

(C) the governmental entity to which the taxes were paid;

(8) if on the filing of the account a tax return due to be filed or any taxes due to be paid are delinquent, the reasons for, and include a description of, the delinquency; and

(9) that the representative has paid all required bond premiums.

Derived from Probate Code § 405.


§ 362.005. Citation and Notice on Presentation of Account

(a) On the presentation of an account for final settlement by a temporary or permanent personal representative, the county clerk shall issue citation to the persons and in the manner provided by Subsection (b).

(b) Citation issued under Subsection (a) must:

(1) contain:

(A) a statement that an account for final settlement has been presented;

(B) the time and place the court will consider the account; and

(C) a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and

(2) be given to each heir or distributee of the decedent by a qualified delivery method [certified mail, return receipt requested] unless the court by written order directs another method of service to be given.

(c) The personal representative shall also provide to each person entitled to citation under Subsection (b) a copy of the account for final settlement either by:

(1) a qualified delivery method [certified mail, return receipt requested]; or

(2) electronic delivery, including facsimile or e-mail.

(d) The court by written order shall require additional notice if the court considers the additional notice necessary.

(e) The court may allow the waiver of citation of an account for final settlement in a proceeding concerning a decedent’s estate.

(f) The personal representative shall file an affidavit sworn to by the personal representative or a certificate signed by the personal representative’s attorney stating:

(1) that the citation was given as required by this section;

(2) the name of each person to whom the citation was given, if the person’s name is not shown on the proof of delivery;

(3) the name of each person executing a waiver of citation; and

(4) that each person entitled to citation was provided a copy of the account for final settlement, indicating the method of delivery for each person.

Derived from Probate Code § 407.


§ 362.006. Examination of and Hearing on Account

(a) On the court’s satisfaction that citation has been properly served on all persons interested in the estate, the court shall examine the account for final settlement and the accompanying vouchers.

(b) After hearing all exceptions or objections to the account for final settlement and accompanying vouchers and the evidence in support of or against the account, the court shall audit and settle the account and, if necessary, restate the account.

Derived from Probate Code § 408(a).


§ 362.007. Delivery of Certain Property to Guardian

The court may permit a resident personal representative who has possession of any of a ward’s estate to deliver the estate to a qualified and acting guardian of the ward.

Derived from Probate Code § 405A.


§ 362.008. Certain Debts Excluded from Settlement Computation

In the settlement of any of the accounts of the personal representative, all debts due the estate that the court is satisfied could not have been collected by due diligence and that have not been collected shall be excluded from the computation.

Derived from Probate Code § 412.


§ 362.009. Money Due to Estate Pending Final Discharge

Money or another thing of value that becomes due to
the estate while an account for final settlement is pending may be paid, delivered, or tendered to the personal representative until the order of final discharge of the representative is entered in the judge’s probate docket. The representative shall issue a receipt for the money or other thing of value to the obligor or payor. On issuance of the receipt, the obligor or payor is discharged of the obligation for all purposes.

Derived from Probate Code § 409.


Statutes in Context

§ 362.011  Partition and Distribution of Estate; Deposit In Court’s Registry

(a) If, on final settlement of an estate, any of the estate remains in the personal representative’s possession, the court shall order that a partition and distribution be made among the persons entitled to receive that part of the estate.

(b) The court shall order the personal representative to convert all the assets to cash and then deposit the cash. This procedure, however, could cause irreparable loss to family heirlooms, farms, ranches, homes, and businesses.

Derived from Probate Code § 408(d).


§ 362.051. Failure to Present Account

(a) The court, on the court’s own motion or on the written complaint of anyone interested in a decedent’s estate that has been administered, shall have the personal representative who is charged with the duty of presenting an account for final settlement cited to appear and present the account within the time specified in the citation if the representative failed or neglected to present the account at the proper time.

(b) On or after the fourth anniversary of the date the court clerk last issues letters testamentary or of administration for a decedent’s estate, the court may close the estate without an account for final settlement and without appointing a successor personal representative if:

(1) the whereabouts of the personal representative and heirs of the decedent are unknown; and

(2) a complaint has not been filed by anyone interested in the decedent’s estate.

Derived from Probate Code § 406.

§ 362.052. Liability for Failure to Deliver Estate Property

(a) On the final settlement of an estate, if the personal representative neglects on demand to deliver a portion of the estate or any money in the representative’s possession ordered to be delivered to a person entitled to that property, the person may file with the court clerk a written complaint alleging:

1. the fact of the neglect;
2. the date of the person's demand; and
3. other relevant facts.

(b) On the filing of a complaint under Subsection (a), the court clerk shall issue a citation to be served personally on the personal representative. The citation must:

1. apprise the representative of the complaint; and
2. cite the representative to appear before the court and answer, if the representative desires, at a time designated in the citation.

(c) If at the hearing the court finds that the citation was properly served and returned, and that the personal representative is guilty of the neglect charged, the court shall enter an order to that effect.

(d) A personal representative found guilty under Subsection (c) is liable to the person who filed the complaint under Subsection (a) for damages at the rate of 10 percent of the amount of the money or the appraised value of the portion of the estate neglectfully withheld, per month, for each month or fraction of a month that the money or portion of the estate is or has been neglectfully withheld after the date of demand. Damages under this subsection may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 414.


SUBTITLE I. INDEPENDENT ADMINISTRATION

Chapter 401. Creation

§ 401.001. Expression of Testator's Intent in Will

(a) Any person capable of making a will may provide in the person’s will that no other action shall be had in the probate court in relation to the settlement of the person’s estate than the probating and recording of the will and the return of any required inventory, appraisement, and list of claims of the person’s estate.

(b) Any person capable of making a will may provide in the person’s will that no independent administration of his or her estate may be allowed. In such case the person's estate, if administered, shall be administered and settled under the direction of the probate court as other estates are required to be settled and not as an independent administration.

Derived from Probate Code § 145(b), (o).


§ 401.002. Creation in Testate Estate by Agreement

(a) Except as provided in Section 401.001(b), if a decedent’s will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent’s will, or in one or another
more separate documents consenting to the application for probate of the decedent’s will, the executor named in the will to serve as independent executor and request that no other action shall be had in the probate court in relation to the settlement of the decedent’s estate other than the probating and recording of the decedent’s will and the return of an inventory, appraisement, and list of claims of the decedent’s estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Except as provided in Section 401.001(b), in situations where no executor is named in the decedent’s will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent’s estate the executor’s inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application forprobate of the decedent’s will, or in one or more separate documents consenting to the application forprobate of the decedent’s will, a qualified person, firm, or corporation to serve as independent administrator and request that no other action shall be had in the probate court in relation to the settlement of the decedent’s estate other than the probating and recording of the decedent’s will and the return of an inventory, appraisement, and list of claims of the decedent’s estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

Derived from Probate Code § 145(c), (d).


§ 401.003. Creation in Intestate Estate by Agreement

(a) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent’s estate, or in one or more documents consenting to the application for administration of the decedent’s estate, a qualified person, firm, or corporation to serve as independent administrator and request that no other action shall be had in the probate court in relation to the settlement of the decedent’s estate other than the probating and recording of the decedent’s will and the return of an inventory, appraisement, and list of claims of the decedent’s estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

(b) The court may not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter 202, to constitute all of the decedent’s heirs.

Derived from Probate Code § 145(e), (g).


§ 401.004. Means of Establishing Distributee Consent

(a) This section applies to the creation of an independent administration under Section 401.002 or 401.003.

(b) All distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(c) If a distributee is an incapacitated person, the guardian of the person of the distributee may consent to the creation of an independent administration on behalf of the distributee. If the probate court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated by the distributees as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 401.002 or 401.003, the court may not enter an order granting independent administration of the estate. If a distributee who is an incapacitated person has no guardian of the person, the probate court may appoint a guardian ad litem to act on behalf of the incapacitated person if the court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor’s behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(d) If a trust is created in the decedent’s will or if the decedent’s will devises property to a trustee as described by Section 254.001, the person or class of persons entitled to receive property outright from the trust on the decedent’s death and those first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent’s death, shall, for the purposes of Section 401.002, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for independent administration on behalf of the trusts without the consent of the distributees or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust. If a trust beneficiary who is considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may file the application or give the
consent, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

(e) If a life estate is created either in the decedent’s will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent’s death, shall, for the purposes of Section 401.002 or 401.003, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(f) If a decedent’s will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent’s will, then, for the purposes of determining who shall be the distributee under Section 401.002 and under Subsection (c), it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent’s will survived the decedent by the prescribed period.

(g) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Section 401.002 or 401.003 and under Subsection (c), it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of the distributee’s interest in the decedent’s estate.

(h) If a distributee of a decedent’s estate dies and if by virtue of the distributee’s death the distributee’s share of the decedent’s estate becomes payable to the distributee’s estate, the deceased distributee’s personal representative may consent to the independent administration of the distributee’s estate under Section 401.002 or 401.003 and under Subsection (c).

Derived from Probate Code § 145A.

§ 401.005. Bond; Waiver of Bond

(a) If an independent administration of a decedent’s estate is created under Section 401.002 or 401.003, then, unless the probate court waives bond on application for waiver, the independent executor shall be required to enter into bond payable to and to be approved by the judge and the judge’s successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(a-1) If a decedent’s will does not contain language directing that no bond or security be required of a person named as executor, unless the court finds that it would not be in the best interest of the estate, the court may waive the requirement of a bond if all of the distributees of the decedent agree to the waiver of bond in:

(1) the application for probate of the decedent’s will; or

(2) one or more separate documents consenting to the application for probate of the decedent’s will.

(b) This section does not repeal any other section of this title.

Derived from Probate Code § 145(p).


§ 401.006. Granting Power of Sale by Agreement

An independent representative may sell estate property without a court order under the same circumstances that a dependent representative could sell estate property with a court order. In intestate administrations or where a will fails expressly to grant a power of sale, the court may grant an independent administrator a power of sale over real property in the order of appointment if the beneficiaries who would receive the real property consent to the power. Protections for third parties who rely on the apparent authority of an independent representative where a power of sale is granted in the will or the representative provides an affidavit that the sale is necessary under the circumstances described in § 356.251.

§ 401.007. No Liability of Judge

Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor under Section 401.002 or 401.003.

Electronic copy available at: https://ssrn.com/abstract=4537861
Section 351.354 does not apply to the appointment of an independent executor under Section 401.002 or 401.003. Derived from Probate Code § 145(q).


§ 401.008. Person Declining to Serve
A person who declines to serve or resigns as independent executor of a decedent’s estate may be appointed an executor or administrator of the estate if the estate will be administered and settled under the direction of the court.
Derived from Probate Code § 145(r).

Chapter 402. Administration

Subchapter A. General Provisions
§ 402.001. General Scope and Exercise of Powers
§ 402.002. Independent Executors May Act Without Court Approval
§ 402.003. Digital Assets

Subchapter B. Power of Sale
§ 402.051. Definition of Independent Executor
§ 402.052. Power of Sale of Estate Property Generally
§ 402.053. Protection of Person Purchasing Estate Property
§ 402.054. No Limitation on Other Action

Chapter 402. Administration

Subchapter A. General Provisions
§ 402.001. General Scope and Exercise of Powers
When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.
Derived from Probate Code § 145(h).

§ 402.002. Independent Executors May Act Without Court Approval
Unless this title specifically provides otherwise, any action that a personal representative subject to court supervision may take with or without a court order may be taken by an independent executor without a court order. The other provisions of this subtitle are designed to provide additional guidance regarding independent administrations in specified situations and are not designed to limit by omission or otherwise the application of the general principles set forth in this chapter.
Derived from Probate Code § 145B.

§ 402.003. Digital Assets
The court, either at the time the independent executor of an estate is appointed or at any time before the administration of the estate is closed, may enter an order that:

1. directs disclosure of the content of electronic communications of the decedent to the independent executor as provided by Section 2001.101 and that contains any court finding described by Section 2001.101(b)(3);
2. with respect to a catalog of electronic communications sent or received by the decedent and other digital assets of the decedent, other than the content of an electronic communication, contains any court finding described by Section 2001.102(b)(4); or
3. directs under Section 2001.231 a custodian to comply with a request to disclose digital assets under Chapter 2001.
New.
Added by Acts 2019, 86th Leg., ch. 1141, § 41, eff. Sept. 1, 2019.

Subchapter B. Power of Sale

§ 402.051. Definition of Independent Executor
In this subchapter, “independent executor” does not include an independent administrator.
Derived from Probate Code § 145C(a).

§ 402.052. Power of Sale of Estate Property Generally
Unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. The procedural requirements applicable to a supervised administration do not apply.
Derived from Probate Code § 145C(b).
§ 402.053. Protection of Person Purchasing Estate Property

(a) A person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(1) a power of sale is granted to the independent executor in the will;
(2) a power of sale is granted under Section 401.006 in the court order appointing the independent executor or independent administrator; or
(3) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 356.251(1).

(b) As to acts undertaken in good faith reliance, the affidavit described by Subsection (a)(3) is conclusive proof, as between a purchaser of property from the estate, and the personal representative of an estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(c) This subchapter does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale.

Derived from Probate Code § 145C(c).


§ 402.054. No Limitation on Other Action

This subchapter does not limit the authority of an independent executor to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this title, including the authority to enter into a lease and to borrow money.

Derived from Probate Code § 145C(d).


Chapter 403. Exemptions and Allowances; Claims

Subchapter A. Exemptions and Allowances

§ 403.001. Setting Aside Exempt Property and Allowances

The independent executor shall set aside and deliver to those entitled exempt property and allowances for support, and allowances in lieu of exempt property, as prescribed in this title, to the same extent and result as if the independent executor’s actions had been accomplished in, and under orders of, the court.

Derived from Probate Code § 146(a)(4).


Subchapter B. Claims

§ 403.051. Duty of Independent Executor

(a) An independent executor, in the administration of an estate, independently of and without application to, or any action in or by the court:

(1) shall give the notices required under Sections 308.051 and 308.053;
(2) may give the notice to an unsecured creditor with a claim for money permitted under Section 308.054 and bar a claim under Section 403.055; and
(3) may approve or reject any claim, or take no action on a claim, and shall classify and pay claims approved or established by suit against the estate in the same order of priority, classification, and proration prescribed in this title.

(b) To be effective, the notice prescribed under Subsection (a)(2) must include, in addition to the other information required by Section 308.054, a statement that a claim may be effectively presented by only one of the methods prescribed by this subchapter.

Derived from Probate Code § 146(b).


§ 403.052. Secured Claims for Money

Within six months after the date letters are granted or within four months after the date notice is received under Section 308.053, whichever is later, a creditor with a claim for money secured by property of the estate must give notice to the independent executor of the creditor’s election to have the creditor’s claim approved as a matured secured claim to be paid in due course of administration. In addition to giving the notice within this period, a creditor whose claim is secured by real property shall record a notice of the creditor’s election under this section in the deed records of the county in which the real property is located. If no election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period, the claim shall be a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien, and the claim may not be asserted against other assets of the estate. The independent executor may pay the claim before maturity if it is determined to be in the best interest of the estate to do so.

Derived from Probate Code § 146(b).


§ 403.053. Matured Secured Claims

(a) A claim approved as a matured secured claim under Section 403.052 remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher classification under Section 355.102. However, the secured creditor:

(1) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(2) during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(b) Subsection (a) may not be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. Except with respect to real property, any third party acting in good faith may obtain good title with respect to an estate asset acquired through a secured creditor’s extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(c) If a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Subchapter G, Chapter 255, the independent executor shall collect from the devisees the amount of the debt and pay that amount to the claimant or shall sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Sections 355.153(b), (c), (d), and (e) applicable to court supervised administrations.

Derived from Probate Code § 146(b-1).


§ 403.054. Preferred Debt and Lien Claims

During an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Section 403.052 is free to exercise any judicial or extrajudicial collection rights, including the right to foreclosure and execution; provided, however, that the creditor does not have the right to conduct a nonjudicial foreclosure sale within six months after letters are granted.

Derived from Probate Code § 146(b-2).


§ 403.055. Certain Unsecured Claims; Barring of Claims

An unsecured creditor who has a claim for money against an estate and who receives a notice under Section 308.054 shall give to the independent executor notice of the nature and amount of the claim before the 121st day after the date the notice is received or the claim is barred.

Derived from Probate Code § 146(b-3).


§ 403.056. Notices Required by Creditors

(a) Notice to the independent executor required by Sections 403.052 and 403.055 must be contained in:

(1) a written instrument that complies with Section 355.004 and is sent by a qualified delivery method, hand delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor’s attorney.
§ 403.057. Statute of Limitations
Except as otherwise provided by Section 16.062, Civil Practice and Remedies Code, the running of the statute of limitations shall be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent’s death, or a suit brought by the creditor against the independent executor. In particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim.


§ 403.058. Other Claim Procedures Generally Do Not Apply
Except as otherwise provided by this subchapter, the procedural provisions of this title governing creditor claims in supervised administrations do not apply to independent administrations. By way of example, but not as a limitation:

(1) Sections 355.064 and 355.066 do not apply to independent administrations, and consequently a creditor’s claim may not be barred solely because the creditor failed to file a suit not later than the 90th day after the date an independent executor rejected the claim or with respect to a claim for which the independent executor takes no action; and
(2) Sections 355.156, 355.157, 355.158, 355.159, and 355.160 do not apply to independent administrations.


§ 403.0585. Liability of Independent Executor for Payment of a Claim
An independent executor, in the administration of an estate, may pay at any time and without personal liability a claim for money against the estate to the extent approved and classified by the independent executor if:
(1) the claim is not barred by limitations; and
(2) at the time of payment, the independent executor reasonably believes the estate will have sufficient assets to pay all claims against the estate.


§ 403.059. Enforcement of Claims by Suit
Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the possession of the independent executor that is subject to the debt. The independent executor shall not be required to plead to any suit brought against the executor for money until after six months after the date that an independent administration was created and the order appointing the executor was entered by the probate court.


§ 403.060. Requiring Heirs to Give Bond
When an independent administration is created and the order appointing an independent executor is entered by the probate court, any person having a debt against the estate may, by written complaint filed in the probate court in which the order was entered, cause all distributees of the estate, heirs at law, and other persons entitled to any portion of the estate under the will, if any, to be cited by personal service to appear before the court and execute a bond for an amount equal to the amount of the creditor’s claim or the full value of the estate, as shown by the inventory and list of claims, whichever is smaller. The bond must be payable to the judge, and the judge’s successors, and be approved by the judge, and conditioned that all obligors shall pay all debts that shall be established against the estate in the manner provided by law. On the return of the citation served, unless a person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute the bond to the satisfaction of the probate court, the estate shall be administered and settled under the direction of the probate court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on the bond and shall be entitled to judgment on the bond for the amount of their debt, or they may have their action against those in possession of the estate.


Chapter 404. Accountings, Successors, and Other Remedies

§ 404.001. Accounting
§ 404.002. Requiring Independent Executor to Give Bond

§ 404.003. Removal of Independent Executor Without Notice

§ 404.0036. Removal Order

§ 404.0037. Costs and Expenses Related to Removal of Independent Executor

§ 404.004. Powers of an Administrator Who Succeeds an Independent Executor

§ 404.005. Court-Appointed Successor Independent Administrator

Chapter 404. Accountings, Successors, and Other Remedies

Statutes in Context

Chapter 404

The independent executor does not need to render annual accountings. Instead, accountings are required only under the circumstances described in the Code, that is, (1) if an interested person demands an accounting 15 months or more after the date independent executor received letters (§ 404.001), or (2) an interested person petitions the court for an accounting and distribution after 2 years from the date of the creation of the independent administration (see § 405.001).

§ 404.001. Accounting

(a) At any time after the expiration of 15 months after the date that the court clerk first issues letters testamentary or of administration to any personal representative of an estate, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

(1) the property belonging to the estate that has come into the executor’s possession as executor;

(2) the disposition that has been made of the property described by Subdivision (1);

(3) the debts that have been paid;

(4) the debts and expenses, if any, still owing by the estate;

(5) the property of the estate, if any, still remaining in the executor’s possession;

(6) other facts as may be necessary to a full and definite understanding of the exact condition of the estate; and

(7) the facts, if any, that show why the administration should not be closed and the estate distributed.

(a-1) Any other interested person shall, on demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Should the independent executor not comply with a demand for an accounting authorized by this section within 60 days after receipt of the demand, the person making the demand may compel compliance by an action in the probate court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it considers proper under the circumstances.

(c) After an initial accounting has been given by an independent executor, any person interested in an estate may demand subsequent periodic accountings at intervals of not less than 12 months, and such subsequent demands may be enforced in the same manner as an initial demand.

(d) The right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate may have against the independent executor of the estate.

Derived from Probate Code § 149A.


§ 404.002. Requiring Independent Executor to Give Bond

When it has been provided by will, regularly probated, that an independent executor appointed by the will shall not be required to give bond for the management of the estate devised by the will, or the independent executor is not required to give bond because bond has been waived by court order as authorized under Section 401.005, then the independent executor may be required to give bond, on proper proceedings had for that purpose as in the case of personal representatives in a supervised administration, if it be made to appear at any time that the independent executor is mismanaging the property, or has betrayed or is about to betray the independent executor’s trust, or has in some other way become disqualified.

Derived from Probate Code § 149.


§ 404.003. Removal of Independent Executor Without Notice

The probate court, on the court’s own motion or on the motion of any interested person, and without notice, may remove an independent executor appointed under this subtitle when:

(1) the independent executor cannot be served with notice or other processes because:

(A) the independent executor’s whereabouts are unknown;

(B) the independent executor is eluding service; or

(C) the independent executor is a nonresident of this state without a designated resident agent;

or

(2) sufficient grounds appear to support a belief that the independent executor has misapplied or embezzled, or is about to misapply or embezzle, all or
part of the property committed to the independent executor’s care.

New.


§ 404.0035. Removal of Independent Executor With Notice

(a) The probate court, on the court’s own motion, may remove an independent executor appointed under this subtitle after providing 30 days’ written notice of the court’s intention to the independent executor, requiring answering at a time and place set in the notice, by a qualified delivery method [certified mail, return receipt requested], to the independent executor’s last known address and to the last known address of the independent executor’s attorney of record, if the independent executor:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return, before the 91st day after the date the independent executor qualifies, either an inventory of the estate property and a list of claims that have come to the independent executor’s knowledge or an affidavit in lieu of the inventory, appraisement, and list of claims, unless that deadline is extended by court order; or

(3) fails to timely file the affidavit or certificate required by Section 308.004.

(b) The probate court, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place set in the notice, may remove an independent executor when:

(1) the independent executor fails to make an accounting which is required by law to be made;

(2) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor’s duties;

(3) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor’s fiduciary duties; or

(4) the independent executor becomes incapable of properly performing the independent executor’s fiduciary duties due to a material conflict of interest.

Derived from Probate Code § 149C.


§ 404.0037. Costs and Expenses Related to Removal of Independent Executor

(a) An independent executor who defends an action for the independent executor’s removal in good faith, whether successful or not, shall be allowed out of the estate the independent executor’s necessary expenses and disbursements, including reasonable attorney’s fees, in the removal proceedings.

(b) Costs and expenses incurred by the party seeking removal that are incident to removal of an independent executor appointed without bond, including reasonable attorney’s fees and expenses, may be paid out of the estate.

Derived from Probate Code § 149C.

Added by Acts 2013, 83rd Leg., ch. 1136, § 56, eff. Jan. 1, 2014.

§ 404.004. Powers of an Administrator Who Succeeds an Independent Executor

(a) Whenever a person has died, or shall die, testate, owning property in this state, and the person’s will has been or shall be admitted to probate by the court, and the probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of that will, and the will grants to the independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, the independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator with the will annexed is appointed by the probate court, and an administrator’s bond is filed and approved by the court, then in all such cases, the court may, in addition to the powers conferred on the administrator under other provisions of the laws of this state, authorize, direct, and empower the administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent provisions of this section.

(b) The court, on application, citation, and hearing, may, by its order, authorize, direct, and empower the administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its

Electronic copy available at: https://ssrn.com/abstract=4537861
said order, direct, and to renew and extend same from
time to time, as the court, on application and order, shall
provide; and, if authorized by the court’s order, to secure
such loans, obligations, and debts, by pledge or mortgage
on property or assets of the estate, real, personal, or
mixed, on such terms and conditions, and for such
duration of time, as the court shall consider to be in the
best interests of the estate, and by its order shall prescribe;
and all such loans, obligations, debts, pledges, and
mortgages shall be valid and enforceable against the estate
and against the administrator in the administrator’s
official capacity.

(c) The court may order and authorize the
administrator to have and exercise the powers and
official capacity.

(d) The court, in addition, may, on application,
citation, and hearing, order, authorize, and empower the
administrator to assume, exercise, and discharge, under
the orders and directions of the court, made from time to
time, all or such part of the rights, powers, and authorities
vested in and delegated to, or possessed by, the
administrator to assume, exercise, and discharge, under
the orders of the court, for the administrator to borrow
money and incur obligations and indebtedness in order to
protect and preserve the estate.

(e) The granting to the administrator by the court of
some, or all, of the powers and authorities set forth in this
section shall be on application filed by the administrator
with the county clerk, setting forth such facts as, in the
judgment of the administrator, require the granting of the
power or authority requested.

(f) On the filing of an application under Subsection
citation, and hearing, order, authorize, and empower the
administrator to assume, exercise, and discharge, under
the orders and directions of the court, made from time to
time, all or such part of the rights, powers, and authorities
vested in and delegated to, or possessed by, the
administrator to assume, exercise, and discharge, under
the orders of the court, for the administrator to borrow
money and incur obligations and indebtedness in order to
protect and preserve the estate.

(g) The court shall hear the application and evidence on
the application, on or after the return day named in
the citation, and, if satisfied a necessity exists and that it
would be in the best interests of the estate to grant the
application in whole or in part, the court shall so order;
otherwise, the court shall refuse the application.

§ 404.005. Court-Appointed Successor Independent
Administrator

(a) If the will of a person who dies testate names an
independent executor who, having qualified, fails for any
reason to continue to serve, or is removed for cause by the
court, and the will does not name a successor independent
executor or if each successor executor named in the will
fails for any reason to qualify as executor or indicates by
affidavit filed with the application for an order continuing
independent administration the successor executor’s
inability or unwillingness to serve as successor
independent executor, all of the distributaries of the
decedent as of the filing of the application for an order
continuing independent administration may apply to the
probate court for the appointment of a qualified person,
firm, or corporation to serve as successor independent
administrator. If the probate court finds that continued
administration of the estate is necessary, the court shall
enter an order continuing independent administration and
appointing the person, firm, or corporation designated in
the application as successor independent administrator,
unless the probate court finds that it would not be in the
best interest of the estate to do so. The successor
independent administrator shall serve with all of the
powers and privileges granted to the successor’s
predecessor independent executor.

(b) Except as otherwise provided by this subsection, if
a distributee described in this section is an incapacitated
person, the guardian of the person of the distributee may
sign the application on behalf of the distributee. If the
probate court finds that either the continuing of
independent administration or the appointment of the
person, firm, or corporation designated in the application
as successor independent administrator would not be in
the best interest of the incapacitated person, then,
notwithstanding Subsection (a), the court may not enter an
order continuing independent administration of the estate.
If the distributee is an incapacitated person and has no
guardian of the person, the court may appoint a guardian
ad litem to make application on behalf of the
incapacitated person if the probate court considers such an
appointment necessary to protect the interest of that
distributee. If a distributee described in this section is a
minor and has no guardian of the person, a natural
guardian of the minor may sign the application for the
order continuing independent administration on the
minor’s behalf unless a conflict of interest exists between
the minor and the natural guardian.

(c) Except as otherwise provided by this subsection, if
a trust is created in the decedent’s will or if the decedent’s
will devises property to a trustee as described by Section
254.001, the person or class of persons entitled to receive
property outright from the trust on the decedent’s death
and those first eligible to receive the income from the
trust, determined as if the trust were to be in existence on
the date of the filing of the application for an order

256
continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust. If a person considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may apply for the order continuing independent administration or sign the application on the incapacitated person’s behalf if the trustee or cotrustee is not the person proposed to serve as the independent administrator.

(d) If a life estate is created either in the decedent’s will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, then the life tenant or life tenants, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) If a decedent’s will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent’s will, for the purposes of determining who shall be the distributee under this section, it shall be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent’s estate survived the decedent for the prescribed period.

(f) In the case of all decedents, for the purposes of determining who shall be the distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent’s estate is filed shall subsequently disclaim any portion of the distributee’s interest in the decedent’s estate.

(g) If a distributee of a decedent’s estate should die, and if by virtue of the distributee’s death the distributee’s share of the decedent’s estate shall become payable to the distributee’s estate, then the deceased distributee’s personal representative may sign the application for an order continuing independent administration of the decedent’s estate under this section.

(h) If a successor independent administrator is appointed under this section, then, unless the probate court shall waive bond on application for waiver, the successor independent administrator shall be required to enter into bond payable to and to be approved by the judge and the judge’s successors in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(i) Absent proof of fraud or collusion on the part of a judge, the judge may not be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent administrator under this section. Section 351.354 does not apply to an appointment of a successor independent administrator under this section.

Derived from Probate Code § 154A.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Subsecs. (b) and (c) amended by Acts 2013, 83rd Leg., ch. 1136, § 57, eff. Jan. 1, 2014. Heading and subsecs. (a), (b), (c), (h), and (i) amended by Acts 2021, 87th Leg., ch. 576, § 9 & 10, eff. Sept. 1, 2021 and by Acts 2021, 87th Leg., ch. 521, § 9 & 10, eff. Sept. 1, 2021.

Chapter 405. Closing and Distributions

§ 405.001. Accounting and Distribution
§ 405.0015. Distributions Generally
§ 405.002. Receipts and Releases for Distributions by Independent Executor
§ 405.003. Judicial Discharge of Independent Executor
§ 405.004. Closing Independent Administration by Closing Report or Notice of Closing Estate
§ 405.005. Closing Report
§ 405.006. Notice of Closing Estate
§ 405.007. Effect of Filing Closing Report or Notice of Closing Estate
§ 405.008. Partition and Distribution or Sale of Property Incapable of Division
§ 405.009. Closing Independent Administration on Application by Distributee
§ 405.010. Issuance of Letters
§ 405.011. Rights and Remedies Cumulative
§ 405.012. Closing Procedures Not Required

Chapter 405. Closing and Distributions

Statutes in Context
Chapter 405

The independent executor does not need to render annual accountings. Instead, accountings are required only under the circumstances described in the Code, that is, (1) if an interested person demands an accounting 15 months or more after the date the independent executor received letters (§ 404.001), or (2) an interested person petitions the court for an accounting and distribution after 2 years from the date of the creation of the independent administration (see § 405.001).
§ 405.001. Accounting and Distribution
(a) In addition to or in lieu of the right to an accounting provided by Section 404.001, at any time after the expiration of two years after the date the court clerk first issues letters testamentary or of administration to any personal representative of an estate, a person interested in the estate then subject to independent administration may petition the court for an accounting and distribution. The court may order an accounting to be made with the court by the independent executor at such time as the court considers proper. The accounting shall include the information that the court considers necessary to determine whether any part of the estate should be distributed.
(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court shall order its distribution by the independent executor to the distributees entitled to the property. If the court finds there is a continued necessity for administration of the estate, the court shall order the distribution of any portion of the estate that the court finds should not be subject to further administration by the independent executor. If any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, the court may:
(1) order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates; or
(2) order distribution of that portion of the estate incapable of distribution without prior partition or sale in undivided interests.
(c) If all the property in the estate is ordered distributed by the court and the estate is fully administered, the court may also order the independent executor to file a final account with the court and may enter an order closing the administration and terminating the power of the independent executor to act as executor.
Derived from Probate Code § 149B.
Added by Acts 2017, 85th Leg., ch. 844, § 33, eff. Sept. 1, 2017.

§ 405.002. Receipts and Releases for Distributions by Independent Executor
(a) An independent executor may not be required to deliver tangible or intangible personal property to a distributee unless the independent executor receives, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee.
(b) An independent executor may not require a waiver or release from the distributee as a condition of delivery of property to a distributee.
Derived from Probate Code § 151(e).

§ 405.003. Judicial Discharge of Independent Executor
(a) After an estate has been administered and if there is no further need for an independent administration of the estate, the independent executor of the estate may file an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.

Case law has indicated that the statutory closing methods are not exclusive. Final distribution of the estate after creditors are paid may result in the closing of the estate by operation of law. In re Estate of Teinert, 251 S.W.3d 66 (Tex. App.—Waco 2008, pet. denied).

§ 405.004. Accounting for Distributions
(a) An independent executor may not be required to account for resulting differences in valuation.

§ 405.005. Distributions Generally
Unless the will, if any, or a court order provides otherwise, an independent executor may, in distributing property not specifically devised that the independent executor is authorized to sell:
(1) make distributions in divided or undivided interests;
(2) allocate particular assets in proportionate or disproportionate shares;
(3) value the estate property for the purposes of acting under Subdivision (1) or (2); and
(4) adjust the distribution, division, or termination for resulting differences in valuation.

Now.
Added by Acts 2017, 85th Leg., ch. 844, § 33, eff. Sept. 1, 2017.

Statutes in Context
§§ 405.003–405.009
There is no requirement that an independent administration be closed. § 405.012. The Code, however, provides three methods for closing the administration. (1) Section 405.004 permits the independent executor to file a closing report affidavit or a notice of closing affidavit. The court takes no action on the affidavit unless an interested party files an objection within thirty days. (2) Section 405.009 permits an heir or beneficiary to petition the court for an order closing the estate. (3) Section 405.003 permits the court to discharge an independent executor so that the executor will have a court order indicating that he or she is not liable for any matters relating to the past administration of the estate which have been fully and fairly disclosed.

Electronic copy available at: https://ssrn.com/abstract=4537861
necessary to adjudicate the independent executor’s request for a discharge of liability. The court may audit, settle, or approve a final account filed under this subsection.

(d) On or before filing an action under this section, the independent executor must distribute to the distributees of the estate any of the remaining assets or property of the estate that remains in the independent executor’s possession after all of the estate’s debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending court approval of the final account. The court may review the amount of assets on reserve and may order the independent executor to make further distributions under this section.

(e) Except as ordered by the court, the independent executor is entitled to pay from the estate legal fees, expenses, or other costs incurred in relation to a proceeding for judicial discharge filed under this section. The independent executor shall be personally liable to refund any amount of such fees, expenses, or other costs not approved by the court as a proper charge against the estate.

Derived from Probate Code §§ 149D, 149E, 149F.


§ 405.004. Closing Independent Administration by Closing Report or Notice of Closing Estate

When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the independent executor’s possession will permit, when there is no pending litigation, and when the independent executor has distributed to the distributees entitled to the estate all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a closing report or a notice of closing of the estate.

Derived from Probate Code § 151(a).


§ 405.005. Closing Report

An independent executor may file a closing report verified by affidavit that:

(1) shows:

(A) the property of the estate that came into the independent executor’s possession;
(B) the debts that have been paid;
(C) the debts, if any, still owing by the estate;
(D) the property of the estate, if any, remaining on hand after payment of debts;
(E) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

Derived from Probate Code § 151(a-1).


§ 405.006. Notice of Closing Estate

(a) Instead of filing a closing report under Section 405.005, an independent executor may file a notice of closing estate verified by affidavit that states:

(1) that all debts known to exist against the estate have been paid or have been paid to the extent permitted by the assets in the independent executor’s possession;
(2) that all remaining assets of the estate, if any, have been distributed; and
(3) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(b) Before filing the notice, the independent executor shall provide to each distributee of the estate a copy of the notice of closing estate. The notice of closing estate filed by the independent executor must include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

Derived from Probate Code § 151(b).


§ 405.007. Effect of Filing Closing Report or Notice of Closing Estate

(a) The independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. If an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

(b) The closing of an independent administration by filing of a closing report or notice of closing estate terminates the power and authority of the independent executor, but does not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice.

(c) When a closing report or notice of closing estate has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of the distributees with respect to the properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in the report or notice.

(d) If the independent executor is required to give bond, the independent executor’s filing of the closing report and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the
future acts of the principal. The filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

c) An independent executor’s closing report or notice of closing estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Derived from Probate Code § 151(c), (d).


§ 405.008. Partition and Distribution or Sale of Property Incapable of Division

If the will does not distribute the entire estate of the testator or provide a means for partition of the estate, or if no will was probated, the independent executor may, but may not be required to, petition the probate court for either a partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both. The estate or portion of the estate shall either be partitioned and distributed or sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in supervised estates.

Derived from Probate Code § 150.


§ 405.009. Closing Independent Administration on Application by Distributee

(a) At any time after an estate has been fully administered and there is no further need for an independent administration of the estate, any distributee may file an application to close the administration; and, after citation on the independent executor, and on hearing, the court may enter an order:

1. requiring the independent executor to file a closing report meeting the requirements of Section 405.005;
2. closing the administration;
3. terminating the power of the independent executor to act as independent executor; and
4. releasing the sureties on any bond the independent executor was required to give from all liability for the future acts of the principal.

(b) The order of the court closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Derived from Probate Code § 152.


§ 405.010. Issuance of Letters

At any time before the authority of an independent executor has been terminated in the manner set forth in this subtitle, the clerk shall issue such number of letters testamentary as the independent executor shall request.

Derived from Probate Code § 149G.


§ 405.011. Rights and Remedies Cumulative

The rights and remedies conferred by this chapter are cumulative of other rights and remedies to which a person interested in the estate may be entitled under law.

Derived from Probate Code § 149G.


§ 405.012. Closing Procedures Not Required

An independent executor is not required to close the independent administration of an estate under Section 405.003 or Sections 405.004 through 405.007.

New.


SUBTITLE J. ADDITIONAL MATTERS RELATING TO THE ADMINISTRATION OF CERTAIN ESTATES

Chapter 451. Order of No Administration

§ 451.001. Application for Family Allowance and Order of No Administration

§ 451.002. Hearing and Order

§ 451.003. Effect of Order

§ 451.004. Proceeding to Revoke Order

Chapter 451. Order of No Administration

260
Chapter 451 provides a procedure for a court to dispense with administration if (1) the decedent is survived by a spouse, minor child, or adult incapacitated child, and (2) the value of the estate, not including homestead and exempt property, does not exceed the family allowance. Administration is not necessary because there would be no property for the decedent's creditors or will beneficiaries to reach.

§ 451.001. Application for Family Allowance and Order of No Administration

(a) If the value of the entire assets of an estate, excluding homestead and exempt property, does not exceed the amount to which the surviving spouse, minor children, and adult incapacitated children of the decedent are entitled as a family allowance, an application may be filed by or on behalf of the surviving spouse, minor children, or adult incapacitated children requesting a court to make a family allowance and to enter an order that no administration of the decedent's estate is necessary.

(b) The application may be filed:

(1) in any court in which venue is proper for administration; or

(2) if an application for the appointment of a personal representative has been filed but not yet granted, in the court in which the application is filed.

(c) The application must:

(1) state the names of the heirs or devisees;

(2) list, to the extent known, estate creditors together with the amounts of the claims; and

(3) describe all property belonging to the estate, together with:

(A) the estimated value of the property according to the best knowledge and information of the applicant; and

(B) the liens and encumbrances on the property.

(d) The application must also include a prayer that the court make a family allowance and that, if the family allowance exhausts the entire assets of the estate, excluding homestead and exempt property, the entire assets of the estate be set aside to the surviving spouse, minor children, and adult incapacitated children, as with other family allowances provided for by Subchapter C, Chapter 353.

§ 451.002. Hearing and Order

(a) On the filing of an application under Section 451.001, the court may hear the application:

(1) promptly without notice; or

(2) at a time and with notice as required by the court.

(b) On the hearing of the application, if the court finds that the facts contained in the application are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall:

(1) make a family allowance; and

(2) if the entire assets of the estate, excluding homestead and exempt property, are exhausted by the family allowance made under Subdivision (1):

(A) assign to the surviving spouse, minor children, and adult incapacitated children the entire estate in the same manner and with the same effect as provided in Subchapter C, Chapter 353, for the making of a family allowance to the surviving spouse, minor children, and adult incapacitated children; and

(B) order that there shall be no administration of the estate.

Derived from Probate Code § 140.


§ 451.003. Effect of Order

(a) An order of no administration issued under Section 451.002(b) constitutes sufficient legal authority to each person who owes money, has custody of property, or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, belonging to the estate, and to each person purchasing from or otherwise dealing with the estate, for payment or transfer without administration to the persons described in the order as entitled to receive the estate.

(b) The persons described in the order are entitled to enforce by suit their right to payment or transfer described by this section.

Derived from Probate Code § 141.


§ 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.
§ 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.

§ 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.

§ 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.
§ 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.

§ 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.

§ 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 a qualified delivery method [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.
(c) The appointee shall file with the court proof of service of the notice required under Subsection (a) in the manner provided by Section 51.103(b)(3).

§ 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.

§ 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.

Subchapter B. Temporary Administration Pending Contest of a Will or Administration

Statutes in Context
Chapter 452, Subchapter B

Chapter 452, Subchapter B, provides for the creation of a temporary administration pending the contest of a will if no executor has yet to be appointed.

§ 452.051. Appointment of Temporary Administrator
(a) If a contest related to probating a will or granting letters testamentary or 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.

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 452.052. Additional Powers Regarding Claims

(a) A court that grants temporary administration pending a will contest or a contest on an application for letters of administration may, at any time while the contest is pending, give the temporary administrator all the powers of a permanent administrator regarding claims against the estate.

(b) If the court gives the temporary administrator powers described by Subsection (a), the court and the temporary administrator shall act in the same manner as in permanent administration in matters such as:
   (1) approving or disapproving claims;
   (2) paying claims; and
   (3) selling property to pay claims.

(c) The court shall require a temporary administrator given powers described by Subsection (a) to give bond in the full amount required of a permanent administrator.

(d) This section is cumulative and does not affect the court’s right to order a temporary administrator to perform any action described by this section in other cases if the action is necessary or expedient to preserve the estate pending the contest’s final determination.

Derived from Probate Code § 132(b).


Subchapter C. Powers and Duties of Temporary Administrator

§ 452.101. Limited Powers of Temporary Administrator

(a) A temporary administrator may exercise only the rights and powers:
   (1) specifically expressed in the court’s order appointing the temporary administrator; or
   (2) expressed in the court’s subsequent orders.

(b) An act performed by a temporary administrator is void unless expressly authorized by the court’s orders.

Derived from Probate Code § 133.


§ 452.102. Additional Bond for Extension of Rights and Powers

A court that extends the rights and powers of a temporary administrator in an order subsequent to the order appointing the temporary administrator may require additional bond commensurate with the extension.

Derived from Probate Code § 133.


Subchapter D. Expiration and Closing of Temporary Administration

§ 452.151. Accounting

At the expiration of a temporary appointment, the temporary administrator shall file with the court clerk:
   (1) a sworn list of all estate property that has come into the temporary administrator’s possession;
   (2) a return of all sales made by the temporary administrator; and
   (3) a full exhibit and account of all the temporary administrator’s acts as temporary administrator.

Derived from Probate Code § 134.


§ 452.152. Closing Temporary Administration

(a) The court shall act on the list, return, exhibit, and account filed under Section 452.151.

(b) When letters of temporary administration expire or become ineffective for any cause, the court immediately shall enter an order requiring the temporary administrator to promptly deliver the estate remaining in the temporary administrator’s possession to the person legally entitled to possession of the estate.

(c) On proof of delivery under Subsection (b), the temporary administrator shall be discharged and the sureties on the temporary administrator’s bond shall be released as to any future liability.

Derived from Probate Code § 135.


Chapter 453. Administration of Community Property

§ 453.001. Effect of Chapter

§ 453.002. Administration of Community Property Not Necessary

§ 453.003. General Powers of Surviving Spouse if No Administration is Pending

§ 453.004. Collection of Unpaid Wages if No Administration is Pending

§ 453.005. Remarriage of Surviving Spouse

§ 453.006. Account of Debts and Disposition of Community Property

§ 453.007. Delivery of Community Estate on Final Partition

§ 453.008. Liability of Surviving Spouse for Loss

§ 453.009. Distribution of Powers Between Personal Representative and Surviving Spouse During Administration

Chapter 453. Administration of Community Property

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 453.001. Effect of Chapter

This chapter does not prohibit the administration of community property under other provisions of this title relating to the administration of an estate.

Derived from Probate Code § 155.


Statutes in Context

§ 453.002

Section 453.002 provides that no administration is necessary for community property if the spouse died intestate and all community property passes to the surviving spouse (that is, either the deceased spouse had no surviving descendants or all of the deceased spouse’s descendants were also descendants of the surviving spouse).

§ 453.002. Administration of Community Property Not Necessary

If a spouse dies intestate and the community property passes to the surviving spouse, no administration of the community property is necessary.

Derived from Probate Code § 155.


Statutes in Context

§§ 453.003–453.004

Sections 453.003–453.004 permit the surviving spouse to administer the community property in both testate and intestate situations provided no personal representative has yet been appointed. This procedure is often called an unqualified community administration.

§ 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, for which a portion of community property is liable for payment;

(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, for which a portion of community property is liable for payment; and

(C) wind up community affairs.

(b) This section does not affect the disposition of the deceased spouse’s property.

Derived from Probate Code §§ 160(a), (c).


§ 453.004. Collection of Unpaid Wages if No Administration Is Pending

(a) If a person who owes money to the community estate for current wages at the time of a deceased spouse’s death is provided an affidavit stating that the affiant is the surviving spouse and that no one has qualified as executor or administrator of the deceased spouse’s estate, the person who pays or delivers to the affiant the deceased spouse’s final paycheck for the wages, including any unpaid sick pay or vacation pay, is released from liability to the same extent as if the payment or delivery is made to the deceased spouse’s personal representative. The person is not required to inquire into the truth of the affidavit.

(b) An affiant to whom the payment or delivery is made under Subsection (a) is answerable to a person having a prior right and is accountable to a personal representative who is appointed. The affiant is liable for any damage or loss to a person that arises from a payment or delivery made in reliance on the affidavit.

(c) This section does not affect the disposition of the deceased spouse’s property.

Derived from Probate Code §§ 160(b), (c).


§ 453.005. Remarriage of Surviving Spouse

The remarriage of a surviving spouse does not terminate the surviving spouse’s powers as a surviving partner.

Derived from Probate Code § 176.


§ 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 Section 101.052 [Sections 101.052(a) and (b)].

Derived from Probate Code §§ 156, 168.

§ 453.007. Delivery of Community Estate on Final Partition

On final partition of the community estate, the surviving spouse shall deliver to the deceased spouse’s heirs or devisees their interest in the estate, and the increase in and profits of the interest, after deducting from the interest:

(1) the proportion of the [community] debts chargeable to the interest;
(2) unavoidable losses;
(3) necessary and reasonable expenses; and
(4) a reasonable commission for the management of the interest.

Derived from Probate Code § 168.

§ 453.008. Liability of Surviving Spouse for Loss

A surviving spouse is not liable for a loss sustained by the community estate unless the surviving spouse is guilty of gross negligence or bad faith.

Derived from Probate Code § 168.

§ 453.009. Distribution of Powers Between Personal Representative and Surviving Spouse During Administration

(a) A qualified personal representative of a deceased spouse’s estate may administer:

(1) the separate property of the deceased spouse;
(2) the community property that was by law under the management of the deceased spouse during the marriage; and
(3) the community property that was by law under the joint control of the spouses during the marriage.

(b) During administration of a deceased spouse’s estate, 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 as if there is no administration pending on the deceased spouse’s estate.

(c) The surviving spouse, by written instrument filed with the clerk, may waive any right to exercise powers as community survivor. If the surviving spouse files a waiver under this subsection, the deceased spouse’s personal representative may administer the entire community estate.

Derived from Probate Code § 177.

Chapter 454. Administration of Estate of Person Presumed Dead

Subchapter A. Estates of Persons Presumed Dead

§ 454.001. Applicability; Determination of Death
§ 454.002. Grant of Letters on Proof of Death
§ 454.003. Citation and Search
§ 454.004. Distribution of Estate

Subchapter B. Persons Presumed Dead but Subsequently Proved Living

§ 454.051. Restoration of Estate
§ 454.052. Liability of Personal Representative and Others Acting Under Court Order; Bonds Not Voided

Chapter 454. Administration of Estate of Person Presumed Dead

Subchapter A. Estates of Persons Presumed Dead

§ 454.001. Applicability; Determination of Death

(a) This subchapter applies in a proceeding to probate a person’s will or administer a person’s estate if there is no direct evidence that the person is dead.

(b) The court has jurisdiction to determine the fact, time, and place of the person’s death.

Derived from Probate Code § 72(a).

§ 454.002. Grant of Letters on Proof of Death

On application for the grant of letters testamentary or of administration for the estate of a person presumed to be dead, the court shall grant the letters if the death of the person is proved by circumstantial evidence to the court’s satisfaction.

Derived from Probate Code § 72(a).

§ 454.003. Citation and Search

(a) If the fact of a person’s death must be proved by circumstantial evidence under Section 454.002, at the request of any interested person, the court may order that a citation be issued to the person presumed dead and that the citation be served on the person by publication and posting and by additional methods as directed by the order.

(b) After letters testamentary or of administration are issued, the court may also direct:

(1) the personal representative to search for the person presumed dead by notifying law enforcement
agencies and public welfare agencies in appropriate locations that the person has disappeared; and
(2) the applicant to engage the services of an investigative agency to search for the person presumed dead.
(c) The expense of a search or notice under this section shall be taxed to the estate as a cost and paid out of the estate property.
Derived from Probate Code § 72(b).

§ 454.004. Distribution of Estate

The personal representative of the estate of a person presumed dead may not distribute the estate to the persons entitled to the estate until the third anniversary of the date the court granted the letters under Section 454.002.
Derived from Probate Code § 72(a).

Subchapter B. Persons Presumed Dead but Subsequently Proved Living

§ 454.051. Restoration of Estate

(a) Except as provided by Subsection (b), a person who was proved by circumstantial evidence to be dead under Section 454.002 and who, in a subsequent action, is proved by direct evidence to have been living at any time after the date the court granted the letters under that section, is entitled to restoration of the person’s estate or the residue of the person’s estate, including the rents and profits from the estate.
(b) For estate property sold by the personal representative of the estate, a distributee, or a distributee’s successors or assignees to a bona fide purchaser for value, the right of a person to restoration is limited to the proceeds of the sale or the residue of the sold property with any increase of the proceeds or the residue.
Derived from Probate Code § 72(a).

§ 454.052. Liability of Personal Representative and Others Acting Under Court Order; Bonds Not Voided

(a) Anyone, including a personal representative, who delivered to another the estate or any part of the estate of a person who was proved by circumstantial evidence to be dead under Section 454.002 and who, in a subsequent action, is proved by direct evidence to have been living at any time after the date the court granted the letters testamentary or of administration under that section is not liable for any part of the estate delivered in accordance with the court’s order.
(b) Subject to Subsection (c), the bond of a personal representative of the estate of a person described by Subsection (a) is not void in any event.
(c) A surety is not liable for any act of the personal representative that was done in compliance with or approved by the court’s order.
Derived from Probate Code § 72(a).

CHAPTER 455. PUBLIC PROBATE ADMINISTRATOR

§ 455.001. Definition
§ 455.002. Bond of Public Probate Administrator
§ 455.003. Funding of Public Probate Administrator’s Office
§ 455.004. Powers and Duties
§ 455.005. Informing Public Probate Administrator
§ 455.006. Public Probate Administrator’s Initiation of Administration
§ 455.007. Access to Information
§ 455.008. Small Estates
§ 455.010. Grant of Administration
§ 455.011. Withdrawal of Public Probate Administrator and Appointment of Successor
§ 455.012. Deposit of Funds in Court Registry

Statutes in Context
Chapter 455

The judge of a statutory probate court (with commissioner court approval) may appoint a “public probate administrator” for all of the statutory probate courts in the county. If there are multiple probate courts, the judges are to designate one among them to appoint and administer the public probate administrator office. This PPA (which may be a charitable organization or other suitable entity) is responsible for taking control of decedents’ estates when no one has been appointed as the personal representative, there are no known or suitable relatives, and the estate may be subject to loss or misappropriation. The PPA is also responsible for determining whether there are heirs or a will and making burial arrangements. There are also expedited provisions for small estates ($455.009), and extremely expedited provisions for extremely small estates ($455.008).

§ 455.001. Definition

In this chapter, “public probate administrator” means the public probate administrator appointed under Section 25.00251, Government Code.

New.
§ 455.002. Bond Of Public Probate Administrator

(a) The public probate administrator must execute an official bond of at least $100,000 conditioned as required by law and payable to the statutory probate court judge who appointed the public probate administrator.

(b) In addition to the official bond of office, at any time, for good cause, the statutory probate court judge who appointed the public probate administrator may require the administrator to post an additional corporate surety bond for individual estates. The additional bonds shall bear the written approval of the judge requesting the additional bond.

(c) The county may choose to self-insure the public probate administrator for the minimum bond amount required by this section.

New.


§ 455.003. Funding of Public Probate Administrator’s Office

A public probate administrator is entitled to commissions under Subchapter A, Chapter 352, to be paid into the county treasury. The public probate administrator’s office, including salaries, is funded, in part, by the commissions.

New.


§ 455.004. Powers and Duties

(a) On receipt of notice of a decedent for whose estate a personal representative has not been appointed and who has no known or suitable next of kin, the public probate administrator shall take prompt possession or control of the decedent’s property located in the county that:

(1) is considered by the public probate administrator to be subject to loss, injury, waste, or misappropriation; or

(2) the court orders into the possession and control of the public probate administrator after notice to the public probate administrator.

(b) The public probate administrator is responsible for determining if the decedent has any heirs or a will and, if necessary, shall make burial arrangements with the appropriate county facility in charge of indigent burial if there are no known personal representatives.

(c) If the public probate administrator determines the decedent executed a will, the administrator shall file the will with the county clerk.

(d) The public probate administrator has all of the powers and duties of an administrator under this title.

(e) The public probate administrator may dispose of any unclaimed property by public auction or private sale, or donation to a charity, if appropriate.

(f) The statutory probate court judge or commissioners court may request accountings in addition to accountings otherwise required by this title.

New.


§ 455.005. Informing Public Probate Administrator

(a) If a public officer or employee knows of a decedent without known or suitable next of kin or knows of property of a decedent that is subject to loss, injury, waste, or misappropriation, the officer or employee may inform the public probate administrator of that fact.

(b) If a person dies in a hospital, mental health facility, or board and care facility without known or suitable next of kin, the person in charge of the hospital or facility may give immediate notice of that fact to the public probate administrator of the county in which the hospital or facility is located.

(c) A funeral director in control of a decedent’s remains may notify the public probate administrator if:

(1) none of the persons listed in Section 711.002, Health and Safety Code, can be found after a reasonable inquiry or contacted by reasonable means; or

(2) any of the persons listed in Section 711.002, Health and Safety Code, refuses to act.

New.


§ 455.006. Public Probate Administrator’s Initiation of Administration

(a) The public probate administrator shall investigate a decedent’s estate and circumstances to determine if the opening of an administration is necessary if the public probate administrator has reasonable cause to believe that the decedent found in the county or believed to be domiciled in the county in which the administrator is appointed does not have a personal representative appointed for the decedent’s estate.

(b) The public probate administrator shall secure a decedent’s estate or resolve any other circumstances related to a decedent, if, after the investigation, the public probate administrator determines that:

(1) the decedent has an estate that may be subject to loss, injury, waste, or misappropriation; or

(2) there are other circumstances relating to the decedent that require action by the public probate administrator.

(c) To establish reasonable cause under Subsection (a), the public probate administrator may require an information letter about the decedent that contains the following:

(1) the name, address, date of birth, and county of residence of the decedent;

(2) a description of the relationship between the interested person and the decedent;
The decedent’s estate.

a safe deposit box open under Subsection (c) shall be paid

a description of any known property of the
decedent, including the estimated value of the

(6) a statement of whether the property is subject
to loss, injury, waste, or misappropriation.

(2) costs and expenses incurred in drilling or forcing
the purpose of inspection and removal of its contents.

dedent referenced in the order, without charge, for

(2) grant the public probate administrator access
to a safe deposit box rented in the name of the
decedent referenced in the order, without charge, for

(2) the date and place of death of the decedent;
and
(3) the name, address, and relationship of each
known heir or devisee of the decedent.

(1) must be maintained or recorded as provided by
Section 205.005; and
(2) has the effect described by Section 205.007.

3). Personal Property

(a) If gross assets of an estate do not exceed the
maximum amount authorized for a small estate affidavit
under Section 205.001, the public probate administrator
can act without issuance of letters testamentary or of
administration if the court approves a statement of
administration stating:

(1) the name and domicile of the decedent;
(3) a statement of the suspected cause of death of the
decedent;
(4) the names and telephone numbers of any
known friends or relatives of the decedent;
(5) a description of any known property of the
decedent, including the estimated value of the
property; and
(6) a statement of whether the property is subject
to loss, injury, waste, or misappropriation.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1,
2014.

§ 455.007. Access to Information

(a) A public probate administrator who has made an
investigation under Section 455.006 may present to the
statutory probate court judge a statement of the known
facts relating to a decedent with a request for permission
to take possession or control of property of the decedent
and further investigate the matter.

(b) On presentation of a statement under Subsection
(a), a statutory probate court judge may issue an order
authorizing the public probate administrator to take
possession or control of property under this chapter. A
public probate administrator may record the order in any
county in which property subject to the order is located.

(c) On presentation of an order issued under this
section, a financial institution, governmental or private
agency, retirement fund administrator, insurance
company, licensed securities dealer, or any other person
shall perform the following without requiring a death
certificate or letters of administration and without
inquiring into the truth of the order:

(1) provide the public probate administrator
complete information concerning property held in
the name of the decedent referenced in the order, without
charge, including the names and addresses of any
beneficiaries and any evidence of a beneficiary
designation; and
(2) grant the public probate administrator access
to a safe deposit box rented in the name of the
decedent referenced in the order, without charge, for
the purpose of inspection and removal of its contents.

(d) Costs and expenses incurred in drilling or forcing
a safe deposit box open under Subsection (c) shall be paid
by the decedent’s estate.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1,
2014.

§ 455.008. Small Estates

(a) If gross assets of an estate do not exceed 20
percent of the maximum amount authorized for a small
estate affidavit under Section 205.001, the public probate
administrator may act without issuance of letters
testamentary or of administration if the court approves a
statement of administration stating:

(1) the name and domicile of the decedent;
(2) the date and place of death of the decedent;
and
(3) the name, address, and relationship of each
known heir or devisee of the decedent.

(b) On approval of the statement of administration,
the public probate administrator may:

(1) take possession of, collect, manage, and secure
the personal property of the decedent;
(2) sell the decedent’s personal property at private
or public sale or auction, without a court order;
(3) distribute personal property to the estate’s
personal representative if one is appointed after the
statement of administration is filed;
(4) distribute personal property to a distributee of
the decedent who presents an affidavit complying
with Chapter 205;
(5) sell or abandon perishable property of the
decedent if necessary to preserve the estate;
(6) make necessary funeral arrangements for the
decedent and pay reasonable funeral charges with
estate assets;
(7) distribute to a minor heir or devisee for whom
a guardian has not been appointed the share of an
intestate estate or a devise to which the heir or devisee
is entitled; and
(8) distribute allowances and exempt property as
provided by this title.

(c) On the distribution of property and internment
of the decedent under this section, the public probate
administrator shall file with the clerk an affidavit, to be
approved by the court, detailing:

(1) the property collected;
(2) the property’s distribution;
(3) the cost of internment; and
(4) the place of internment.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1,
2014. Subsec. (a) amended by Acts 2019, 86th Leg., ch.
1141, § 42, eff. Sept. 1, 2019.

§ 455.009. Small Estate Affidavit

(a) If gross assets of an estate do not exceed the
maximum amount authorized for a small estate affidavit
under Section 205.001, the public probate administrator
may file an affidavit that complies with Chapter 205 for
approval by the statutory probate court judge.

(a-1) The public probate administrator may file the
affidavit as provided by Subsection (a) after the public
probate administrator has acted under Section 455.007 or
455.008.

(b) If the statutory probate court judge approves the
affidavit, the affidavit:

(1) must be maintained or recorded as provided by
Section 205.005; and
(2) has the effect described by Section 205.007.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1,
1141, § 43, eff. Sept. 1, 2019.
§ 455.010  Grant of Administration
(a) A public probate administrator shall file an application for letters of administration or administration with will annexed as provided by this title:
   (1) if gross assets of an estate exceed the maximum amount authorized for a small estate affidavit under Section 205.001;
   (2) if the property of the decedent cannot be disposed of using other methods detailed in this chapter; or
   (3) at the discretion of the public probate administrator or on order of the statutory probate court judge.
(b) After issuance of letters of administration, the public probate administrator is considered a personal representative under this title and has all of the powers and duties of a personal representative under this title.

§ 455.011.  Withdrawal of Public Probate Administrator and Appointment of Successor
(a) If a public probate administrator has taken any action under Section 455.008, 455.009, or 455.010 and a qualified person more entitled to serve as a personal representative under Section 304.001 comes forward or a will of a decedent is found naming an executor, the public probate administrator may surrender the administration of the estate and the assets of the estate to the person once the person has qualified under this title.
(b) Before surrendering the administration of the estate, the public probate administrator must file a verified affidavit that shows fully and in detail:
   (1) the condition of the estate;
   (2) the charges and claims that have been approved or established by suit or that have been rejected and may be established later;
   (3) the amount of each claim that has been rejected and may be established later;
   (4) the property of the estate in the administrator’s possession; and
   (5) any other facts that are necessary in determining the condition of the estate.
(c) The court may require any other filing from the public probate administrator that the court considers appropriate to fully show the condition of the estate before surrendering the estate under this section.

§ 455.012.  Deposit of Funds in Court Registry
The public probate administrator shall deposit all funds coming into the custody of the administrator in the court registry, except as provided by Section 455.003. Funds deposited must be disbursed at the direction of the public probate administrator and according to an order issued by the statutory probate court judge who appointed the administrator.

Chapter 456.  Disbursement and Closing of Lawyer Trust or Escrow Accounts
§ 456.001.  Definition
§ 456.002.  Authority to Designate Lawyer on Certain Trust or Escrow Accounts
§ 456.003.  Duty of Eligible Institutions
§ 456.004.  Liability of Eligible Institutions
§ 456.005.  Rules

Statutes in Context
Chapter 456
The 2015 Legislature added Chapter 456 to address what happens to trust and escrow accounts when a lawyer dies. The personal representative now has the authority to enter into a written contract with a Texas lawyer who may then be a signer on the account, determine the proper recipients of the funds in the account, distribute the funds to the proper recipients, and then close the account. If the personal representative is a Texas attorney, the person may take these steps him- or herself. After receiving the appropriate instructions regarding the distribution of the funds, the financial institution must comply within seven business days. Any person aggrieved by the financial institution’s failure to distribute funds timely may bring a private cause of action against the institution.

Chapter 456.  Disbursement and Closing of Lawyer Trust or Escrow Accounts
§ 456.001.  Definition
In this chapter, “eligible institution” means a financial institution or investment company in which a lawyer has established an escrow or trust account for purposes of holding client funds or the funds of third persons that are in the lawyer’s possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct.

§ 456.002.  Authority to Designate Lawyer on Certain Trust or Escrow Accounts
(a) When administering the estate of a deceased lawyer who established one or more trust or escrow
accounts for client funds or the funds of third persons that are in the lawyer’s possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct, the personal representative may hire through written agreement a lawyer authorized to practice in this state to:

(1) be the authorized signer on the trust or escrow account;
(2) determine who is entitled to receive the funds in the account;
(3) disburse the funds to the appropriate persons or to the decedent’s estate; and
(4) close the account.

(b) If the personal representative is a lawyer authorized to practice in this state, the personal representative may state that fact and disburse the trust or escrow account funds of a deceased lawyer in accordance with Subsection (a).

(c) An agreement under Subsection (a) or a statement under Subsection (b) must be made in writing, and a copy of the agreement or statement must be delivered to each eligible institution in which the trust or escrow accounts were established.

New.

Added by Acts 2015, 84th Leg., ch. 995, § 45, eff. Sept. 1, 2015.

§ 456.003. Duty of Eligible Institutions

Not later than the seventh business day after the date an eligible institution receives a copy of a written agreement under Section 456.002(a) or a statement from a personal representative under Section 456.002(b) and instructions from the lawyer identified in the agreement or statement, as applicable, regarding how to disburse the funds or close a trust or escrow account, the eligible institution shall disburse the funds and close the account in compliance with the instructions.

New.


§ 456.004. Liability of Eligible Institutions

An eligible institution is not liable for any act respecting an account taken in compliance with this chapter.

New.

Added by Acts 2015, 84th Leg., ch. 995, § 45, eff. Sept. 1, 2015.

§ 456.0045. Private Cause of Action

(a) If an eligible institution violates Section 456.003, a person aggrieved by the violation may bring an action against the eligible institution to:

(1) obtain declaratory or injunctive relief to enforce the section; and
(2) recover damages to the same extent the person would be entitled to damages had the eligible institution acted in the same manner with respect to the deceased lawyer before the lawyer’s death.

(b) A person who prevails in an action under this section may recover court costs and reasonable attorney’s fees.

New.


§ 456.005. Rules

The supreme court may adopt rules regarding the administration of funds in a trust or escrow account subject to this chapter.

New.

Added by Acts 2015, 84th Leg., ch. 995, § 45, eff. Sept. 1, 2015.

SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND FIDUCIARIES

Statutes in Context
Subtitle K

Subtitle K addresses the procedures for handling “foreign” (that is, non-Texas) wills.

1. Non-Texas Domiciliary With Non-Texas Will

a. Will Probated in Decedent’s Domiciliary Jurisdiction If the will is probated in the decedent’s domiciliary state or country, the will need not meet the requirements of Texas law to be effective to dispose of Texas property. The only grounds a contestant may use to attack the will in Texas are (1) the foreign proceedings are not properly authenticated, (2) the will was previously rejected by a Texas court, and (3) the will has been set aside by a court in the domiciliary jurisdiction.

b. Will Admitted in Non-Domiciliary Jurisdiction If the will has already been probated in a state or county which was not the decedent’s domicile at death, the will may be contested in Texas on any ground that would prevent a Texas will from gaining admission to probate.

c. Will Not Admitted Anywhere If the will has not been admitted in any other state or county, the proponent may bring an original probate in Texas. The will may be contested on any ground that would prevent a Texas will from gaining admission to probate.

d. Rejected in Domiciliary Jurisdiction A rejection of a foreign will by the decedent’s domiciliary jurisdiction is conclusive in Texas unless the ground for rejection in the domiciliary jurisdiction would not have been a valid ground.
for rejecting the will under Texas law. For example, assume that the testator died with an unwatched holographic will in a state which requires witnesses on all wills. Because Texas recognizes holographic wills without witnesses, this will could be probated in Texas even though it was rejected by the domiciliary state.

2. Texas Dotmality with Non-Texas Will

Section 251.053 contains the Texas savings statute which was enacted by the 2015 Legislature. The statute provides that a will is valid in Texas, even if it does not meet the Texas requirements, if it meets the requirements of the jurisdiction where (1) the will was executed, (2) the decedent was domiciled, or (3) the decedent had a place of residence.

Chapter 501. Ancillary Probate of Foreign Will

§ 501.001. Authority for Ancillary Probate of Foreign Will

The written will of a testator who was not domiciled in this state at the time of the testator’s death may be admitted to probate at any time in this state if:

(1) the will would affect any property in this state; and

(2) proof is presented that the will stands probated or otherwise established in any state of the United States or a foreign nation.

Derived from Probate Code § 95(a).


§ 501.002. Application for Ancillary Probate of Foreign Will

(a) An application for ancillary probate in this state of a foreign will admitted toprobate or otherwise established in the jurisdiction in which the testator was domiciled at the time of the testator’s death must include all information required for an application for probate of a domestic will; and

(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 include all information required for an application for probate of a domestic will; and

(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 toprobate 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 ofprobate records;

(2) include a certificate with the original signature of the judge or presiding magistrate of the court stating that the attestation is in proper form; and

(3) have the court seal affixed, if a court seal exists.

Derived from Probate Code §§ 95(b)(1), (2), (c).


§ 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 a qualified delivery method [registered or certified mail] on each devisee and heir identified in the application.

Derived from Probate Code §§ 95(b)(1), (2).


§ 501.004. Recording by Clerk

(a) If a foreign will submitted for ancillary probate in this state has been admitted toprobate or otherwise established in the jurisdiction in which the testator was domiciled at the time of the testator’s death, it is the ministerial duty of the court clerk to record the will and the evidence of the will’s probate or other establishment in the judge’s probate docket.

(b) If a foreign will submitted for ancillary probate in this state has been admitted toprobate or otherwise established in a jurisdiction other than the jurisdiction in which the testator was domiciled at the time of the testator’s death, and a contest against the ancillary probate is not filed as authorized by Chapter 504, the court clerk shall record the will and the evidence of the will’s probate or other establishment in the judge’s probate docket.

(c) A court order is not necessary for the recording of a foreign will in accordance with this section.

272
§ 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.

§ 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;
(2) the executor is not disqualified from serving in that capacity in this state; and
(3) if the will is admitted to ancillary probate in this state after the fourth anniversary of the testator’s death, the executor continues to serve in that capacity in the jurisdiction in which the will was previously admitted to probate or otherwise established.

(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.

§ 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.

§ 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.

Chapter 502. Original Probate of Foreign Will

§ 502.001. Original Probate of Foreign Will Authorized

§ 502.002. Proof of Foreign Will in Original Probate Proceeding

Chapter 502. Original Probate of Foreign Will

§ 502.001. Original Probate of Foreign Will Authorized

(a) This section applies only to a will of a testator who dies domiciled outside of this state that:

(1) on probate, may operate on any property in this state; and
(2) is valid under the laws of this state.

(b) A court may grant original probate of a foreign will described by Subsection (a) in the same manner as the court grants the probate of other wills under this title if the will:

(1) has not been rejected from probate or establishment in the jurisdiction in which the testator died domiciled; or
(2) has been rejected from probate or establishment in the jurisdiction in which the testator died domiciled solely for a cause that is not a ground for rejection of a will of a testator who died domiciled in this state.

(c) A court may delay passing on an application for probate of a foreign will pending the result of probate or
establishment, or of a contest of probate or establishment, in the jurisdiction in which the testator died domiciled.

Derived from Probate Code § 103.


§ 502.002. Proof of Foreign Will in Original Probate Proceeding

(a) A copy of the will of a testator who dies domiciled outside of this state, authenticated in the manner required by this title, is sufficient proof of the contents of the will to admit the will to probate in an original proceeding in this state if an objection to the will is not made.

(b) This section does not:
   (1) authorize the probate of a will that would not otherwise be admissible to probate; or
   (2) if an objection is made to a will, relieve the proponent from offering proof of the contents and legal sufficiency of the will as otherwise required.

(c) Subsection (b)(2) does not require the proponent to produce the original will unless ordered by the court.

Derived from Probate Code § 104.


Chapter 503. Recording of Foreign Testamentary Instrument

Subchapter A. Requirements for Recording Foreign Testamentary Instrument

§ 503.001. Authorization to Record Certain Foreign Testamentary Instruments in Deed Records

§ 503.002. Recording of Certain Foreign Testamentary Instruments in Language Other Than English

§ 503.003. Contest of Recorded Foreign Testamentary Instrument Permitted

Subchapter B. Effects of Recorded Foreign Testamentary Instrument

§ 503.051. Recorded Foreign Testamentary Instrument as Conveyance

§ 503.052. Recorded Foreign Testamentary Instrument as Notice of Title

Chapter 503. Recording of Foreign Testamentary Instrument

Subchapter A. Requirements for Recording Foreign Testamentary Instrument

§ 503.001. Authorization to Record Certain Foreign Testamentary Instruments in Deed Records

(a) A copy of a will or other testamentary instrument that conveys, or in any other manner disposes of, land in this state and that has been probated according to the laws of any state of the United States or a country other than the United States, along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation, seal, and certificate required by Section 501.002(c), may be filed and recorded in the deed records in any county in this state in which the land is located:
   (1) without further proof or authentication, subject to Section 503.003; and
   (2) in the same manner as a deed or conveyance is required to be recorded under the laws of this state.

(b) A copy of a will or other testamentary instrument described by Subsection (a), along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation and certificate required by Section 501.002(c), is:
   (1) prima facie evidence that the instrument has been admitted to probate according to the laws of the state or country in which it was allegedly admitted to probate; and
   (2) sufficient to authorize the instrument and the judgment, order, or decree to be recorded in the deed records in the proper county or counties in this state.

Derived from Probate Code §§ 96, 97.


§ 503.002. Recording of Certain Foreign Testamentary Instruments in Language Other Than English

(a) An authenticated copy of a will or other testamentary instrument described by Section 503.001(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), that is written in whole or in part in a language other than English may be filed for recording in the deed records in any county in this state in which the land conveyed or disposed of in the instrument is located if:
   (1) a correct English translation is recorded with the authenticated copies of the will or other testamentary instrument and judgment, order, or decree by which the instrument was admitted to probate; and
   (2) the accuracy of the translation is sworn to before an officer authorized to administer oaths.

(b) The recording of an authenticated copy of a will or other testamentary instrument and a copy of the judgment, order, or decree in the manner provided by Subsection (a) operates as constructive notice from the date of filing to all persons of the:
   (1) existence of the instrument; and
   (2) title or titles conferred by the instrument.

Derived from Probate Code § 95(c).
§ 503.003. Contest of Recorded Foreign Testamentary Instrument Permitted

The validity of a will or other testamentary instrument, a copy of which is filed and recorded as provided by Section 503.001, may be contested in the manner and to the extent provided by Subchapter A, Chapter 504.

Derived from Probate Code § 96.


Subchapter B. Effects of Recorded Foreign Testamentary Instrument

§ 503.051. Recorded Foreign Testamentary Instrument as Conveyance

A copy of a foreign will or other testamentary instrument described by Section 503.001 and the copy of the judgment, order, or decree by which the instrument was admitted to probate that are attested and proved as provided by that section and delivered to the county clerk of the proper county in this state to be recorded in the deed records:

(1) take effect and are valid as a deed of conveyance of all property in this state covered by the instrument; and
(2) have the same effect as a recorded deed or other conveyance of land beginning at the time the instrument is delivered to the clerk to be recorded.

Derived from Probate Code § 98.


§ 503.052. Recorded Foreign Testamentary Instrument as Notice of Title

A copy of a foreign will or other testamentary instrument described by Section 503.001 and the copy of the judgment, order, or decree by which the instrument was admitted to probate that is attested and proved as provided by that section and filed for recording in the deed records of the proper county in this state constitute notice to all persons of the:

(1) existence of the instrument; and
(2) title or titles conferred by the instrument.

Derived from Probate Code § 99.


Chapter 504. Contest of or Other Challenge to Foreign Testamentary Instrument

Subchapter A. Contest or Setting Aside Probate of Foreign Will in this State

§ 504.001. Grounds for Contesting Foreign Will Probated in Domiciliary Jurisdiction

§ 504.002. Grounds for Contesting Foreign Will Probated in Non-Domiciliary Jurisdiction

§ 504.003. Procedures and Time Limits for Contesting Foreign Will

§ 504.004. Probate of Foreign Will Set Aside for Lack of Service

Subchapter B. Contest or Final Rejection in Foreign Jurisdiction

§ 504.051. Notice of Will Contest in Foreign Jurisdiction

§ 504.052. Effect of Notice

§ 504.053. Effect of Rejection of Testamentary Instrument by Foreign Jurisdiction

Chapter 504. Contest of or Other Challenge to Foreign Testamentary Instrument

Subchapter A. Contest or Setting Aside Probate of Foreign Will in this State

§ 504.001. Grounds for Contesting Foreign Will Probated in Domiciliary Jurisdiction

(a) Subject to Subsection (b), an interested person may contest a foreign will that has been:

(1) admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of the testator’s death; and
(2) admitted to probate in this state or filed in the deed records of any county of this state.

(b) A will described by Subsection (a) may be contested only on the grounds that:

(1) the proceedings in the jurisdiction in which the testator was domiciled at the time of the testator’s death were not authenticated in the manner required for ancillary probate or recording in the deed records in this state;
(2) the will has been finally rejected for probate in this state in another proceeding; or
(3) the probate of the will has been set aside in the jurisdiction in which the testator was domiciled at the time of the testator’s death.

Derived from Probate Code § 100(a).


§ 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

Electronic copy available at: https://ssrn.com/abstract=4537861
may be contested on any grounds that are the basis for the contest of a domestic will.

Derived from Probate Code § 100(b).


§ 504.003. Procedures and Time Limits for Contesting Foreign Will

(a) The probate in this state of a foreign will probated or established in a jurisdiction other than the jurisdiction in which the testator was domiciled at the time of the testator’s death may be contested in the manner that would apply if the testator had been domiciled in this state at the time of the testator’s death.

(b) A foreign will admitted to ancillary probate in this state or filed in the deed records of any county of this state may be contested using the same procedures and within the same time limits applicable to the contest of a will admitted to original probate in this state.

Derived from Probate Code §§ 95(d)(2), 100(c).


§ 504.004. Probate of Foreign Will Set Aside for Lack of Service

(a) The probate in this state of a foreign will shall be set aside if:

(1) the will was probated in this state:

(A) in accordance with the procedure applicable to the probate of a will admitted to probate in the jurisdiction in which the testator was domiciled at the time of the testator’s death; and

(B) without the service of citation required for a will admitted to probate in another jurisdiction that was not the testator’s domicile at the time of the testator’s death; and

(2) it is proved that the foreign jurisdiction in which the will was probated was not the testator’s domicile at the time of the testator’s death.

(b) If otherwise entitled, a will the probate of which is set aside in accordance with Subsection (a) may be:

(1) reprobated in accordance with the procedure prescribed for the probate of a will admitted in a jurisdiction that was not the testator’s domicile at the time of the testator’s death; or

(2) admitted to original probate in this state in the proceeding in which the ancillary probate was set aside or in a subsequent proceeding.

Derived from Probate Code § 100(b).


Subchapter B. Contest or Final Rejection in Foreign Jurisdiction

§ 504.051. Notice of Will Contest in Foreign Jurisdiction

Verified notice that a proceeding to contest a will probated or established in a foreign jurisdiction has been commenced in that jurisdiction may be filed and recorded in the judge’s probate docket of the court in this state in which the foreign will was probated, or in the deed records of any county of this state in which the foreign will was recorded, within the time limits for the contest of a foreign will in this state.

Derived from Probate Code § 101.


§ 504.052. Effect of Notice

After a notice is filed and recorded under Section 504.051, the probate or recording in this state of the foreign will that is the subject of the notice has no effect until verified proof is filed and recorded that the foreign proceedings:

(1) have been terminated in favor of the will; or

(2) were never commenced.

Derived from Probate Code § 101.


§ 504.053. Effect of Rejection of Testamentary Instrument by Foreign Jurisdiction

(a) Except as provided by Subsection (b), final rejection of a will or other testamentary instrument from probate or establishment in a foreign jurisdiction in which the testator was domiciled at the time of the testator’s death is conclusive in this state.

(b) A will or other testamentary instrument that is finally rejected from probate or establishment in a foreign jurisdiction in which the testator was domiciled at the time of the testator’s death may be admitted to probate or continue to be effective in this state if the will or other instrument was rejected solely for a cause that is not a ground for rejection of a will of a testator who died domiciled in this state.

Derived from Probate Code § 102.


Chapter 505. Foreign Personal Representatives, Trustees, and Fiduciaries

Subchapter A. Foreign Corporate Fiduciary

§ 505.001. Definition

§ 505.002. Applicability of Other Law

§ 505.003. Authority of Foreign Corporate Fiduciary to Serve in Fiduciary Capacity

§ 505.004. Filing Requirements; Designation
§ 505.001. Definition

In this subchapter, “foreign corporate fiduciary” means a corporate fiduciary that does not have its main office or a branch office in this state.

Derived from Probate Code § 105A(a).


§ 505.002. Applicability of Other Law

(a) A foreign corporate fiduciary acting in a fiduciary capacity in this state in strict accordance with this subchapter:

(1) is not transacting business in this state within the meaning of Section 9.001, Business Organizations Code; and

(2) is qualified to serve in that capacity under Section 501.006.

(b) This subchapter is in addition to, and not a limitation on, Subtitles F and G, Title 3, Finance Code.

Derived from Probate Code §§ 105A(c), (d).


§ 505.003. Authority of Foreign Corporate Fiduciary to Serve in Fiduciary Capacity

(a) Subject to Subsections (b) and (c) and Section 505.004, a foreign corporate fiduciary may be appointed by will, deed, agreement, declaration, indenture, court order or decree, or otherwise and may serve in this state in any fiduciary capacity, including as:

(1) trustee of a personal or corporate trust;

(2) executor;

(3) administrator; or

(4) guardian of the estate.

(b) A foreign corporate fiduciary appointed to serve in a fiduciary capacity in this state must have the corporate power to act in that capacity.

(c) This section applies only to the extent that the home state of the foreign corporate fiduciary appointed to serve in a fiduciary capacity in this state grants to a corporate fiduciary whose home state is this state the authority to serve in like fiduciary capacity.

Derived from Probate Code § 105A(a).


§ 505.004. Filing Requirements; Designation

(a) A foreign corporate fiduciary must file the following documents with the secretary of state before qualifying or serving in this state in a fiduciary capacity as authorized by Section 505.003:

(1) a copy of the fiduciary’s charter, articles of incorporation or of association, and all amendments to those documents, certified by the fiduciary’s secretary under the fiduciary’s corporate seal;

(2) a properly executed written instrument that by the instrument’s terms is of indefinite duration and irrevocable, appointing the secretary of state and the secretary of state’s successors as the fiduciary’s agent for service of process on whom notices and processes issued by a court of this state may be served in an action or proceeding relating to a trust, estate, fund, or other matter within this state with respect to which the fiduciary is acting in a fiduciary capacity, including the acts or defaults of the fiduciary with respect to that trust, estate, or fund; and

(3) a written certificate of designation specifying the name and address of the officer, agent, or other person to whom the secretary of state shall forward notices and processes described by Subdivision (2).

(b) A foreign corporate fiduciary may change the certificate of designation under Subsection (a)(3) by filing a new certificate.

Derived from Probate Code § 105A(b).


§ 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 to a qualified...
Subchapter B. Foreign Executors and Trustees

§ 505.051. Applicability of Bond Requirement
(a) A foreign executor is not required to give bond if the will appointing the foreign executor provides that the executor may serve without bond.
(b) The bond provisions of this title applicable to domestic representatives apply to a foreign executor if the will appointing the foreign executor does not exempt the foreign executor from giving bond.

§ 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.

Subchapter C. Recovery of Debts by Foreign Executor or Administrator

§ 505.101. Suit to Recover Debt
(a) On giving notice by a qualified delivery method 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.

§ 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.

§ 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.
Subchapter A. Payment of Certain Funds to State

§ 551.001. Payment of Certain Shares of Estate to State
(a) The court, by written order, shall require the executor or administrator of an estate to pay to the comptroller as provided by this subchapter the share of that estate of a person entitled to that share who does not demand the share, including any portion deposited in an account in the court’s registry under Section 362.011(c), from the executor or administrator within six months after the date of, as applicable:
(1) a court order approving the report of the commissioners of partition made under Section 360.154; or
(2) the settlement of the final account of the executor or administrator.
(b) This section does not apply to the share of an estate to which a resident minor without a guardian is entitled.

Derived from Probate Code § 427.

§ 551.002. Payment of Portion that Is in Money
The executor or administrator shall pay the portion of the share subject to Section 551.001 that is in money to the comptroller.

 Derived from Probate Code § 427.

Subchapter B. Recovery of Funds Paid to State
§ 551.051. Recovery of Funds

Subchapter C. Penalties; Enforcement
§ 551.101. Liability of Court Clerk; Penalty
§ 551.102. Damages for Failure to Make Payments
§ 551.103. Enforcement of Payment and Damages; Recovery on Bond

Chapter 551. Payment of Certain Estates to State

Subchapter A. Payment of Certain Funds to State

§ 551.001. Payment of Certain Shares of Estate to State
(a) The court, by written order, shall require the executor or administrator of an estate to pay to the comptroller as provided by this subchapter the share of that estate of a person entitled to that share who does not demand the share, including any portion deposited in an account in the court’s registry under Section 362.011(c), from the executor or administrator within six months after the date of, as applicable:
(1) a court order approving the report of the commissioners of partition made under Section 360.154; or
(2) the settlement of the final account of the executor or administrator.
(b) This section does not apply to the share of an estate to which a resident minor without a guardian is entitled.

Derived from Probate Code § 427.

§ 551.003. Compensation to Executor or Administrator
The executor or administrator is entitled to reasonable compensation for services performed under Section 551.003.

 Derived from Probate Code § 427.

§ 551.004. 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 provide to the comptroller, by a qualified delivery method or e-mail, a certified copy of the court order not later than the fifth day after the date the order is issued.

Derived from Probate Code § 428.

§ 551.005. Comptroller’s Receipt
(a) An executor or administrator who pays to the comptroller under this subchapter any funds of the estate represented by the executor or administrator shall:
(1) obtain from the comptroller a receipt for the payment, with official seal attached; and
(2) file the receipt with the clerk of the court that orders the payment.
(b) The court clerk shall record the comptroller’s receipt in the judge’s probate docket.

Derived from Probate Code § 430.
Subchapter B. Recovery of Funds Paid to State

§ 551.051. Recovery of Funds

If funds of an estate have been paid to the comptroller under this chapter, an heir or devisee or an assignee of an heir or devisee may recover the share of the funds to which the heir, devisee, or assignee is entitled by filing a claim with the comptroller in the manner provided by Chapter 74, Property Code, for property delivered to the comptroller under that chapter.

Derived from Probate Code § 433(a).

Derived from Probate Code §§ 433(a), (b), (c).

Subchapter C. Penalties; Enforcement

§ 551.101. Liability of Court Clerk; Penalty

(a) A court clerk who fails to timely comply with Section 551.005(b) is liable for a $100 penalty.

(b) The penalty under Subsection (a) shall be recovered through an action brought in the name of this state, after personal service of citation, on the information of any resident. Half of the penalty shall be paid to the informer and the other half to this state.

Derived from Probate Code § 429.

§ 551.102. Damages for Failure to Make Payments

(a) An executor or administrator who fails to pay funds of an estate to the comptroller as required by an order under Section 551.001 on or before the 30th day after the date of the order is liable, after personal service of citation charging that failure and after proof of the failure, for damages. The damages:

(1) accrue at the rate of five percent of the amount of the funds per month for each month or fraction of a month after the 30th day after the date of the order that the executor or administrator fails to make the payment; and

(2) must be paid to the comptroller out of the executor’s or administrator’s own estate.

(b) Damages under this section may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 431.

§ 551.103. Enforcement of Payment and Damages; Recovery on Bond

(a) The comptroller may apply in the name of this state to the court that issued an order for the payment of funds of an estate under this chapter to enforce the payment of:

(1) funds the executor or administrator has failed to pay to the comptroller under the order; and

(2) any damages that have accrued under Section 551.102.

(b) The court shall enforce the payment under Subsection (a) in the manner prescribed for enforcement of other payment orders.

(c) In addition to the action under Subsection (a), the comptroller may bring an action in the name of this state against the executor or administrator and the sureties on the executor’s or administrator’s bond for the recovery of the funds ordered to be paid and any accrued damages.

(d) The county attorney or criminal district attorney for the county, the district attorney for the district, or the attorney general, at the election of the comptroller and with the approval of the attorney general, shall represent the comptroller in all proceedings under this section, and shall also represent the interests of this state in all other matters arising under this code.

Derived from Probate Code § 432.

SUBTITLE P. DURABLE POWERS OF ATTORNEY

Chapter 751. General Provisions Regarding Durable Powers of Attorney

Subchapter A. General Provisions

§ 751.001. Short Title

§ 751.0015. Applicability of Subtitle

§ 751.002. Definitions

§ 751.00201. Meaning of Disabled or Incapacitated for Purposes of Durable Powers of Attorney

§ 751.0021. Requirements of Durable Power of Attorney

§ 751.0022. Presumption of Genuine Signature

§ 751.0023. Validity of Power of Attorney

§ 751.0024. Meaning and Effect of Durable Power of Attorney

§ 751.003. Uniformity of Application and Construction

§ 751.005. Extension of Principal’s Authority to Other Persons

§ 751.006. Remedies Under Other Law

§ 751.007. Conflict With or Effect on Other Law

Subchapter A-1. Appointment of Agents

§ 751.021. Co-agents

§ 751.022. Acceptance of Appointment as Agent

§ 751.023. Successor Agents

§ 751.024. Reimbursement and Compensation of Agent

Subchapter A-2. Authority of Agent Under Durable Power of Attorney
TEXAS ESTATES CODE

§ 751.031. Grants of Authority in General and Certain Limitations
§ 751.032. Gift Authority
§ 751.033. Authority to Create or Change Certain Beneficiary Designations
§ 751.034. Incorporation of Authority

§ 751.051. Effect of Acts Performed by Agent
§ 751.052. Relation of Attorney in Fact or Agent to Court-Appointed Guardian of Estate
§ 751.054. Knowledge of Termination of Power, Good-Faith Acts
§ 751.055. Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity, Good-Faith Reliance
§ 751.057. Effect of Bankruptcy Proceeding

Subchapter C. Duty to Inform and Account
§ 751.101. Fiduciary Duties
§ 751.102. Duty to Timely Inform Principal
§ 751.103. Maintenance of Records
§ 751.104. Accounting
§ 751.105. Effect of Failure to Comply; Suit
§ 751.106. Effect of Subchapter on Principal’s Rights

Subchapter C-1. Other Duties of Agent
§ 751.121. Duty to Notify of Breach of Fiduciary Duty by Other Agent
§ 751.122. Duty to Preserve Principal’s Estate Plan

Subchapter C-2. Duration of Durable Power of Attorney and Agent’s Authority
§ 751.131. Termination of Durable Power of Attorney
§ 751.132. Termination of Agent’s Authority
§ 751.133. Relation of Agent to Court-Appointed Guardian of Estate
§ 751.134. Effect on Certain Persons of Termination of Durable Power of Attorney or Agent’s Authority
§ 751.135. Previous Durable Power of Attorney Continues in Effect Until Revoked

Subchapter D. Recording Durable Power of Attorney for Certain Real Property Transactions
§ 751.151. Recording for Real Property Transactions Requiring Execution and Delivery of Instruments

Subchapter E. Acceptance of and Reliance on Durable Power of Attorney
§ 751.201. Acceptance of Durable Power of Attorney Required; Exceptions
§ 751.202. Other Form or Recording of Durable Power of Attorney as Condition of Acceptance Prohibited
§ 751.203. Agent’s Certification
§ 751.204. Opinion of Counsel
§ 751.205. English Translation
§ 751.206. Grounds for Refusing Acceptance
§ 751.207. Written Statement of Refusal of Acceptance Required
§ 751.208. Date of Acceptance
§ 751.209. Good Faith Reliance on Durable Power of Attorney
§ 751.210. Reliance on Certain Requested Information
§ 751.211. Actual Knowledge of Person When Transactions Conduct Through Employees
§ 751.213. Liability of Principal

Subchapter F. Civil Remedies
§ 751.251. Judicial Relief

Chapter 752. Statutory Durable Power of Attorney

Subchapter A. General Provisions Regarding Statutory Durable Power of Attorney
§ 752.001. Use, Meaning, and Effect of Statutory Durable Power of Attorney
§ 752.002. Validity Not Affected
§ 752.003. Prescribed Form Not Exclusive
§ 752.004. Legal Sufficiency of Statutory Durable Power of Attorney

Subchapter B. Form of Statutory Durable Power of Attorney
§ 752.051. Form
§ 752.052. Modifying Statutory Form to Grant Specific Authority

Subchapter C. Construction of Powers Related to Statutory Durable Power of Attorney
§ 752.101. Construction in General
§ 752.102. Real Property Transactions
§ 752.103. Tangible Personal Property Transactions
§ 752.104. Stock and Bond Transactions
§ 752.105. Commodity and Option Transactions
§ 752.106. Banking and Other Financial Institution Transactions
§ 752.107. Business Operation Transactions
§ 752.108. Insurance and Annuity Transactions
§ 752.109. Estate, Trust, and Other Beneficiary Transactions
§ 752.110. Claims and Litigation
§ 752.111. Personal and Family Maintenance
§ 752.112. Benefits from Certain Governmental Programs or Civil or Military Service
§ 752.113. Retirement Plan Transactions
§ 752.114. Tax Matters
§ 752.1145. Digital Asset Transactions
§ 752.115. Existing Interests; Foreign Interests

Chapter 751. General Provisions Regarding Durable Powers of Attorney

Statutes in Context
Chapter 751

A power of attorney is a formal method of creating an agency relationship under which one person has the ability to act in the place of another. The person granting authority is called the principal and the person who obtains the authority is the agent or attorney-in-fact. Note that in this context, the term “attorney” is not synonymous with “lawyer” and thus any competent person may serve as an agent even if the person has no legal training.

Under traditional agency law, an agent’s authority terminates when the principal becomes incompetent because the principal is no longer able to monitor the agent’s conduct. This rule prevented powers of attorney from being used as a disability planning technique. In 1954, Virginia became the first state to authorize a durable power of attorney which provides that the agent retains the authority to act even if the principal is incompetent. All states now have legislation sanctioning durable powers of attorney. The Texas provisions are found in Chapter 751.

Subchapter A. General Provisions

§ 751.001. Short Title

This subtitle may be cited as the Durable Power of Attorney Act.

Derived from Probate Code § 482.

New.


§ 751.0015. Applicability of Subtitle

This subtitle applies to all durable powers of attorney except:

Electronic copy available at: https://ssrn.com/abstract=4537861
The requirements for a valid durable power of attorney are as follows: (1) the instrument must be in writing or in an electronic record (oral statements are insufficient), (2) the principal must be an adult, (3) the principal or the principal’s proxy must sign the instrument, (4) the instrument must name an agent, (5) the instrument must expressly provide that the agent’s authority either (a) continues even after the principal becomes disabled or (b) begins when the agent becomes disabled (the springing power of attorney), and (6) the power of attorney must be acknowledged. Note that no witnesses are needed and the durable power of attorney does not need to be filed with the court.

§ 751.0021. Requirements of Durable Power of Attorney

(a) An instrument is a durable power of attorney for purposes of this subtitle if the instrument:
   (1) is a writing or other record that designates another person as agent and grants authority to that agent to act in the place of the principal, regardless of whether the term “power of attorney” is used;
   (2) is signed by an adult principal or in the adult principal’s conscious presence by another adult directed by the principal to sign the principal’s name on the instrument;
   (3) contains:
      (A) the words:
         (i) “This power of attorney is not affected by subsequent disability or incapacity of the principal”; or
         (ii) “This power of attorney becomes effective on the disability or incapacity of the principal”; or
      (B) words similar to those of Paragraph (A) that clearly indicate that the authority conferred on the agent shall be exercised notwithstanding the principal’s subsequent disability or incapacity; and
   (4) is acknowledged by the principal or another adult directed by the principal as authorized by Subdivision (2) before an officer authorized under the laws of this state or another state to:
      (A) take acknowledgments to deeds of conveyance; and
      (B) administer oaths.

(b) If the law of a jurisdiction other than this state determines the meaning and effect of a writing or other record that grants authority to an agent to act in the place of the principal, regardless of whether the term “power of attorney” is used, and that law provides that the authority conferred on the agent is exercisable notwithstanding the principal’s subsequent disability or incapacity, the writing or other record is considered a durable power of attorney under this subtitle.

§ 751.0022. Presumption of Genuine Signature

A signature on a durable power of attorney that purports to be the signature of the principal or of another adult directed by the principal as authorized by Section 751.0021(a)(2) is presumed to be genuine, and the durable power of attorney is presumed to have been executed under Section 751.0021(a) if the officer taking the acknowledgment has complied with the requirements of Section 121.004(b), Civil Practice and Remedies Code.

§ 751.0023. Validity of Power of Attorney

(a) A durable power of attorney executed in this state is valid if the execution of the instrument complies with Section 751.0021(a).

(b) A durable power of attorney executed in a jurisdiction other than this state is valid in this state if, when executed, the execution of the durable power of attorney complied with:
   (1) the law of the jurisdiction that determines the meaning and effect of the durable power of attorney as provided by Section 751.0024; or
   (2) the requirements for a military power of attorney as provided by 10 U.S.C. Section 1044b.

(c) Except as otherwise provided by statute other than this subtitle or by the durable power of attorney, a photocopy or electronically transmitted copy of an original durable power of attorney has the same effect as the original instrument and may be relied on, without liability, by a person who is asked to accept the durable power of attorney to the same extent as the original.

§ 751.0024. Meaning and Effect of Durable Power of Attorney

The meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by:
   (1) the law of the jurisdiction of the principal’s domicile, if the principal’s domicile is indicated in the power of attorney; or
   (2) the law of the jurisdiction in which the durable power of attorney was executed, if the principal’s domicile is not indicated in the power of attorney.
§ 751.003. Uniformity of Application and Construction
This subtitle shall be applied and construed to effect the general purpose of this subtitle, which is to make uniform to the fullest extent possible the law with respect to the subject of this subtitle among states enacting these provisions.
Derived from Probate Code § 506.

§ 751.005. Extension of Principal’s Authority to Other Persons
If, in this subtitle, a principal is given an authority to act, that authority includes:
(1) any person designated by the principal;
(2) a guardian of the estate of the principal; or
(3) another personal representative of the principal.
Derived from Probate Code § 489B(i).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.006. Remedies Under Other Law
The remedies under this chapter are not exclusive and do not abrogate any right or remedy under any law of this state other than this chapter.
Derived from Probate Code § 489B(j).

§ 751.007. Conflict with or Effect on Other Law
This subtitle does not:
(1) supersede any other law applicable to financial institutions or other entities, and to the extent of any conflict between this subtitle and another law applicable to an entity, the other law controls; or
(2) have the effect of validating a conveyance of an interest in real property executed by an agent under a durable power of attorney if the conveyance is determined under a statute or common law to be void but not voidable.
New.

Subchapter A-1. Appointment of Agents

§ 751.021. Co-Agents
A principal may designate in a durable power of attorney two or more persons to act as co-agents. Unless the durable power of attorney otherwise provides, each co-agent may exercise authority independently of the other co-agent.

New.

§ 751.022. Acceptance of Appointment As Agent
Except as otherwise provided in the durable power of attorney, a person accepts appointment as an agent under a durable power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance of the appointment.
New.

§ 751.023. Successor Agents
(a) A principal may designate in a durable power of attorney one or more successor agents to act if an agent resigns, dies, or becomes incapacitated, is not qualified to serve, or declines to serve.
(b) A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function.
(c) Unless the durable power of attorney otherwise provides, a successor agent:
(1) has the same authority as the authority granted to the predecessor agent; and
(2) is not considered an agent under this subtitle and may not act until all predecessor agents, including co-agents, to the successor agent have resigned, died, or become incapacitated, are not qualified to serve, or have declined to serve.
New.

§ 751.024. Reimbursement and Compensation of Agent
Unless the durable power of attorney otherwise provides, an agent is entitled to:
(1) reimbursement of reasonable expenses incurred on the principal’s behalf; and
(2) compensation that is reasonable under the circumstances.
New.

Subchapter A-2. Authority of Agent Under Durable Power of Attorney

§ 751.031. Grants of Authority in General and Certain Limitations
(a) Subject to Subsections (b), (c), and (d) and Section 751.032, if a durable power of attorney grants to an agent the authority to perform all acts that the principal could perform, the agent has the general authority conferred by Subchapter C, Chapter 752.
(b) An agent may take the following actions on the principal’s behalf or with respect to the principal’s property only if the durable power of attorney designating the agent expressly grants the agent the authority and the exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) create, amend, revoke, or terminate an inter vivos trust;
(2) make a gift;
(3) create or change rights of survivorship;
(4) create or change a beneficiary designation; or
(5) delegate authority granted under the power of attorney.

d) Notwithstanding a grant of authority to perform an act described by Subsection (b), unless the durable power of attorney otherwise provides, an agent who is not an ancestor, spouse, or descendant of the principal may not exercise authority under the power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

d) Authority granted in a durable power of attorney is exercisable with respect to property that the principal has the broadest authority to control.

c) If an agent is not granted authority under Section 751.031(b)(4) but the durable power of attorney grants the authority to the agent described in Section 752.108 or 752.113, then, unless the power of attorney otherwise provides, the authority of the agent to designate the agent as a beneficiary is not subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

c) Language in a durable power of attorney granting general authority with respect to gifts authorizes the agent to only:

(1) make outright to, or for the benefit of, a person a gift of any of the principal’s property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed:

(2) the authority is exercised in this state or the property is located in this state; and

(3) the authority is exercised in this state or the property is located in this state.

§ 751.033. Authority to Create or Change Certain Beneficiary Designations

(a) Unless the durable power of attorney otherwise provides, and except as provided by Section 751.031(c), authority granted to an agent under Section 751.031(b)(4) empowers the agent to:

(1) create or change a beneficiary designation under an account, contract, or another arrangement that authorizes the principal to designate a beneficiary, including an insurance or annuity contract, a qualified or nonqualified retirement plan, including a retirement plan as defined by Section 752.113, an employment agreement, including a deferred compensation agreement, and a residency agreement;
(2) enter into or change a P.O.D. account or trust account under Chapter 113; or
(3) create or change a nontestamentary payment or transfer under Chapter 111.

(b) If an agent is granted authority under Section 751.031(b)(4) and the durable power of attorney grants the authority to the agent described in Section 752.108 or 752.113, then, unless the power of attorney otherwise provides, the authority of the agent to designate the agent as a beneficiary is not subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

(c) If an agent is not granted authority under Section 751.031(b)(4) but the durable power of attorney grants the authority to the agent described in Section 752.108 or 752.113, then, unless the power of attorney otherwise provides and notwithstanding Section 751.031, the agent’s authority to designate the agent as a beneficiary is
subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

New.

§ 751.034. Incorporation of Authority
(a) An agent has authority described in this chapter if the durable power of attorney refers to general authority with respect to the descriptive term for the subjects stated in Chapter 752 or cites the section in which the authority is described.
(b) A reference in a durable power of attorney to general authority with respect to a subject in Chapter 752 or a citation to one of those sections incorporates the entire section as if the section were set out in its entirety in the power of attorney.
(c) A principal may modify authority incorporated by reference.

New.


§ 751.051. Effect of Acts Performed by Agent
An act performed by an agent under a durable power of attorney has the same effect and inures to the benefit of and binds the principal and the principal’s successors in interest as if the principal had performed the act.

Derived from Probate Code § 484.

§ 751.052. Relation of Attorney In Fact or Agent to Court-Appointed Guardian of Estate
(a) If, after execution of a durable power of attorney, a court appoints a guardian of the estate of a ward who is [of] the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to the attorney in fact or agent named in the power of attorney are automatically suspended for the duration of the guardianship unless the court enters an order that:
   (A) affirms and states the effectiveness of the power of attorney; and
   (B) confirms the validity of the appointment of the named attorney in fact or agent.
(b) If the powers and authority of an attorney in fact or agent are revoked as provided by Subsection (a), the attorney in fact or agent shall:
   (1) deliver to the guardian of the estate all assets of the ward’s estate that are in the possession of the attorney in fact or agent; and
   (2) account to the guardian of the estate as the attorney in fact or agent would account to the principal if the principal had terminated the powers of the attorney in fact or agent.

Derived from Probate Code § 485.

§ 751.054. Knowledge of Termination of Power; Good-Faith Acts
(a) The revocation by, the death of, or the qualification of a temporary or permanent guardian of the estate of a principal who has executed a durable power of attorney or the removal of an attorney in fact or agent under Chapter 753 does not revoke, suspend, or terminate the agency as to the attorney in fact, agent, or other person who acts in good faith under or in reliance on the power without actual knowledge of the termination or suspension, as applicable, of the power by:
   (1) the revocation;
   (2) the principal’s death;
   (3) the qualification of a temporary or permanent guardian of the estate of the principal; or
   (4) the attorney in fact’s or agent’s removal.

 Derived from Probate Code § 486.

§ 751.055. Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance
(a) As to an act undertaken in good-faith reliance on a durable power of attorney, an affidavit executed by the attorney in fact or agent under the durable power of attorney stating that the attorney in fact or agent did not have, at the time the power was exercised, actual knowledge of the termination or suspension of the power, as applicable, by revocation, the principal’s death, the principal’s divorce or the annulment of the principal’s marriage if the attorney in fact or agent was the principal’s spouse, the qualification of a temporary or permanent guardian of the estate of the principal, or the attorney in fact’s or agent’s removal, is conclusive proof
as between the attorney in fact or agent and a person other than the principal or the principal’s personal representative dealing with the attorney in fact or agent of the nonrevocation, nonsuspension, or nontermination of the power at that time.

Derived from Probate Code §§ 487(a), (b), (c), (d).


§ 751.057. Effect of Bankruptcy Proceeding

(a) The filing of a voluntary or involuntary petition in bankruptcy in connection with the debts of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the principal’s agent.

(b) Any act the agent may undertake with respect to the principal’s property is subject to the limitations and requirements of the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) until a final determination is made in the bankruptcy proceeding.

Derived from Probate Code § 487A.


Subchapter C. Duty to Inform and Account

Statutes in Context

Chapter 751, Subchapter C

The agent’s duty to inform the principal with respect to actions taken and to account for them is set forth in Chapter 751, Subchapter C.

§ 751.101. Fiduciary Duties

A person who accepts appointment as an agent under a durable power of attorney as provided by Section 751.022 is a fiduciary as to the principal only when acting as an agent under the power of attorney and has a duty to inform and to account for actions taken under the power of attorney.

Derived from Probate Code § 489B(a).


§ 751.102. Duty to Timely Inform Principal

(a) The agent shall timely inform the principal of each action taken under a durable power of attorney.

(b) Failure of an agent to timely inform, as to third parties, does not invalidate any action of the agent.

Derived from Probate Code § 489B(b).


§ 751.103. Maintenance of Records

(a) The agent shall maintain records of each action taken or decision made by the agent.

(b) The agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

Derived from Probate Code § 489B(c), (f).


§ 751.104. Accounting

(a) The principal may demand an accounting by the agent.

(b) Unless otherwise directed by the principal, an accounting under Subsection (a) must include:

(1) the property belonging to the principal that has come to the agent’s knowledge or into the agent’s possession;

(2) each action taken or decision made by the agent;

(3) a complete account of receipts, disbursements, and other actions of the agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

(4) a listing of all property over which the agent has exercised control that includes:

(A) an adequate description of each asset; and

(B) the asset’s current value, if the value is known to the agent;

(5) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(6) each known liability; and

(7) any other information and facts known to the agent as necessary for a full and definite understanding of the exact condition of the property belonging to the principal.

(c) Unless directed otherwise by the principal, the agent shall also provide to the principal all documentation regarding the principal’s property.

Derived from Probate Code § 489B(d), (e).


§ 751.105. Effect of Failure to Comply; Suit

If the agent fails or refuses to inform the principal, provide documentation, or deliver an accounting under Section 751.104 within 60 days of a demand under that section, or a longer or shorter period as demanded by the principal or ordered by a court, the principal may file suit to:

(1) compel the agent to deliver the accounting or the assets; or

(2) terminate the durable power of attorney.

Derived from Probate Code § 489B(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1,
§ 751.106. Effect of Subchapter on Principal’s Rights

This subchapter does not limit the right of the principal to terminate the durable power of attorney or to make additional requirements of or to give additional instructions to the agent.

Derived from Probate Code § 489B(h).


Subchapter C-1. Other Duties of Agent

§ 751.121. Duty to Notify of Breach of Fiduciary Duty by Other Agent

(a) An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate under the circumstances to safeguard the principal’s best interest. An agent who fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken the action.

(b) Except as otherwise provided by Subsection (a) or the durable power of attorney, an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

New.


§ 751.122. Duty to Preserve Principal’s Estate Plan

An agent shall preserve to the extent reasonably possible the principal’s estate plan to the extent the agent has actual knowledge of the plan if preserving the plan is consistent with the principal’s best interest based on all relevant factors, including:

(1) the value and nature of the principal’s property;
(2) the principal’s foreseeable obligations and need for maintenance;
(3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
(4) eligibility for a benefit, a program, or assistance under a statute or regulation.

New.


Subchapter C-2. Duration of Durable Power of Attorney and Agent’s Authority

§ 751.131. Termination of Durable Power of Attorney

A durable power of attorney terminates when:

(1) the principal dies;
(2) the principal revokes the power of attorney;
(3) the power of attorney provides that it terminates;
(4) the purpose of the power of attorney is accomplished;
(5) one of the circumstances with respect to an agent described by Section 751.132(a)(1), (2), or (3) arises and the power of attorney does not provide for another agent to act under the power of attorney; or
(6) a permanent guardian of the estate of the principal has qualified to serve in that capacity as provided by Section 751.133.

New.


§ 751.132. Termination of Agent’s Authority

(a) An agent’s authority under a durable power of attorney terminates when:

(1) the principal revokes the authority;
(2) the agent dies, becomes incapacitated, is no longer qualified, or resigns;
(3) the agent’s marriage to the principal is dissolved by court decree of divorce or annulment or is declared void by a court, unless the power of attorney otherwise provides; or
(4) the power of attorney terminates.

(b) Unless the durable power of attorney otherwise provides, an agent’s authority may be exercised until the agent’s authority terminates under Subsection (a), notwithstanding a lapse of time since the execution of the power of attorney.

New.


[Section 751.052 was also amended by Acts 2017, 85th Leg., ch. 844, § 2, eff. Sept. 1, 2017.]

§ 751.133. Relation of Agent to Court-Appointed Guardian of Estate

(a) If, after execution of a durable power of attorney, a court of the principal’s domicile appoints a:

(1) permanent guardian of the estate for a ward who is the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to the agent named in the power of attorney are automatically revoked unless the court enters an order that the powers of the agent be suspended during the pendency of the guardianship of the estate; or
(2) temporary guardian of the estate for a ward who is the principal who executed the power of attorney, on the qualification of the guardian the powers and authority granted to the agent named in the power of attorney are automatically suspended for
the duration of the guardianship unless the court enters an order that:

(A) affirms and states the effectiveness of the power of attorney; and

(B) confirms the validity of the appointment of the named agent [terminate on the qualification of the guardian of the estate].

(a-1) If the powers and authority of an agent are revoked as provided by Subsection (a), the agent shall:

(1) deliver to the guardian of the estate all assets of the ward’s estate that are in the possession of the agent; and

(2) account to the guardian of the estate as the agent would account to the principal if the principal had terminated the powers of the agent.

(b) If, after execution of a durable power of attorney, a court of the principal’s domicile appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the agent on the qualification of the temporary guardian of the estate until the date the term of the temporary guardian expires. This subsection may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.

Derived from Probate Code § 485.


§ 751.134. Effect on Certain Persons of Termination of Durable Power of Attorney or Agent’s Authority

Termination of an agent’s authority or of a durable power of attorney is not effective as to the agent or another person who, without actual knowledge of the termination, acts in good faith under or in reliance on the power of attorney. An act performed as described by this section, unless otherwise invalid or unenforceable, binds the principal and the principal’s successors in interest.

New.


§ 751.135. Previous Durable Power of Attorney Continues in Effect Until Revoked

The execution of a durable power of attorney does not revoke a durable power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other durable powers of attorney are revoked.

New.


Subchapter E. Acceptance of and Reliance on Durable Power of Attorney

§ 751.201. Acceptance of Durable Power of Attorney Required; Exceptions

(a) Unless one or more grounds for refusal under Section 751.206 exist, a person who is presented with and asked to accept a durable power of attorney by an agent with authority to act under the power of attorney shall:

(1) accept the power of attorney; or

(2) before accepting the power of attorney:

(A) request an agent’s certification under Section 751.203 or an opinion of counsel under Section 751.204 not later than the 10th business day after the date the power of attorney is presented, except as provided by Subsection (c); or

(B) if applicable, request an English translation under Section 751.205 not later than the fifth business day after the date the power of attorney is presented, except as provided by Subsection (c).

(b) Unless one or more grounds for refusal under Section 751.206 exist and except as provided by Subsection (c), a person who requests:

(1) an agent’s certification must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested certification; and

Electronic copy available at: https://ssrn.com/abstract=4537861
I, ___________ (agent), certify under penalty of perjury that:

1. I am the agent named in the power of attorney validly executed by ___________ (principal) (“principal”) on ___________ (date), and the power of attorney is now in full force and effect.

2. The principal is not deceased and is presently domiciled in ___________ (city and state/territory or foreign country).

3. To the best of my knowledge after diligent search and inquiry:
   a. The power of attorney has not been revoked by the principal or suspended or terminated by the occurrence of any event, whether or not referenced in the power of attorney;
   b. At the time the power of attorney was executed, the principal was mentally competent to transact legal matters and was not acting under the undue influence of any other person;
   c. A permanent guardian of the estate of the principal has not qualified to serve in that capacity;
   d. My powers under the power of attorney have not been suspended by a court in a temporary guardianship or other proceeding;
   e. If I am (or was) the principal’s spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court, or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal has been dissolved by court decree of divorce or annulment or declared void by a court;
   f. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and
   g. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal now has a disability or is incapacitated or the specified future time or contingency has occurred.

5. I am acting within the scope of my authority under the power of attorney, and my authority has not been altered or terminated.

6. If applicable, I am the successor to ___________ (predecessor agent), who has resigned, died, or become incapacitated, is not qualified to serve or has declined to serve as agent, or is otherwise unable to act. There are no unsatisfied conditions remaining under the power of attorney that preclude my acting as successor agent.

7. I agree not to:
   a. Exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or terminated; or
   b. Exercise any specific powers that have been revoked, suspended, or terminated.

8. A true and correct copy of the power of attorney is attached to this document.

(2) an opinion of counsel must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested opinion.

(c) An agent presenting a durable power of attorney for acceptance and the person to whom the power of attorney is presented may agree to extend a period prescribed by Subsection (a) or (b).

(d) If an English translation of a durable power of attorney is requested as authorized by Subsection (a)(2)(B), the power of attorney is not considered presented for acceptance under Subsection (a) until the date the requestor receives the translation. On and after that date, the power of attorney shall be treated as a power of attorney originally prepared in English for all the purposes of this subchapter.

(e) A person is not required to accept a durable power of attorney under this section if the agent refuses to or does not provide a requested certification, opinion of counsel, or English translation under this subchapter.

Now.

Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.202. Other Form or Recording of Durable Power of Attorney as Condition of Acceptance Prohibited

A person who is asked to accept a durable power of attorney under Section 751.201 may not require that:

1. an additional or different form of the power of attorney be presented for authority that is granted in the power of attorney presented to the person; or
2. the power of attorney be recorded in the office of a county clerk unless the recording of the instrument is required by Section 751.151 or another law of this state.

Now.

Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.203. Agent’s Certification

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request that the agent presenting the power of attorney provide to the person an agent’s certification, under penalty of perjury, of any factual matter concerning the principal, agent, or power of attorney. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal, the person to whom the power of attorney is presented may request that the certification include a written statement from a physician attending the principal that states that the principal is presently disabled or incapacitated.

(b) A certification described by Subsection (a) may be in the following form:

CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

Electronic copy available at: https://ssrn.com/abstract=4537861
9. If used in connection with an extension of credit under Section 50(a)(6), Article XVI, Texas Constitution, the power of attorney was executed in the office of the lender, the office of a title company, or the law office of _________, _____________________.

(signature of agent)

(c) A certification made in compliance with this section is conclusive proof of the factual matter that is the subject of the certification.

New.
Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.204. Opinion of Counsel

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an opinion of counsel regarding any matter of law concerning the power of attorney so long as the person provides to the agent the reason for the request in a writing or other record.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an opinion of counsel requested under this section must be provided by the principal or agent, at the principal’s expense. If, without an extension, the requestor requests the opinion later than the 10th business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not required to, provide the opinion, at the requestor’s expense.

New.
Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.205. English Translation

(a) Before accepting a durable power of attorney under Section 751.201 that contains, wholly or partly, language other than English, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an English translation of the power of attorney.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an English translation requested under this section must be provided by the principal or agent, at the principal’s expense. If, without an extension, the requestor requests the translation later than the fifth business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not required to, provide the translation, at the requestor’s expense.

New.
Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.206. Grounds for Refusing Acceptance

A person is not required to accept a durable power of attorney under this subchapter if:

(1) the person would not otherwise be required to engage in a transaction with the principal under the same circumstances, including a circumstance in which the agent seeks to:

(A) establish a customer relationship with the person under the power of attorney when the principal is not already a customer of the person or expand an existing customer relationship with the person under the power of attorney; or

(B) acquire a product or service under the power of attorney that the person does not offer;

(2) the person’s engaging in the transaction with the agent or with the principal under the same circumstances would be inconsistent with:

(A) another law of this state or a federal statute, rule, or regulation;

(B) a request from a law enforcement agency; or

(C) a policy adopted by the person in good faith that is necessary to comply with another law of this state or a federal statute, rule, regulation, regulatory directive, guidance, or executive order applicable to the person;

(3) the person would not engage in a similar transaction with the agent because the person or an affiliate of the person:

(A) has filed a suspicious activity report as described by 31 U.S.C. Section 5318(g) with respect to the principal or agent;

(B) believes in good faith that the principal or agent has a prior criminal history involving financial crimes; or

(C) has had a previous, unsatisfactory business relationship with the agent due to or resulting in:

(i) material loss to the person;

(ii) financial mismanagement by the agent;

(iii) litigation between the person and the agent alleging substantial damages; or

(iv) multiple nuisance lawsuits filed by the agent;

(4) the person has actual knowledge of the termination of the agent’s authority or of the power of attorney before an agent’s exercise of authority under the power of attorney;

(5) the agent refuses to comply with a request for a certification, opinion of counsel, or translation under Section 751.201 or, if the agent complies with one or more of those requests, the requestor in good faith is unable to determine the validity of the power of attorney or the agent’s authority to act under the power of attorney because the certification, opinion, or translation is incorrect, incomplete, unclear, limited, qualified, or otherwise deficient in a manner that makes the certification, opinion, or translation ineffective for its intended purpose, as determined in good faith by the requestor;

(6) regardless of whether an agent’s certification, opinion of counsel, or translation has been requested.
or received by the person under this subchapter, the person believes in good faith that:

(A) the power of attorney is not valid;

(B) the agent does not have the authority to act as attempted; or

(C) the performance of the requested act would violate the terms of:

(i) a business entity’s governing documents; or

(ii) an agreement affecting a business entity, including how the entity’s business is conducted;

(7) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding to construe the power of attorney or review the agent’s conduct and that proceeding is pending;

(8) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding for which a final determination was made that found:

(A) the power of attorney invalid with respect to a purpose for which the power of attorney is being presented for acceptance; or

(B) the agent lacked the authority to act in the same manner in which the agent is attempting to act under the power of attorney;

(9) the person makes, has made, or has actual knowledge that another person has made a report to a law enforcement agency or other federal or state agency, including the Department of Family and Protective Services, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting with or on behalf of the agent;

(10) the person receives conflicting instructions or communications with regard to a matter from co-agents acting under the same power of attorney or from agents acting under different powers of attorney signed by the same principal or another adult acting for the principal as authorized by Section 751.0021, provided that the person may refuse to accept the power of attorney only with respect to that matter; or

(11) the person is not required to accept the durable power of attorney by the law of the jurisdiction that applies in determining the power of attorney’s meaning and effect, or the powers conferred under the durable power of attorney that the agent is attempting to exercise are not included within the scope of activities to which the law of that jurisdiction applies.

New.

Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.207. Written Statement of Refusal of Acceptance Required

(a) Except as provided by Subsection (b), a person who refuses to accept a durable power of attorney under this subchapter shall provide to the agent presenting the power of attorney for acceptance a written statement advising the agent of the reason or reasons the person is refusing to accept the power of attorney.

(b) If the reason a person is refusing to accept a durable power of attorney is a reason described by Section 751.206(2) or (3):

(1) the person shall provide to the agent presenting the power of attorney for acceptance a written statement signed by the person under penalty of perjury stating that the reason for the refusal is a reason described by Section 751.206(2) or (3); and

(2) the person refusing to accept the power of attorney is not required to provide any additional explanation for refusing to accept the power of attorney.

(c) The person must provide to the agent the written statement required under Subsection (a) or (b) on or before the date the person would otherwise be required to accept the durable power of attorney under Section 751.201.

New.

Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.208. Date of Acceptance

A durable power of attorney is considered accepted by a person under Section 751.201 on the first day the person agrees to act at the agent’s direction under the power of attorney.

New.

Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.209. Good Faith Reliance on Durable Power of Attorney

(a) A person who in good faith accepts a durable power of attorney without actual knowledge that the signature of the principal or of another adult directed by the principal to sign the principal’s name as authorized by Section 751.0021 is not genuine may rely on the presumption under Section 751.0022 that the signature is genuine and that the power of attorney was properly executed.

(b) A person who in good faith accepts a durable power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent’s authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent’s authority may rely on the power of attorney as if:

(1) the power of attorney were genuine, valid, and still in effect;

(2) the agent’s authority were genuine, valid, and still in effect; and

(3) the agent had not exceeded and had properly exercised the authority.

New.

Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.
§ 751.210. Reliance on Certain Requested Information

A person may rely on, without further investigation or liability to another person, an agent’s certification, opinion of counsel, or English translation that is provided to the person under this subchapter.

New.
Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.211. Actual Knowledge of Person When Transactions Conducted Through Employees

(a) This section applies to a person who conducts a transaction or activity through an employee of the person.

(b) For purposes of this chapter, a person is not considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney does not have actual knowledge of the fact.

(c) For purposes of this chapter, a person is considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney has actual knowledge of the fact.

New.
Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.212. Cause of Action for Refusal to Accept Durable Power of Attorney

(a) The principal or an agent acting on the principal’s behalf may bring an action against a person who refuses to accept a durable power of attorney in violation of this subchapter.

(b) An action under Subsection (a) may not be commenced against a person until after the date the person is required to accept the durable power of attorney under Section 751.201.

(c) If the court finds that the person refused to accept the durable power of attorney in violation of this subchapter, the court, as the exclusive remedy under this chapter:

(1) shall order the person to accept the power of attorney; and
(2) may award the plaintiff court costs and reasonable and necessary attorney’s fees.

(d) The court shall dismiss an action under this section that was commenced after the date a written statement described by Section 751.207(b) was provided to the agent.

(e) Notwithstanding Subsection (c), if the agent receives a written statement described by Section 751.207(b) after the date a timely action is commenced under this section, the court may not order the person to accept the durable power of attorney, but instead may award the plaintiff court costs and reasonable and necessary attorney’s fees as the exclusive remedy under this chapter.

New.
Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

§ 751.213. Liability of Principal

(a) Subsection (b) applies to an action brought under Section 751.212 if:

(1) the court finds that the action was commenced after the date the written statement described by Section 751.207(b) was timely provided to the agent;
(2) the court expressly finds that the refusal of the person against whom the action was brought to accept the durable power of attorney was permitted under this chapter; or
(3) Section 751.212(e) does not apply and the court does not issue an order ordering the person to accept the power of attorney.

(b) Under any of the circumstances described by Subsection (a), the principal may be liable to the person who refused to accept the durable power of attorney for court costs and reasonable and necessary attorney’s fees incurred in defending the action as the exclusive remedy under this chapter.

New.
Added by Acts 2017, 85th Leg., ch. 834, § 8, eff. Sept. 1, 2017.

Subchapter F. Civil Remedies

§ 751.251. Judicial Relief

(a) The following may bring an action requesting a court to construe, or determine the validity or enforceability of, a durable power of attorney, or to review an agent’s conduct under a durable power of attorney and grant appropriate relief:

(1) the principal or the agent;
(2) a guardian, conservator, or other fiduciary acting for the principal;
(3) a person named as a beneficiary to receive property, a benefit, or a contractual right on the principal’s death;
(4) a governmental agency with regulatory authority to provide protective services to the principal [protect the principal’s welfare]; and
(5) a person who demonstrates to the court sufficient interest in the principal’s welfare or estate.

(b) A person who is asked to accept a durable power of attorney may bring an action requesting a court to construe, or determine the validity or enforceability of, the power of attorney.

(c) On the principal’s motion, the court shall dismiss an action under Subsection (a) unless the court finds that the principal lacks capacity to revoke the agent’s authority or the durable power of attorney.

(d) In an action brought under this section, the court may award costs and reasonable and necessary attorney’s fees in an amount the court considers equitable and just.

New.
Chapter 752. Statutory Durable Power of Attorney

Statutes in Context
Chapter 752

Section 752.051 contains a form which the principal may use to create a durable power of attorney. The form includes a list of powers which the principal may grant by initialing a line in front of the power. Alternatively, the principal may grant all the powers by initialing Line N. Each of the listed powers is explained in great detail by a later statutory provision. It is important for the principal to read the statutory provisions so that the principal fully understands the scope of the powers which the principal is granting to the agent.

The principal has a choice of making the power effective immediately (the default choice) or effective only upon incapacity (the springing power). Debate exists regarding which effective date is better. The principal often feels there is no need to grant any authority until the agent’s actions are actually needed. However, third parties may be reluctant to accept a springing agent’s authority for fear that the principal is not actually incapacitated. A compromise option is for the agent to make the power effective immediately but have the agent’s attorney (or some other trusted person) keep the document and deliver it to the agent at the appropriate time.

The principal may grant certain powers, the so-called “hot powers,” by including and initialing language specifically granting those powers as explained in § 752.052.

Subchapter A. General Provisions Regarding Statutory Durable Power of Attorney

§ 752.001. Use, Meaning, and Effect of Statutory Durable Power of Attorney

(a) An individual may use a statutory durable power of attorney to grant an agent powers with respect to an individual’s property and financial matters.

(b) A power of attorney in substantially the form prescribed by Section 752.051 has the meaning and effect prescribed by this subtitle.

Derived from Probate Code § 490(a).

§ 752.002. Validity Not Affected

A power of attorney is valid with respect to meeting the requirements for a statutory durable power of attorney regardless of the fact that:

(1) one or more of the categories of optional powers listed in the form prescribed by Section 752.051 are not initialed; or

(2) the form includes specific limitations on, or additions to, the powers of the attorney in fact or agent.

Derived from Probate Code § 490(a).

§ 752.003. Prescribed Form Not Exclusive

The form prescribed by Section 752.051 is not exclusive, and other forms of power of attorney may be used.

Derived from Probate Code § 490(a).

§ 752.004. Legal Sufficiency of Statutory Durable Power of Attorney

A statutory durable power of attorney is legally sufficient under this subtitle if:

(1) the wording of the form complies substantially with the wording of the form prescribed by Section 752.051;

(2) the form is properly completed; and

(3) the signature of the principal is acknowledged.

Derived from Probate Code § 490(b).

Subchapter B. Form of Statutory Durable Power of Attorney

§ 752.051. Form

The following form is known as a “statutory durable power of attorney”:

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF

Electronic copy available at: https://ssrn.com/abstract=4537861
THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent’s authority will continue until:

(1) you die or revoke the power of attorney;
(2) your agent resigns, is removed by court order, or is unable to act for you; or
(3) a guardian is appointed for your estate.

I, __________ (insert your name and address), appoint __________ (insert the name and address of the person appointed) as my agent to act for me in any lawful way with respect to all of the following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (O) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (N).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

(A) Real property transactions;
(B) Tangible personal property transactions;
(C) Stock and bond transactions;
(D) Commodity and option transactions;
(E) Banking and other financial institution transactions;
(F) Business operating transactions;
(G) Insurance and annuity transactions;
(H) Estate, trust, and other beneficiary transactions;
(I) Claims and litigation;
(J) Personal and family maintenance;
(K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
(L) Retirement plan transactions;
(M) Tax matters;
(N) Digital assets and the content of an electronic communication;
(O) ALL OF THE POWERS LISTED IN (A) THROUGH (N), YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (O).

SPECIAL INSTRUCTIONS:

Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

Special instructions applicable to co-agents (if you have appointed co-agents to act, initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to act independently):

Each of my co-agents may act independently for me.

My co-agents may act for me only if the co-agents act jointly.

My co-agents may act for me only if a majority of the co-agents act jointly.

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

I grant my agent the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE BELOW, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES.

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. Termination of this durable power of attorney is not effective as to a third party until the third party has actual knowledge of the termination. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. The meaning and effect of this durable power of attorney is determined by Texas law.

If any agent named by me dies, incapacitated, refuses to act, or if my marriage to an agent named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent’s authority to act under this power of attorney), or is removed by court order, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: 

Signed this ______ day of __________, __________.

(your signature) __________________________

State of ______________________

County of ______________________

This document was acknowledged before me on ______ (date) by ______________________

(name of principal).

(signature of notarial officer)

(Seal, if any, of notary)

(printed name) __________________________

My commission expires: ______________________

IMPORTANT INFORMATION FOR AGENT

Agent’s Duties

When you accept the authority granted under this power of attorney, you establish a “fiduciary” relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated, suspended, or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

(1) act in good faith;
(2) do nothing beyond the authority granted in this power of attorney;
(3) act loyally for the principal’s benefit;
(4) avoid conflicts that would impair your ability to act in the principal’s best interest; and
(5) disclose your identity as an agent when you act for the principal by writing or printing the name of the principal and signing your own name as “agent” in the following manner:

(Principal’s Name) by (Your Signature) as Agent

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

(1) maintain records of each action taken or decision made on behalf of the principal;
(2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and

(3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:

(A) the property belonging to the principal that has come to your knowledge or into your possession;
(B) each action taken or decision made by you as agent;
(C) a complete account of receipts, disbursements, and other actions of you as agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
(D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset’s current value, if known to you;
(E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
(F) each known liability;
(G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and
(H) all documentation regarding the principal’s property.

Termination of Agent’s Authority

You must stop acting on behalf of the principal if you learn of any event that terminates or suspends this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

(1) the principal’s death;
(2) the principal’s revocation of this power of attorney or your authority;
(3) the occurrence of a termination event stated in this power of attorney;
(4) if you are married to the principal, the dissolution of your marriage by a court decree of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney;
(5) the appointment and qualification of a permanent guardian of the principal’s estate unless a court order provides otherwise; or
(6) if ordered by a court, your removal as agent (attorney in fact) under this power of attorney.

An event that suspends this power of attorney or your authority to act under this power of attorney is the appointment and qualification of a temporary guardian unless a court order provides otherwise.

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for
misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Derived from Probate Code § 490(a).


§ 752.052. Modifying Statutory Form to Grant Specific Authority

The statutory durable power of attorney may be modified to allow the principal to grant the agent the specific authority described by Section 751.031(b) by including the following language:

“GRANT OF SPECIFIC AUTHORITY
OPTIONAL

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent. If you DO NOT want to grant your agent one or more of the following powers, you may also CROSS OUT a power you DO NOT want to grant.)

____ Create, amend, revoke, or terminate an inter vivos trust
____ Make a gift, subject to the limitations of Section 751.032 of the Durable Power of Attorney Act (Section 751.032, Estates Code) and any special instructions in this power of attorney
____ Create or change rights of survivorship
____ Create or change a beneficiary designation
____ Authorize another person to exercise the authority granted under this power of attorney”.

New.


Subchapter C. Construction of Powers Related to Statutory Durable Power of Attorney

Statutes in Context
Chapter 752, Subchapter C

Chapter 752, Subchapter C, provides detailed explanations of the powers granted in the statutory form.

§ 752.101. Construction in General

By executing a statutory durable power of attorney that confers authority with respect to any class of transactions, the principal empowers the attorney in fact or agent for that class of transactions to:

(1) demand, receive, and obtain by litigation, action, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled;

(2) conserve, invest, disburse, or use any money or other thing of value received on behalf of the principal for the purposes intended;

(3) contract in any manner with any person, on terms agreeable to the attorney in fact or agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify that contract or another contract made by or on behalf of the principal;

(4) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the attorney in fact or agent considers desirable to accomplish a purpose of a transaction;

(5) with respect to a claim existing in favor of or against the principal:

(A) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise; or

(B) intervene in an action or litigation relating to the claim;

(6) seek on the principal’s behalf the assistance of a court to carry out an act authorized by the power of attorney;

(7) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(8) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(9) prepare, execute, and file a record, report, or other document the attorney in fact or agent considers necessary or desirable to safeguard or promote the principal’s interest under a statute or governmental regulation;

(10) reimburse the attorney in fact or agent for an expenditure made in exercising the powers granted by the durable power of attorney; and

(11) in general, perform any other lawful act that the principal may perform with respect to the transaction.

Derived from Probate Code § 491.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.102. Real Property Transactions

The language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the attorney in fact or agent, without further reference to a specific description of the real property, to:
(1) accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;
(2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property;
(3) release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist;
(4) perform any act of management or of conservation with respect to an interest in real property, a right incident to real property, owned or claimed to be owned by the principal, including the authority to:
   (A) insure against a casualty, liability, or loss;
   (B) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;
   (C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with the taxes or assessments;
   (D) purchase supplies, hire assistance or labor, or make repairs or alterations to the real property; and
   (E) manage and supervise an interest in real property, including the mineral estate.
(5) use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in which the principal has or claims to have an estate, interest, or right;
(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property, receive and hold shares of stock or obligations received in a plan or reorganization, and act with respect to the shares or obligations, including:
   (A) selling or otherwise disposing of the shares or obligations;
   (B) exercising or selling an option, conversion, or similar right with respect to the shares or obligations; and
   (C) voting the shares or obligations in person or by proxy;
(7) change the form of title of an interest in or right incident to real property;
(8) dedicate easements or other real property in which the principal has or claims to have an interest to public use, with or without consideration;
(9) enter into mineral transactions, including:
   (A) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest in which the principal has or claims to have an interest;
   (B) pooling and unitizing all or part of the principal’s land, mineral leasehold, mineral, royalty, or other interest with land, mineral leasehold, mineral, royalty, or other interest of one or more persons for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;
(10) entering into contracts and agreements concerning the installation and operation of plants or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;
(11) conducting or contracting for the conducting of seismic evaluation operations;
(12) drilling or contracting for the drilling of wells for oil, gas, or other minerals;
(13) contracting for and making “dry hole” and “bottom hole” contributions of cash, leasehold interests, or other interests toward the drilling of wells;
(14) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;
(15) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation in the drilling or reworking of wells;
(16) entering into farmout agreements committing the principal to assign oil, gas, or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;
(17) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests;
(18) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to the principal and receiving and receipting for the proceeds of those contracts, conveyances, and other agreements and transfers on behalf of the principal; and
(19) taking an action described by Paragraph (K) regardless of whether the action is, at the time the action is taken or subsequently, recognized or considered as a common or proper practice by those engaged in the business of prospecting for,
developing, producing, processing, transporting, or marketing minerals; and
(10) designate the property that constitutes the principal’s homestead.

(b) The power to mortgage and encumber real property provided by this section includes the power to execute documents necessary to create a lien against the principal’s homestead as provided by Section 50, Article XVI, Texas Constitution, and to consent to the creation of a lien against property owned by the principal’s spouse in which the principal has a homestead interest.

Derived from Probate Code § 492.


§ 752.103. Tangible Personal Property Transactions

The language conferring general authority with respect to tangible personal property transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) accept tangible personal property or an interest in tangible personal property as a gift or as security for a loan or reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, create a security interest in, pawn, grant options concerning, lease or sublet to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) release, assign, satisfy, or enforce by litigation, action, or otherwise a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and

(4) perform an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) insuring the property or interest against casualty, liability, or loss;

(B) obtaining or regaining possession or protecting the property or interest by litigation, action, or otherwise;

(C) paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) moving the property;

(E) storing the property for hire or on a gratuitous bailment; and

(F) using, altering, and making repairs or alterations to the property.

Derived from Probate Code § 493.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.104. Stock and Bond Transactions

The language conferring authority with respect to stock and bond transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) buy, sell, and exchange:

(A) stocks;

(B) bonds;

(C) mutual funds; and

(D) all other types of securities and financial instruments other than commodity futures contracts and call and put options on stocks and stock indexes;

(2) receive certificates and other evidences of ownership with respect to securities;

(3) exercise voting rights with respect to securities in person or by proxy;

(4) enter into voting trusts; and

(5) consent to limitations on the right to vote.

Derived from Probate Code § 494.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.105. Commodity and Option Transactions

The language conferring authority with respect to commodity and option transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated options exchange; and

(2) establish, continue, modify, or terminate option accounts with a broker.

Derived from Probate Code § 495.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.106. Banking and Other Financial Institution Transactions

The language conferring authority with respect to banking and other financial institution transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) continue, modify, or terminate an account or other banking arrangement made by or on behalf of the principal;

(2) establish, modify, or terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the attorney in fact or agent;

(3) rent a safe deposit box or space in a vault;

(4) contract to procure other services available from a financial institution as the attorney in fact or agent considers desirable;

(5) withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;
(6) receive bank statements, vouchers, notices, or similar documents from a financial institution and act with respect to those documents;
(7) enter a safe deposit box or vault and withdraw from or add to its contents;
(8) borrow money at an interest rate agreeable to the attorney in fact or agent and pledge as security the principal’s property as necessary to borrow, pay, renew, or extend the time of payment of a debt of the principal;
(9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal’s order to receive the cash or other proceeds of those transactions, to accept a draft drawn by a person on the principal, and to pay the principal when due;
(10) receive for the principal and act on a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;
(11) apply for and receive letters of credit, credit cards, and traveler’s checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
(12) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Derived from Probate Code § 496.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.107. Business Operation Transactions

Subject to the terms of an agreement or other document governing or relating to an entity or entity ownership interest, to the extent the agent is permitted by law to act for the principal and unless the power of attorney provides otherwise, the [the] language conferring authority with respect to business operating transactions in a statutory durable power of attorney empowers the [attorney-in-fact or] agent to:

(1) operate, buy, sell, enlarge, reduce, or terminate an ownership [a business] interest;
(2) [do the following, to the extent that an attorney in fact or agent is permitted by law to act for a principal and subject to the terms of a partnership agreement,] [A] perform a duty or[ ] discharge a liability, or exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have [under the partnership agreement, whether or not the principal is a general or limited partner];
(3) [B] enforce the terms of an agreement or other document governing or relating to an entity or entity ownership interest [the partnership agreement by litigation, action, or otherwise]; [and]
(4) [C] defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of an entity ownership interest [membership in the partnership];
(5) [D] exercise in person or by proxy, or enforce by litigation, action, or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a [certificated or uncertificated] ownership interest;
(6) [E] [bond, share, or other similar instrument and] defend, submit to alternative dispute resolution [arbitration], settle, or compromise litigation [a legal proceeding] to which the principal is a party concerning a [certificated or uncertificated] ownership interest [because of a bond, share, or similar instrument];

(7) [(F)] with respect to a business or entity owned solely by the principal:
(A) continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the business or entity [before execution of the power of attorney with an individual, legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business];
(B) determine:
(i) the location of the business’s or entity’s operation;
(ii) the nature and extent of the business;
(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in the business’s or entity’s operation;
(iv) the amount and types of insurance carried; and
(v) the method of engaging, compensating, and dealing with the business’s or entity’s employees and accountants, attorneys, or [and] other agents [and employees];
(C) change the name or form of organization under which the business or entity is operated and enter into an [a partnership agreement with other persons [or organize a corporation] to take over all or part of the operation of the business or entity; and
(D) demand and receive money due or claimed by the principal or on the principal’s behalf in the operation of the business or entity and control and disburse the money in the operation of the business or entity;
(8) [(G)] put additional capital into a business or entity in which the principal has an interest;
(9) [(H)] join in a plan of reorganization, consolidation, interest exchange, conversion, or merger of the business or entity;
(10) [(I)] sell or liquidate a business or entity or all or part of the assets of the business or entity [at the time and on the terms that the attorney in fact or agent considers desirable];
(11) [(J)] establish the value of a business or entity under a buy-out agreement to which the principal is a party;
§ 752.108. Insurance and Annuity Transactions

(a) The language conferring authority with respect to insurance and annuity transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, or additional insurance contracts and annuities for the principal or the principal’s spouse, children, and other dependents and select the amount, type of insurance or annuity, and method of payment;

(3) pay the premium or assessment on, modify, rescind, release, or terminate, an insurance contract or annuity procured by the attorney in fact or agent;

(4) designate the beneficiary of the insurance contract, except as provided by Subsection (b);

(5) apply for and receive a loan on the security of the insurance contract or annuity;

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

(9) change or convert the type of insurance contract or annuity with respect to which the principal has or claims to have a power described by this section;

(10) change the beneficiary of an insurance contract or annuity, except that the attorney in fact or agent may be designated a beneficiary only to the extent authorized by Subsection (b);

(11) apply for and procure government aid to guarantee or pay premiums of an insurance contract on the life of the principal;

(12) do the following: (A) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business or entity and (i) that are required by a governmental agency, department, or instrumentality; or (ii) that the attorney in fact or agent considers desirable; and (B) make related payments; and

(13) pay, compromise, or contest taxes or assessments and perform any other act that the attorney in fact or agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business or entity, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Derived from Probate Code § 497.


§ 752.109. Estate, Trust, and Other Beneficiary Transactions

The language conferring authority with respect to estate, trust, and other beneficiary transactions in a statutory durable power of attorney empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, life estate, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled because of the fund;

(3) initiate, participate in, or oppose a legal or judicial proceeding to:

(A) ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; or

(B) remove, substitute, or surcharge a fiduciary;

(4) conserve, invest, disburse, or use anything received for an authorized purpose; and

(5) transfer all or part of the principal’s interest in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

Derived from Probate Code § 499.

§ 752.110. Claims and Litigation

The language conferring general authority with respect to claims and litigation in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) assert and prosecute before a court or administrative agency a claim, a claim for relief, a counterclaim, or an offset, or defend against an individual, a legal entity, or a government, including an action to:
   (A) recover property or other thing of value;
   (B) recover damages sustained by the principal;
   (C) eliminate or modify tax liability; or
   (D) seek an injunction, specific performance, or other relief;
   (2) bring an action to determine an adverse claim, intervene in an action or litigation, and act as an amicus curiae;
   (3) in connection with an action or litigation:
      (A) procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree; and
      (B) perform any lawful act the principal could perform, including:
         (i) acceptance of tender;
         (ii) offer of judgment;
         (iii) admission of facts;
         (iv) submission of a controversy on an agreed statement of facts;
         (v) consent to examination before trial; and
         (vi) binding of the principal in litigation;
   (4) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;
   (5) waive the issuance and service of process on the principal, accept service of process, appear for the principal, designate persons on whom process directed to the principal may be served, execute and file or deliver a consent, verity pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, or receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;
   (6) act for the principal regarding voluntary or involuntary bankruptcy or insolvency proceedings concerning:
      (A) the principal; or
      (B) another person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects the principal’s interest in property or other thing of value; and
   (7) pay a judgment against the principal or a settlement made in connection with a claim or litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Derived from Probate Code § 500.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.111. Personal and Family Maintenance

The language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney empowers the agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal’s spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including:
   (A) providing living quarters by purchase, lease, or other contract; or
   (B) paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;
(2) provide for the individuals described by Subdivision (1):
   (A) normal domestic help;
   (B) usual vacations and travel expenses; and
   (C) money for shelter, clothing, food, appropriate education, and other living costs;
(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1);
(4) continue any provision made by the principal for the individuals described by Subdivision (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;
(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) and open new accounts the agent considers desirable to accomplish a lawful purpose;
(6) continue:
   (A) payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization; or
   (B) contributions to those organizations;
(7) perform all acts necessary in relation to the principal’s mail, including:
   (A) receiving, signing for, opening, reading, and responding to any mail addressed to the principal, whether through the United States Postal Service or a private mail service;
   (B) forwarding the principal’s mail to any address; and
   (C) representing the principal before the United States Postal Service in all matters relating to mail service; and
(8) subject to the needs of the individuals...
described by Subdivision (1), provide for the reasonable care of the principal’s pets.

Derived from Probate Code § 501.


§ 752.112. Benefits from Certain Governmental Programs or Civil or Military Service

The language conferring authority with respect to benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) execute a voucher in the principal’s name for an allowance or reimbursement payable by the United States, a foreign government, or a state or subdivision of a state to the principal, including an allowance or reimbursement for:

(A) transportation of the individuals described by Section 752.111(1); and

(B) shipment of the household effects of those individuals;

(2) take possession and order the removal and shipment of the principal’s property from a post, warehouse, depot, dock, or other governmental or private place of storage or safekeeping and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) prepare, file, and prosecute a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal claims to be entitled under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described by this section and conserve, invest, disburse, or use anything received for a lawful purpose.

Derived from Probate Code § 502.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.113. Retirement Plan Transactions

(a) In this section, “retirement plan” means:

(1) an employee pension benefit plan as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002), without regard to the provisions of Section (2)(B) of that section;

(2) a plan that does not meet the definition of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.) because the plan does not cover common law employees;

(3) a plan that is similar to an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), regardless of whether the plan is covered by Title 1 of that Act, including a plan that provides death benefits to the beneficiary of employees; and

(4) an individual retirement account or annuity, a self-employed pension plan, or a similar plan or account.

(b) The language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney empowers the agent to perform any lawful act the principal may perform with respect to a transaction relating to a retirement plan, including to:

(1) apply for service or disability retirement benefits;

(2) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(3) designate or change the designation of a beneficiary or benefits payable by a retirement plan, except as provided by Subsection (c);

(4) make voluntary contributions to retirement plans if authorized by the plan;

(5) exercise the investment powers available under any self-directed retirement plan;

(6) make rollovers of plan benefits into other retirement plans;

(7) borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan;

(8) waive the principal’s right to be a beneficiary of a joint or survivor annuity if the principal is not the participant in the retirement plan;

(9) receive, endorse, and cash payments from a retirement plan;

(10) waive the principal’s right to receive all or a portion of benefits payable by a retirement plan; and

(11) request and receive information relating to the principal from retirement plan records.

(c) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an agent may be named a beneficiary under a retirement plan only to the extent the agent was named a beneficiary by the principal under the retirement plan, or in the case of a rollover or trustee-to-trustee transfer, the predecessor retirement plan.

Derived from Probate Code § 503.


§ 752.114. Tax Matters

The language conferring authority with respect to tax matters in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) prepare, sign, and file:

(A) federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act (26 U.S.C. Chapter 21), and other tax returns;

(B) claims for refunds;

(C) requests for extensions of time;
TEXAS ESTATES CODE

§ 304. petitions regarding tax matters; and
(E) any other tax-related documents, including:
   (i) receipts;
   (ii) offers;
   (iii) waivers;
   (iv) consents, including consents and agreements under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A);
   (v) closing agreements; and
   (vi) any power of attorney form required by the Internal Revenue Service or other taxing authority with respect to a tax year on which the statute of limitations has not run and 25 tax years following that tax year;
(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and
(4) act for the principal in all tax matters, for all periods, before the Internal Revenue Service and any other taxing authority.

Derived from Probate Code § 504.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.1145. Digital Asset Transactions
(a) In this section, “digital asset” has the meaning assigned by Section 2001.002.
(b) The language conferring authority with respect to digital assets in a statutory durable power of attorney empowers the attorney in fact or agent, without further reference to a specific digital asset, to access digital assets as provided in Chapter 2001.
New.

§ 752.115. Existing Interests; Foreign Interests
The powers described by Sections 752.102-752.1145 may be exercised equally with respect to an interest the principal has at the time the durable power of attorney is executed or acquires later, whether or not:
   (1) the property is located in this state; or
   (2) the powers are exercised or the durable power of attorney is executed in this state.
Derived from Probate Code § 505.

Chapter 753. Removal of Attorney in Fact or Agent

§ 753.001. Procedure for Removal
(a) In this section, “person interested,” notwithstanding Section 22.018, has the meaning assigned by Section 1002.018.
(b) The following persons may file a petition under this section:
   (1) any person named as a successor attorney in fact or agent in a durable power of attorney; or
   (2) if the person with respect to whom a guardianship proceeding has been commenced is a principal who has executed a durable power of attorney, any person interested in the guardianship proceeding, including an attorney ad litem or guardian ad litem.
(c) On the petition of a person described by Subsection (b), a probate court, after a hearing, may enter an order:
   (1) removing a person named and serving as an attorney in fact or agent under a durable power of attorney;
   (2) authorizing the appointment of a successor attorney in fact or agent who is named in the durable power of attorney, if the court finds that the successor attorney in fact or agent is willing to accept the authority granted under the power of attorney; and
   (3) if compensation is allowed by the terms of the durable power of attorney, denying all or part of the removed attorney in fact’s or agent’s compensation.
(d) A court may enter an order under Subsection (c) if the court finds:
   (1) that the attorney in fact or agent has breached the attorney in fact’s or agent’s fiduciary duties to the principal;
   (2) that the attorney in fact or agent has materially violated or attempted to violate the terms of the durable power of attorney and the violation or attempted violation results in a material financial loss to the principal;
   (3) that the attorney in fact or agent is incapacitated or is otherwise incapable of properly performing the attorney in fact’s or agent’s duties; or
   (4) that the attorney in fact or agent has failed to make an accounting:
      (A) that is required by Section 751.104 within the period prescribed by Section 751.105, by other law, or by the terms of the durable power of attorney; or
      (B) as ordered by the court.
New.
Added by Acts 2017, 85th Leg., ch. 514, § 6, eff. Sept. 1, 2017.
§ 753.002. Notice to Third Parties

Not later than the 21st day after the date the court enters an order removing an attorney in fact or agent and authorizing the appointment of a successor under Section 753.001, the successor attorney in fact or agent shall provide actual notice of the order to each third party that the attorney in fact or agent has reason to believe relied on or may rely on the durable power of attorney.

New.
Added by Acts 2017, 85th Leg., ch. 514, § 6, eff. Sept. 1, 2017.

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

Statutes in Context
Title 3

Guardians may be needed for minors and adult incapacitated individuals. There are two main types of guardians: a guardian of the person who is in charge of the ward’s physical needs (§ 1151.051) and a guardian of the estate of who is in charge of the ward’s property and financial affairs (§ 1151.101).

The guardianship provisions were originally integrated with the decedents’ estates provisions. In 1993, they were split. In many respects, the guardianship provisions still closely mirror the decedents’ estates provisions.

SUBTITLE A. GENERAL PROVISIONS

Chapter 1001. Purpose and Construction

§ 1001.001. Policy; Purpose of Guardianship
§ 1001.002. Laws Applicable to Guardianships
§ 1001.003. References in Law Meaning Incapacitated Person

Chapter 1001. Purpose and Construction

§ 1001.001. Policy; Purpose of Guardianship

(a) A court may appoint a guardian with either full or limited authority over an incapacitated person as indicated by the incapacitated person’s actual mental or physical limitations and only as necessary to promote and protect the well-being of the incapacitated person.

(b) In creating a guardianship that gives a guardian limited authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including by presuming that the incapacitated person retains capacity to make personal decisions regarding the person’s residence.

Derived from Probate Code § 602.


§ 1001.002. Laws Applicable to Guardianships

To the extent applicable and not inconsistent with other provisions of this code, the laws and rules governing estates of decedents apply to guardianships.

Derived from Probate Code § 603(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1001.003. References in Law Meaning Incapacitated Person

In this code or any other law, a reference to any of the following means an incapacitated person:

(1) a person who is mentally, physically, or legally incompetent;
(2) a person who is judicially declared incompetent;
(3) an incompetent or an incompetent person;
(4) a person of unsound mind; or
(5) a habitual drunkard.

Derived from Probate Code § 603(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1002. Definitions

§ 1002.001. Applicability of Definitions
§ 1002.0015. Alternatives to Guardianship
§ 1002.002. Attorney Ad Litem
§ 1002.003. Authorized Corporate Surety
§ 1002.004. Child
§ 1002.005. Claim
§ 1002.006. Community Administrator
§ 1002.007. Corporate Fiduciary
§ 1002.008. Court; Probate Court; Statutory Probate Court
§ 1002.009. Court Investigator
§ 1002.010. Estate; Guardianship Estate
§ 1002.011. Exempt Property
§ 1002.012. Guardian
§ 1002.013. Guardian Ad Litem
§ 1002.014. Guardianship Certification Program Of The Judicial Branch Certification Commission
§ 1002.015. Guardianship Proceeding
§ 1002.016. Guardianship Program
§ 1002.017. Incapacitated Person
§ 1002.018. Interested Person; Person Interested
§ 1002.019. Minor
§ 1002.020. Mortgage; Lien
§ 1002.021. Next Of Kin
§ 1002.022. Parent
§ 1002.003. Authorized Corporate Surety

“Authorized corporate surety” means a domestic or foreign corporation authorized to engage in business in this state to issue surety, guaranty, or indemnity bonds that guarantee the fidelity of a guardian.

Derived from Probate Code § 601(2).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.004. Child

“Child” includes a biological child and an adopted child, regardless of whether the child was adopted by a parent under a statutory procedure or by acts of estoppel.

Derived from Probate Code § 601(3).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.005. Claim

“Claim” includes:

(1) a liability against the estate of an incapacitated person; and
(2) a debt due to the estate of an incapacitated person.

Derived from Probate Code § 601(4).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.006. Community Administrator

“Community administrator” means a spouse who, on the judicial declaration of incapacity of the other spouse, is authorized to manage, control, and dispose of the entire community estate, including the part of the community estate the incapacitated spouse legally has the power to manage in the absence of the incapacity.

Derived from Probate Code § 601(5).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.007. Corporate Fiduciary

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

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

Derived from Probate Code § 601(6).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
§ 1002.008. Court; Probate Court; Statutory Probate Court
   (a) “Court” or “probate court” means:
   (1) a county court exercising its probate jurisdiction;
   (2) a court created by statute and authorized to exercise original probate jurisdiction; or
   (3) a district court exercising original probate jurisdiction in a contested matter.
   (b) “Statutory probate court” means a court created by statute and designated as a statutory probate court under Chapter 25, Government Code.
   The term does not include a county court at law exercising probate jurisdiction unless the court is designated a statutory probate court under Chapter 25, Government Code.
   Derived from Probate Code §§ 601(8), (29).
   Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.009. Court Investigator
   “Court investigator” means a person appointed by the judge of a statutory probate court under Section 25.0025, Government Code, or a judge under Section 1054.156.
   Derived from Probate Code § 601(7).

§ 1002.010. Estate; Guardianship Estate
   “Estate” or “guardianship estate” means a ward’s or deceased ward’s property, as that property:
   (1) exists originally and changes in form by sale, reinvestment, or otherwise;
   (2) is augmented by any accretions and other additions to the property, including any property to be distributed to the deceased ward’s representative by the trustee of a trust that terminates on the ward’s death, or substitutions for the property; and
   (3) is diminished by any decreases in or distributions from the property.
   Derived from Probate Code § 601(9).
   Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.011. Exempt Property
   “Exempt property” means the property in a deceased ward’s estate that is exempt from execution or forced sale by the constitution or laws of this state, and any allowance paid instead of that property.
   Derived from Probate Code § 601(10).
   Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.012. Guardian
   (a) “Guardian” means a person appointed as a:
   (1) guardian under Subchapter D, Chapter 1101;
   (2) successor guardian; or
   (3) temporary guardian.
   (b) Except as expressly provided otherwise, “guardian” includes:
   (1) the guardian of the estate of an incapacitated person; and
   (2) the guardian of the person of an incapacitated person.
   Derived from Probate Code § 601(11).
   Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.013. Guardian Ad Litem
   “Guardian ad litem” means a person appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding.
   Derived from Probate Code § 601(12).
   Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.014. Guardianship Certification Program of the Judicial Branch Certification Commission
   “Guardianship certification program of the Judicial Branch Certification Commission” means the program established under Chapter 155 [111], Government Code.
   Derived from Probate Code § 601(12-a).

§ 1002.015. Guardianship Proceeding
   The term “guardianship proceeding” means a matter or proceeding related to a guardianship or any other matter covered by this title, including:
   (1) the appointment of a guardian of a minor or other incapacitated person, including an incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child;
   (2) an application, petition, or motion regarding guardianship or a substitute for guardianship under this title;
   (3) a mental health action; and
   (4) an application, petition, or motion regarding a trust created under Chapter 1301.
   Derived from Probate Code § 601(25).

§ 1002.016. Guardianship Program
   “Guardianship program” has the meaning assigned by Section 155.001, Government Code.
   Derived from Probate Code § 601(13).
308

TEXAS ESTATES CODE

§ 1002.017. Incapacitated Person

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

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.018. Interested Person; Person Interested

“Interested person” or “person interested” means:
(1) an heir, devisee, spouse, creditor, or any other person having a property right in or claim against an estate being administered; or
(2) a person interested in the welfare of an incapacitated person.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.019. Minor

“Minor” means a person younger than 18 years of age who:
(1) has never been married; and
(2) has not had the disabilities of minority removed for general purposes.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.020. Mortgage; Lien

“Mortgage” and “lien” include:
(1) a deed of trust;
(2) a vendor’s lien;
(3) a mechanic’s, materialman’s, or laboror’s lien;
(4) a judgment, attachment, or garnishment lien;
(5) a federal or state tax lien;
(6) a chattel mortgage; and
(7) a pledge by hypothecation.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.021. Next of Kin

“Next of kin” includes:
(1) an adopted child;
(2) an adopted child’s descendants; and
(3) the adoptive parent of an adopted child.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.022. Parent

“Parent” means
(a) “Parent” includes a natural person, a corporation, and a guardianship program.
(b) The definition of “person” assigned by Section 311.005, Government Code, does not apply to any provision in this title.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.024. Personal Property

“Personal property” includes an interest in:
(1) goods;
(2) money;
(3) a chose in action;
(4) an evidence of debt; and
(5) a real chattel.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.025. Private Professional Guardian

“Private professional guardian” has the meaning assigned by Section 155.001, Government Code.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.026. Proposed Ward

“Proposed ward” means a person alleged in a guardianship proceeding to be incapacitated.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.026. Proposed Ward

“Qualified delivery method” means delivery by:
(1) hand delivery by courier, with courier’s proof of delivery receipt;
(2) certified or registered mail, return receipt requested, with return receipt; or
(3) a private delivery service designated as a designated delivery service by the United States Secretary of the Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.

New.

Added by Acts 2023, 88th Leg., ch. 123, § 1, eff. Sept. 1, 2023 and Acts 2023, 88th Leg., ch. 207, § 1, eff. Sept. 1, 2023.

§ 1002.027.  Real Property

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

Derived from Probate Code § 601(28).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.028.  Representative; Personal Representative

“Representative” and “personal representative” include:

(1) a guardian; and

(2) a successor guardian.

Derived from Probate Code § 601(23).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.029.  Surety

“Surety” includes a personal surety and a corporate surety.

Derived from Probate Code § 601(30).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.030.  Ward

“Ward” means a person for whom a guardian has been appointed.

Derived from Probate Code § 601(31).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.031.  Supports and Services

“Supports and services” means available formal and informal resources and assistance that enable an individual to:

(1) meet the individual’s needs for food, clothing, or shelter;

(2) care for the individual’s physical or mental health;

(3) manage the individual’s financial affairs; or

(4) make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

New.

Added by Acts 2015, 84th Leg., ch. 214, § 2, eff. Sept. 1, 2015.
Chapter 1022. Jurisdiction

§ 1022.001. General Probate Court Jurisdiction in Guardianship Proceedings; Appeals


§ 1022.003. Jurisdiction of Contested Guardianship Proceeding in County With No Statutory Probate Court or County Court at Law

§ 1022.004. Jurisdiction of Contested Guardianship Proceeding in County With No Statutory Probate Court

§ 1022.005. Exclusive Jurisdiction of Guardianship Proceeding in County With Statutory Probate Court

§ 1022.006. Concurrent Jurisdiction With District Court

§ 1022.007. Transfer of Proceeding by Statutory Probate Court

§ 1022.008. Transfer of Contested Guardianship of the Person of a Minor

Chapter 1022. Jurisdiction

§ 1022.001. General Probate Court Jurisdiction in Guardianship Proceedings; Appeals

(a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in Section 1021.001 for that type of court.

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

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

Derived from Probate Code § 605.


§ 1022.002. Original Jurisdiction for Guardianship Proceedings

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of guardianship proceedings.

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

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

(d) From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

Derived from Probate Code §§ 604 & 607A.


§ 1022.003. Jurisdiction of Contested Guardianship Proceeding in County With No Statutory Probate Court or County Court at Law

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

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

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

(b) If a party to a guardianship proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a
 exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge’s own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge’s own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

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

Section 1022.005. Exclusive Jurisdiction of Guardianship Proceeding in County With Statutory Probate Court

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.

(b) A cause of action related to a guardianship proceeding of which the statutory probate court has jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.
exclusive jurisdiction as provided by Subsection (a) must be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 1022.006 or with the jurisdiction of any other court.

**Derived from Probate Code § 607D.**


### § 1022.006. Concurrent Jurisdiction With District Court

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

1. a personal injury, survival, or wrongful death action by or against a person in the person’s capacity as a guardian; and
2. an action involving a guardian in which each other party aligned with the guardian is not an interested person in the guardianship.

**Derived from Probate Code § 607E.**


### § 1022.007. Transfer of Proceeding by Statutory Probate Court

(a) A judge of a statutory probate court, on the motion of a party to the action or of a person interested in the guardianship, may:

1. transfer to the judge’s court from a district, county, or statutory court a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court, including a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court and in which the guardian, ward, or proposed ward in the pending guardianship proceeding is a party; and
2. consolidate the transferred cause of action with the guardianship proceeding to which it relates and any other proceedings in the statutory probate court that are related to the guardianship proceeding.

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

**Derived from Probate Code § 608.**


### § 1022.008. Transfer of Contested Guardianship of the Person of a Minor

(a) If an interested person contests an application for the appointment of a guardian of the person of a minor or an interested person seeks the removal of a guardian of the person of a minor, the judge, on the judge’s own motion, may transfer all matters related to the guardianship proceeding to a court of competent jurisdiction in which a suit affecting the parent-child relationship under the Family Code is pending.

(b) The probate court that transfers a proceeding under this section to a court with proper jurisdiction over suits affecting the parent-child relationship shall send to the court to which the transfer is made the complete files in all matters affecting the guardianship of the person of the minor and certified copies of all entries in the judge’s guardianship docket. The transferring court shall keep a copy of the transferred files. If the transferring court retains jurisdiction of the guardianship of the estate of the minor or of another minor who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

(c) The court to which a transfer is made under this section shall apply the procedural and substantive provisions of the Family Code, including Sections 155.005 and 155.205, in regard to enforcing an order rendered by the court from which the proceeding was transferred.

**Derived from Probate Code § 609.**

*Added by and redesignated from Probate Code § 609(b), (c) by Acts 2013, 83rd Leg., ch. 161, § 6.015(a), (b), eff. Jan. 1, 2014.*

### Chapter 1023. Venue

#### § 1023.001. Venue for Appointment of Guardian

#### § 1023.002. Concurrent Venue and Transfer for Want of Venue

#### § 1023.003. Application for Transfer of Guardianship to Another County

#### § 1023.004. Notice

#### § 1023.005. Court Action

#### § 1023.006. Transfer of Record

#### § 1023.007. Transfer Effective

#### § 1023.008. Continuation of Guardianship

#### § 1023.009. New Guardian Appointed on Transfer

#### § 1023.010. Review of Transferred Guardianship

#### § 1023.011. No Liability of Judge

### Chapter 1023. Venue

#### § 1023.001. Venue for Appointment of Guardian

(a) Except as otherwise authorized by this section, a proceeding for the appointment of a guardian for the person or estate, or both, of an incapacitated person shall be brought in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.

(b) A proceeding for the appointment of a guardian for the person or estate, or both, of a minor may be brought:
(1) in the county in which both the minor’s parents reside;
(2) if the parents do not reside in the same county, in the county in which the parent who is the sole managing conservator of the minor resides, or in the county in which the parent who is the joint managing conservator with the greater period of physical possession of and access to the minor resides;
(3) if only one parent is living and the parent has custody of the minor, in the county in which that parent resides;
(4) if both parents are dead but the minor was in the custody of a deceased parent, in the county in which the last surviving parent having custody resided; or
(5) if both parents of a minor child have died in a common disaster and there is no evidence that the parents died other than simultaneously, in the county in which both deceased parents resided at the time of their simultaneous deaths if they resided in the same county.

(c) A proceeding for the appointment of a guardian who was appointed by will may be brought in the county in which the will was admitted to probate or in the county of the appointee’s residence if the appointee resides in this state.

Derived from Probate Code § 610.

§ 1023.002. Concurrent Venue and Transfer for Want of Venue

(a) If two or more courts have concurrent venue of a guardianship proceeding, the court in which an application for a guardianship proceeding is initially filed has and retains jurisdiction of the proceeding. A proceeding is considered commenced by the filing of an application alleging facts sufficient to confer venue, and the proceeding initially legally commenced extends to all of the property of the guardianship estate.

(b) If a guardianship proceeding is commenced in more than one county, it shall be stayed except in the county in which it was initially commenced until final determination of proper venue is made by the court in the county in which it was initially commenced.

(c) If it appears to the court at any time before the guardianship is closed that the proceeding was commenced in a court that did not have venue over the proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county.

(d) When a proceeding is transferred to another county under a provision of this chapter, all orders entered in connection with the proceeding shall be valid and shall be recognized in the court to which the guardianship was ordered transferred, if the orders were made and entered in conformance with the procedures prescribed by this code.

Derived from Probate Code §§ 611(b)-(d).

Added by and redesignated from Probate Code § 611(b)-(d) by Acts 2013, 83rd Leg., ch. 161, § 6.015(a), (d), eff. Jan. 1, 2014.

§ 1023.003. Transfer of Guardianship to Another County

(a) When a guardian or any other person desires to transfer the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for the transfer.

(b) With notice as provided by Section 1023.004, the court in which a guardianship is pending, on the court’s own motion, may transfer the transaction of the business of the guardianship to another county if the ward resides in the county to which the guardianship is to be transferred.

Derived from Probate Code § 612.

§ 1023.004. Notice

(a) On filing an application or on motion of a court to transfer a guardianship to another county under Section 1023.003, the sureties on the bond of the guardian shall be cited by personal service to appear and show cause why the guardianship should not be transferred.

(b) If an application is filed by a person other than the guardian, the guardian shall be cited by personal service to appear and show cause why the guardianship should not be transferred.

(c) If a court made a motion to transfer a guardianship, the guardian shall be given notice by a qualified delivery method [certified mail] to appear and show cause why the guardianship should not be transferred.

Derived from Probate Code § 613.

§ 1023.005. Court Action

(a) On hearing an application or motion under Section 1023.003, if it appears that transfer of the guardianship is in the best interests of the ward and either the ward has resided in the county to which the guardianship is to be transferred for at least six months or good cause is not otherwise shown to deny the transfer, the court shall enter an order:

(1) requiring that any existing bond of the guardian must remain in effect until a new bond has

Electronic copy available at: https://ssrn.com/abstract=4537861
Texas Estates Code

been given or a rider has been filed in accordance with Section 1023.010; and
(3) certifying that the guardianship is in compliance with this code at the time of transfer.
(b) In making a determination that the transfer is in the best interests of the ward under Subsection (a), the court may consider:
(1) the interests of justice;
(2) the convenience of the parties; and
(3) the preference of the ward, if the ward is 12 years of age or older.
(c) On receipt of an order described by Subsection (a), the county shall accept the transfer of the guardianship.

Derived from Probate Code § 614.


§ 1023.006. Transfer of Record

(a) Not later than the 10th working day after the date [When] an order of transfer is signed [made] under Section 1023.005, the clerk shall record any unrecorded papers of the guardianship required to be recorded. On payment of the clerk’s fee, the clerk shall send, using the electronic filing system established under Section 72.031, Government Code, [transmit in electronic or paper form] to the county clerk of the county to which the guardianship was ordered transferred:
(1) a transfer certificate and index of transferred documents [the case file of the guardianship proceedings]; [and]
(2) a copy of each final order;
(3) a copy of the order of transfer signed by the transferring court;
(4) a copy of the original papers filed in the transferring court;
(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and
(6) a bill of any costs accrued in the transferring court [a certified copy of the index of the guardianship records].

(b) The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form developed by the Office of Court Administration of the Texas Judicial System under Section 72.037, Government Code, when transferring a proceeding under this section.
(c) The clerk of the transferring court shall keep a copy of the documents transferred under Subsection (a).
(d) The clerk of the court to which the proceeding is transferred shall:
(1) accept documents transferred under Subsection (a);
(2) docket the suit; and
(3) notify, using the electronic filing system established under Section 72.031, Government Code, all parties, the clerk of the transferring court, and, if appropriate, the transferring court’s local registry that the suit has been docketed.
(e) The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (d), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).
(f) The clerk of the transferring court shall send a certified copy of the order directing payments to the transferee court to:
(1) any party affected by the order and, if appropriate, to the local registry of the transferee court using the electronic filing system established under Section 72.031, Government Code; and
(2) an employer affected by the order electronically or by first class mail.
(g) The clerks of both the transferee and transferring courts may each produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a) but must include a copy of the transfer certificate and index of transferred documents with each document produced.

(b) Sections 80.001 and 80.002, Government Code, do not apply to the transfer of documents under this section.

Derived from Probate Code § 615.


§ 1023.007. Transfer Effective

The order transferring a guardianship does not take effect until the clerk of the court to which the proceeding is transferred accepts and docket the case record under Section 1023.006,[

(1) the case file and a certified copy of the index required by Section 1023.006 are filed in electronic or paper form in the office of the county clerk of the county to which the guardianship was ordered transferred; and
(2) a certificate under the clerk’s official seal and reporting the filing of the case file and a certified copy of the index is filed in electronic or paper form in the court ordering the transfer by the county clerk of the county to which the guardianship was ordered transferred.

Derived from Probate Code § 616.

§ 1023.008. Continuation of Guardianship

(a) When a guardianship is transferred from one county to another in accordance with this chapter:

(1) the guardianship proceeds in the court to which it was transferred as if it had been originally commenced in that court;

(2) the court to which the guardianship is transferred becomes the court of continuing, exclusive jurisdiction;

(3) a proceeding relating to the guardianship that is commenced in the court ordering the transfer continues in the court to which the guardianship is transferred as if the proceeding commenced in the receiving court;

(4) a judgment or order entered in the guardianship before the transfer has the same effect and must be enforced as a judgment or order entered by the court to which the guardianship is transferred; and

(5) the court ordering the transfer does not retain:

(A) jurisdiction of the ward who is the subject of the guardianship; and

(B) the authority to enforce an order entered for a violation of this title that occurred before or after the transfer.

(b) It is not necessary to record in the receiving court any of the papers in the case that were recorded in the court from which the case was transferred.

Derived from Probate Code § 617.


§ 1023.009. New Guardian Appointed on Transfer

If it appears to the court that transfer of the guardianship is in the best interests of the ward, but that because of the transfer it is not in the best interests of the ward for the guardian of the estate to continue to serve in that capacity, the court may in its order of transfer revoke the letters of guardianship and appoint a new guardian, and the former guardian shall account for and deliver the estate as provided by this title in a case in which a guardian resigns.

Derived from Probate Code § 618.


§ 1023.010. Review of Transferred Guardianship

(a) Not later than the 90th day after the date the transfer of the guardianship takes effect under Section 1023.007, the court to which the guardianship was transferred shall hold a hearing to consider modifying the rights, duties, and powers of the guardian or any other provisions of the transferred guardianship.

(b) After the hearing described by Subsection (a), the court to which the guardianship was transferred shall enter an order requiring the guardian to:

(1) give a new bond payable to the judge of the court to which the guardianship was transferred; or

(2) file a rider to an existing bond noting the court to which the guardianship was transferred.

Derived from Probate Code § 619.


§ 1023.011. No Liability of Judge

(a) When a guardianship is transferred from one county to another in accordance with this chapter, a judge of the court from which the guardianship is transferred may not be held civilly liable for any injury, damage, or loss to the ward or the ward’s estate that occurs after the transfer.

(b) A judge of the court to which a guardianship is transferred as described by Subsection (a) may not be held civilly liable for any injury, damage, or loss to the ward or the ward’s estate that occurred before the transfer.

New.

Added by Acts 2021, 87th Leg., ch. 382, § 3, eff. Sept. 1, 2021.

SUBTITLE C. PROCEDURAL MATTERS

Chapter 1051. Notices and Process in Guardianship Proceedings in General

Subchapter A. Issuance and Form of Notice or Process

§ 1051.001. Issuance of Notice or Process in General

§ 1051.002. Direction of Writ or Other Process

§ 1051.003. Contents of Citation or Notice

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

§ 1051.051. Personal Service

§ 1051.052. Service by Mail or Qualified Delivery Method

§ 1051.053. Service by Posting

§ 1051.054. Service by Publication

§ 1051.055. Service on Party’s Attorney of Record

§ 1051.056. Service on Guardian or Receiver

Subchapter C. Notice and Citation Required for Application for Guardianship

§ 1051.101. Notice Required for Application for Guardianship; Citation of Applicant Not Required

§ 1051.102. Issuance of Citation for Application for Guardianship

§ 1051.103. Service of Citation for Application for Guardianship
§ 1051.104. Notice by Applicant for Guardianship
§ 1051.105. Waiver of Notice of Application for Guardianship
§ 1051.106. Action by Court on Application for Guardianship

Subchapter D. Return and Proof of Service of Citation or Notice
§ 1051.151. Requirements for Return on Citation or Notice Served by Personal Service
§ 1051.152. Validity of Service and Return on Citation or Notice Served by Posting
§ 1051.153. Proof of Service
§ 1051.154. Return to Court

Subchapter E. Alternative Manner of Issuance, Service, and Return
§ 1051.201. Court-Ordered Issuance, Service, and Return Under Certain Circumstances

Subchapter F. Additional Notice Provisions
§ 1051.251. Waiver of Notice of Hearing
§ 1051.252. Request for Notice of Filing of Pleading
§ 1051.253. Service of Notice of Intention to Take Depositions in Certain Proceedings

Chapter 1051. Notices and Process in Guardianship Proceedings in General

Subchapter A. Issuance and Form of Notice or Process
§ 1051.001. Issuance of Notice or Process in General

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

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

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

(1) necessary citations, writs, and other process in a guardianship proceeding; and

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

Derived from Probate Code §§ 632(a), (b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.002. Direction of Writ or Other Process

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

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

Derived from Probate Code § 632(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.003. Contents of Citation or Notice

(a) A citation or notice must:

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

(2) be dated;

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

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

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

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

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

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

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

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

Derived from Probate Code § 632(c).

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

§ 1051.051. Personal Service

(a) Except as otherwise provided by Subsection (b), if personal service of citation or notice is required, the citation or notice must be served on the attorney of record for the person to be cited or notified. Notwithstanding the requirement of personal service, service may be made on...
§ 1051.052. Service by Mail or Qualified Delivery Method

(a) The county clerk, or the guardian if required by statute or court order, shall serve a citation or notice required or permitted to be served by 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 a qualified delivery method [registered or certified mail] and shall serve the citation or notice by sending [mailing] the original citation or notice by a qualified delivery method [registered or certified mail].

(c) A guardian shall issue a notice required to be given by a guardian by a qualified delivery method [registered or certified mail] and shall serve the notice by sending [mailing] the original notice by a qualified delivery method [registered or certified mail].

(d) The county clerk or guardian, as applicable, shall send [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 or other proof of delivery requiring recipient signature requested. The clerk or guardian, as applicable, shall address the envelope containing the citation or notice to:

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

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

(e) Service by a qualified delivery method [mail] must be made at least 20 days before the return day of the citation or notice, excluding the date of service. The date of service [by mail] is the date of mailing, the date of deposit with the private delivery service, or the date of delivery by courier, as applicable.

(f) A copy of a citation or notice served under Subsection (a), (b), or (c) and a certificate of the person serving the citation or notice showing that the citation or notice was sent [mailed] and the date of the mailing, the date of deposit with a private delivery service, or the date of delivery by courier, as applicable, shall be filed and recorded. A returned receipt or other proof of delivery receipt for a citation or notice served under Subsection (b) or (c) shall be attached to the certificate.

(b) The applicant or movant in a guardianship proceeding shall pay the cost of delivery of a citation or notice under this section, to be taxed as costs in the proceeding.

Derived from Probate Code § 632(f)(4).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Heading amended by Acts 2023, 88th Leg., ch. 123, § 3, eff. Sept.. 1, 2023 and Acts 2023, 88th Leg., ch. 207, § 3, eff. Sept.. 1, 2023. Subsecs (b), (c), (d), (e), and (f) amended and subsec. (h) added by Acts 2023, 88th Leg., ch. 123, § 4, eff. Sept.. 1, 2023 and Acts 2023, 88th Leg., ch. 207, § 4, eff. Sept.. 1, 2023.

§ 1051.053. Service by Posting

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

(b) Citation or notice under this section must be posted for at least 10 days before the return day of the citation or notice, excluding the date of posting, except as provided by Section 1051.152(b). The date of service of citation or notice by posting is the date of posting.

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

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

(1) issued in the name of the guardian;

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

(3) filed with the county clerk.

Derived from Probate Code § 632(f)(2).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.054. Service by Publication

(a) Except as provided by Section 17.032, Civil Practice and Remedies Code, citation or notice to a person to be served by publication shall be published one time on
the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation in the county in which the proceeding is pending. The publication must be made at least 10 days before the return day of the citation or notice, excluding the date of publication.

(b) The date of service of citation or notice by publication is the earlier of:

(1) the date the citation or notice is published on the public information Internet website under Subsection (a); or

(2) the date of publication printed on the newspaper in which the citation or notice is published.

Derived from Probate Code § 632(f)(3).


§ 1051.055. Service on Party’s Attorney of Record

(a) If a party is represented by an attorney of record in a guardianship proceeding, including a proposed ward who has been personally served with notice of the proceeding and is represented by an attorney ad litem who has been personally served with notice of the proceeding or any subsequent application for the guardianship or any subsequent motions, applications, or pleadings relating to the guardianship proceeding involving the ward after the guardianship is created, if any.

(b) A notice served on an attorney under this section may be served by: (1) delivery to the attorney in person or by a qualified delivery method;

(2) registered or certified mail, return receipt requested; or

(3) any other form of mail that requires proof of delivery.

(c) A notice or citation may be served on an attorney under this section by:

(1) another party to the proceeding;

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

(3) an appropriate sheriff or constable; or

(4) another person competent to testify.

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

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

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

(3) the affidavit of a person showing service.

(e) Except as provided by Section 1051.105, an attorney ad litem may not waive personal service of citation.

Derived from Probate Code § 634.


§ 1051.056. Service on Guardian or Receiver

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

(1) the guardian’s or receiver’s attorney of record; or

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

Derived from Probate Code § 632(g).


Subchapter C. Notice and Citation Required for Application for Guardianship

§ 1051.101. Notice Required for Application for Guardianship; Citation of Applicant not Required

(a) On the filing of an application for guardianship, notice shall be issued and served as provided by this subchapter.

(b) It is not necessary to serve a citation on a person who files an application for the creation of a guardianship under this title or for that person to waive the issuance and personal service of citation under this subchapter.

Derived from Probate Code §§ 633(a), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.102. Issuance of Citation for Application for Guardianship

(a) On the filing of an application for guardianship, the court clerk shall issue a citation stating:

(1) that the application was filed;

(2) the name of the proposed ward;

(3) the name of the applicant; and

(4) the name of the person to be appointed guardian as provided in the application, if that person is not the applicant.

(b) The citation must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if the persons wish to contest the application.

(c) The citation shall be posted.

(d) The citation must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 1051.252 to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any.

Derived from Probate Code § 633(b).

§ 1051.103. Service of Citation for Application for Guardianship

(a) The sheriff or other officer shall personally serve citation to appear and answer an application for guardianship on:

(1) a proposed ward who is 12 years of age or older;
(2) the proposed ward’s parents, if the whereabouts of the parents are known or can be reasonably ascertained;
(3) any court-appointed conservator or person having control of the care and welfare of the proposed ward;
(4) the proposed ward’s spouse, if the whereabouts of the spouse are known or can be reasonably ascertained; and
(5) the person named in the application to be appointed guardian, if that person is not the applicant.

(b) A citation served as provided by Subsection (a) must contain the statement regarding the right under Section 1151.056.

(c) A citation served as provided by Subsection (a) to a relative of the proposed ward described by Subsection (a)(2) or (4) must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward under Section 1151.056.

Derived from Probate Code § 633(c).


§ 1051.104. Notice by Applicant for Guardianship

(a) The person filing an application for guardianship shall send [mail] a copy of the application and a notice containing the information required in the citation issued under Section 1051.102 by a qualified delivery method [registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery] to the following persons, if their whereabouts are known or can be reasonably ascertained:

(1) each adult child of the proposed ward;
(2) each adult sibling of the proposed ward;
(3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;
(4) the operator of a residential facility in which the proposed ward resides;
(5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;
(6) a person designated to serve as guardian of the proposed ward by a written declaration under Subchapter E, Chapter 1104, if the applicant knows of the existence of the declaration;
(7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the proposed ward;
(8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward’s last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and
(9) each adult named in the application as an “other living relative" of the proposed ward within the third degree by consanguinity, as required by Section 1101.001(b)(11) or (13), if the proposed ward’s spouse and each of the proposed ward’s parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

(b) The applicant shall file with the court:

(1) a copy of any notice required by Subsection (a) and the return receipts or other proofs of delivery of the notice; and
(2) an affidavit sworn to by the applicant or the applicant’s attorney stating:

(A) that the notice was sent [mailed] as required by Subsection (a); and
(B) the name of each person to whom the notice was sent [mailed], if the person’s name is not shown on the return receipt or other proof of delivery.

(c) Failure of the applicant to comply with Subsections (a)(2)-(9) does not affect the validity of a guardianship created under this title.

(d) Notice required by Subsection (a) to a relative of the proposed ward described by Subsection (a)(1) or (2) must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward under Section 1151.056.

Derived from Probate Code §§ 633(d), (d-1), (f).


§ 1051.105. Waiver of Notice of Application for Guardianship

A person other than the proposed ward who is entitled to receive notice or personal service of citation under Sections 1051.103 and 1051.104(a) may, by writing filed with the clerk, waive the receipt of notice or the issuance and personal service of citation either in person or through an attorney ad litem.

Derived from Probate Code § 633(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.106. Action by Court on Application for Guardianship

The court may not act on an application for the creation of a guardianship until the applicant has complied
Subchapter D. Return and Proof of Service of Citation or Notice

§ 1051.151. Requirements for Return on Citation or Notice Served by Personal Service

The return of the person serving a citation or notice under Section 1051.051 must:

(1) be endorsed on or attached to the citation or notice;
(2) state the date and place of service;
(3) certify that a copy of the citation or notice was delivered to the person directed to be served;
(4) be subscribed and sworn to before, and under the hand and official seal of, an officer authorized by the laws of this state to take an affidavit; and
(5) be returned to the county clerk who issued the citation or notice.

Derived from Probate Code § 632(f)(1).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.152. Validity of Service and Return on Citation or Notice Served by Posting

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

(1) a sheriff or constable posts a copy of the citation or notice at the location or locations prescribed by this title; and
(2) the posting occurs on a day preceding the return day of service specified in the citation or notice that provides sufficient time for the period the citation or notice must be posted to expire before the specified return day.

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

Derived from Probate Code § 632(h).

§ 1051.153. Proof of Service

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

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;
(2) if the service is made by a private person, the person's affidavit;
(3) if the service is made by mail or by a qualified delivery method:

(A) the certificate of the county clerk making the service, or the affidavit of the guardian or other person making the service that states that the citation or notice was mailed or sent by a qualified delivery method and the date of the mailing, the date of deposit with the private delivery service, or the date of delivery by courier, as applicable; and
(B) the return receipt or other proof of delivery receipt attached to the certificate or affidavit, as applicable, if the service [mailing] was made by a qualified delivery method [registered or certified mail and a receipt has been returned]; and
(4) if the service is made by publication:

(A) a statement that:

(i) is made by the Office of Court Administration of the Texas Judicial System or an employee of the office;
(ii) contains or to which is attached a copy of the published citation or notice; and
(iii) states the date of publication on the public information Internet website maintained as required by Section 72.034, Government Code [, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019]; and
(B) an affidavit that:

(i) is made by the publisher of the newspaper in which the citation or notice was published or an or to which is attached a copy of the published citation or notice; and
(ii) states the date of publication printed on the newspaper in which the citation or notice was published.

Derived from Probate Code § 632(i).

§ 1051.154. Return to Court

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

Derived from Probate Code § 632(g).
Subchapter E. Alternative Manner of Issuance, Service, and Return

§ 1051.201. Court-Ordered Issuance, Service, and Return Under Certain Circumstances

(a) A citation or notice required by this title shall be issued, served, and returned in the manner specified by written order of the court in accordance with this title and the Texas Rules of Civil Procedure if:
   (1) an interested person requests that action;
   (2) a specific method is not provided by this title for giving the citation or notice;
   (3) a specific method is not provided by this title for the service and return of citation or notice; or
   (4) a provision with respect to a matter relating to citation or notice is inadequate.

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

Derived from Probate Code § 632(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F. Additional Notice Provisions

§ 1051.251. Waiver of Notice of Hearing

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

(b) A consul or other representative of a foreign government whose appearance has been entered as provided by law on behalf of a person residing in a foreign country may waive notice on the person’s behalf.

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

Derived from Probate Code § 635.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.252. Request for Notice of Filing of Pleading

(a) At any time after an application is filed to commence a guardianship proceeding, a person interested in the estate or welfare of a ward or incapacitated person may file with the county clerk a written request to be notified of all, or any specified, motions, applications, or pleadings filed with respect to the proceeding by any person or by a person specifically designated in the request. A person filing a request under this section is responsible for payment of the fees and other costs of providing the requested documents, and the clerk may require a deposit to cover the estimated costs of providing the notice. The clerk shall send to the requestor by regular mail a copy of any requested document.

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

Derived from Probate Code § 632(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.253. Service of Notice of Intention to Take Depositions in Certain Proceedings

(a) In a guardianship proceeding in which there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories, service may be made by posting notice of the intention to take depositions for a period of 10 days as provided by Section 1051.053 governing a posting of notice.

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

(c) At the expiration of the 10-day period prescribed by Subsection (a):
   (1) the depositions for which the notice was posted may be taken; and
   (2) the judge may file cross-interrogatories if no person appears.

Derived from Probate Code § 649.


Chapter 1052. Filing and Recordkeeping

Subchapter A. Recordkeeping Requirements

§ 1052.001. Guardianship Docket
§ 1052.002. Claim Docket
§ 1052.003. Guardianship Fee Book
§ 1052.004. Alternate Recordkeeping

Subchapter B. Files; Index

§ 1052.051. Filing Procedures
§ 1052.052. Case Files
§ 1052.053. Index

Chapter 1052. Filing and Recordkeeping

Subchapter A. Recordkeeping Requirements

§ 1052.001. Guardianship Docket

(a) The county clerk shall maintain a record book titled “Judge’s Guardianship Docket” and shall record in the book:
   (1) the name of each person with respect to whom, or with respect to whose estate, a proceeding is commenced or sought to be commenced;
(2) the name of the guardian of the estate or person or of the applicant for letters of guardianship; 
(3) the date each original application for a guardianship proceeding is filed; 
(4) a notation of each order, judgment, decree, and proceeding that occurs in each guardianship, including the date it occurs; and 
(5) the docket number of each guardianship as assigned under Subsection (b).
(b) The county clerk shall assign a docket number to each guardianship in the order a proceeding is commenced.

§ 1052.002. Claim Docket
(a) The county clerk shall maintain a record book titled “Claim Docket” and shall record in the book each claim that is presented against a guardianship for the court’s approval.
(b) The county clerk shall assign one or more pages of the record book to each guardianship.
(c) The claim docket must be ruled in 16 columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. The county clerk shall record for each claim, in the order the claims are filed, the following information in the respective columns, beginning with the first or marginal column:
   (1) the name of the claimant;
   (2) the amount of the claim;
   (3) the date of the claim;
   (4) the date the claim is filed;
   (5) the date the claim is due;
   (6) the date the claim begins bearing interest;
   (7) the interest rate;
   (8) the date the claim is allowed by the guardian, if applicable;
   (9) the amount allowed by the guardian, if applicable;
   (10) the date the claim is rejected, if applicable;
   (11) the date the claim is approved, if applicable;
   (12) the amount approved for the claim, if applicable;
   (13) the date the claim is disapproved, if applicable;
   (14) the class to which the claim belongs;
   (15) the date the claim is established by a judgment of a court, if applicable; and 
   (16) the amount of the judgment established under Subdivision (15), if applicable.

§ 1052.003. Guardianship Fee Book
(a) The county clerk shall maintain a record book titled “Guardianship Fee Book” and shall record in the book each item of cost that accrues to the officers of the court and any witness fees.
(b) Each record entry must include:
   (1) the party to whom the cost or fee is due;
   (2) the date the cost or fee accrued;
   (3) the guardianship or party liable for the cost or fee; and 
   (4) the date the cost or fee is paid.

§ 1052.004. Alternate Recordkeeping
Instead of maintaining the record books described by Sections 1052.001, 1052.002, and 1052.003, the county clerk may maintain the information described by those sections relating to a person’s guardianship proceeding:
(a) on a computer file;
(b) on microfilm;
(c) in the form of a digitized optical image; or
(d) in another similar form of data compilation.
(2) citation and notice, whether published or posted, including the return on the citation or notice;  
(3) bond and official oath or declaration;  
(4) inventory, appraisement, and list of claims;  
(5) exhibit and account;  
(6) report of renting;  
(7) application for sale or partition of real estate;  
(8) report of sale;  
(9) application for authority to execute a lease for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money;  
(10) report of lending or investing money; and  
(11) report of guardians of the persons.

Derived from Probate Code § 625.

§ 1052.053.   Index
(a) The county clerk shall properly index the records required under this chapter.
(b) The county clerk shall keep the index open for public inspection but may not release the index from the clerk’s custody.

Derived from Probate Code § 627A.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1053. Other Court Duties and Procedures

Subchapter A. Enforcement of Orders
§ 1053.001.   Enforcement of Orders

A judge may enforce an order entered against a guardian by attachment and confinement. Unless this title expressly provides otherwise, the term of confinement for any one offense under this section may not exceed three days.

Derived from Probate Code § 651.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Costs and Security
§ 1053.051.   Applicability of Certain Laws
A law regulating costs in ordinary civil cases applies to a guardianship proceeding unless otherwise expressly provided by this title.

Derived from Probate Code § 622(a).

§ 1053.052.   Security for Certain Costs
(a) The clerk may require or may obtain from the court an order requiring a person who files an application, complaint, or opposition relating to a guardianship proceeding, other than a guardian, attorney ad litem, or guardian ad litem, 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), an officer of the court or a person interested in the guardianship or in the welfare of the ward may, by written motion, obtain from the court an order requiring the person who filed the application, complaint, or opposition to provide security for the probable costs of the proceeding. The rules governing civil suits in the county court with respect to providing security for the probable costs of a proceeding control in cases described by Subsection (a) and this subsection.

(c) A guardian, attorney ad litem, or guardian ad litem appointed under this title by a court of this state may not be required to provide security for costs in an action brought by the guardian, attorney ad litem, or guardian ad litem in the guardian’s, attorney ad litem’s, or guardian ad litem’s fiduciary capacity.

Derived from Probate Code § 622(b). (c).

§ 1053.053. Exemption From Guardianship Proceeding Fees for 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 proposed ward or ward any of the following fees if the court finds that the proposed ward or ward became incapacitated as a result of a personal injury sustained while in active service as a member of the armed forces of the United States in a combat zone:

1. a fee for the filing of a guardianship proceeding; and
2. a fee for any service rendered by the court regarding the administration of the guardianship.

(c) The clerk of a county court is not required to refund a fee exempt under this section that is paid before September 1, 2017. This subsection expires September 1, 2019.

New.

Added by Acts 2017, 85th Leg., ch. 92 § 1, eff. Sept. 1, 2017.

§ 1053.054. Exemption From Guardianship Fees for Certain Law Enforcement Officers, Firefighters, and Others

(a) In this section:

1. “Eligible proposed ward” or “eligible ward” means an individual listed in Section 615.003, Government Code.

2. “Line of duty” and “personal injury” have the meanings assigned by Section 615.021(e), Government Code.

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

1. a fee for the filing of a guardianship proceeding; and
2. a fee for any service rendered by the court regarding the administration of the guardianship.

(c) The clerk of a county court is not required to refund a fee exempt under this section that is paid before September 1, 2017. This subsection expires September 1, 2019.

New.

Added by Acts 2017, 85th Leg., ch. 92 § 1, eff. Sept. 1, 2017.

Subchapter C. Procedures for Guardianship Proceedings

§ 1053.101. Calling of Dockets

The judge in whose court a guardianship proceeding is pending, as determined by the judge, shall:

1. call guardianship proceedings in the proceedings’ regular order on both the guardianship and claim dockets; and
2. issue necessary orders.

Derived from Probate Code § 629.


§ 1053.102. Setting of Certain Hearings by Clerk

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

1. designate the time and place for hearing;
2. enter the setting on the judge’s docket; and
3. certify on the docket the reason that the judge is not acting to set the hearing.

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

Derived from Probate Code § 630.


§ 1053.103. Rendering of Decisions, Orders, Decrees, and Judgments

The court shall render a decision, order, decree, or judgment in a guardianship proceeding in open court, except as otherwise expressly provided.

Derived from Probate Code § 650.


§ 1053.104. Confidentiality of Certain Information

(a) On request by a person protected by a protective order issued under Chapter 85, Family Code, or a guardian, attorney ad litem, or member of the family or household of a person protected by an order, the court may exclude from any document filed in a guardianship proceeding:

1. the address and phone number of the person protected by the protective order;
2. the place of employment or business of the person protected by the protective order; and
3. the school attended by the person protected by the protective order or the day-care center or other
child-care facility the person attends or in which the person resides; and
(4) the place at which service of process on the person protected by the protective order was effectuated.

(b) On granting a request for confidentiality under this section, the court shall order the clerk to:
(1) strike the information described by Subsection (a) from the public records of the court; and
(2) maintain a confidential record of the information for use only by the court.

§ 1053.105. Inapplicability of Certain Rules of Civil Procedure
The following do not apply to guardianship proceedings:
(1) Rules 47(c) and 169, Texas Rules of Civil Procedure; and
(2) the portions of Rule 190.2, Texas Rules of Civil Procedure, concerning expedited actions under Rule 169, Texas Rules of Civil Procedure.

§ 1054.001. Appointment of Attorney Ad Litem in Proceeding for Appointment of Guardian
In a proceeding under this title for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the proposed ward’s interests, including the proposed ward’s expressed wishes.

Subchapter A. Attorneys Ad Litem and Interpreters
§ 1054.002. Term of Appointment
(a) Unless the court determines that the continued appointment of an attorney ad litem appointed under Section 1054.001 is in the ward’s best interests, the attorney’s term of appointment expires, without a court order, on the date the court:
(1) appoints a guardian in accordance with Subchapter D, Chapter 1101;
(2) appoints a successor guardian; or
(3) denies the application for appointment of a guardian.

Subchapter A. Attorneys Ad Litem and Interpreters
§ 1054.001. Appointment of Attorney Ad Litem in Proceeding for Appointment of Guardian
In a proceeding under this title for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the proposed ward’s interests, including the proposed ward’s expressed wishes.

Subchapter B. Guardians Ad Litem
§ 1054.002. Term of Appointment
(a) Unless the court determines that the continued appointment of an attorney ad litem appointed under Section 1054.001 is in the ward’s best interests, the attorney’s term of appointment expires, without a court order, on the date the court:
(1) appoints a guardian in accordance with Subchapter D, Chapter 1101;
(2) appoints a successor guardian; or
(3) denies the application for appointment of a guardian.
(b) The term of appointment of an attorney ad litem appointed under Section 1054.001 continues after the court appoints a temporary guardian under Chapter 1251 unless a court order provides for the termination or expiration of the attorney ad litem’s appointment.

Derived from Probate Code § 646(e).


§ 1054.003. Access to Records

An attorney ad litem appointed under Section 1054.001 or an attorney retained by a ward or proposed ward under Section 1054.006 or 1202.103 shall be provided copies of all of the current records in the guardianship case. The attorney ad litem or retained attorney may have access to all of the proposed ward’s relevant medical, psychological, and intellectual testing records.

Derived from Probate Code § 646(a).


§ 1054.004. Duties

(a) An attorney ad litem appointed under Section 1054.001 shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:

- (1) the law and facts of the case;
- (2) the proposed ward’s legal options regarding disposition of the case;
- (3) the grounds on which guardianship is sought; and
- (4) whether alternatives to guardianship would meet the needs of the proposed ward and avoid the need for the appointment of a guardian.

(b) Before the hearing, the attorney ad litem shall review:

- (1) the application for guardianship;
- (2) certificates of current physical, medical, and intellectual examinations; and
- (3) all of the proposed ward’s relevant medical, psychological, and intellectual testing records.

(c) Before the hearing, the attorney ad litem shall discuss with the proposed ward the attorney ad litem’s opinion regarding:

- (1) whether a guardianship is necessary for the proposed ward; and
- (2) if a guardianship is necessary, the specific powers or duties of the guardian that should be limited if the proposed ward receives supports and services.

Derived from Probate Code § 647.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended and subsec. (c) added by Acts 2013, 83rd Leg., ch. 161, § 6, eff. Sept. 1, 2015.

§ 1054.005. Appointment of Interpreter

At the time the court appoints the attorney ad litem under Section 1054.001, the court shall appoint a language interpreter or sign interpreter if necessary to ensure effective communication between the proposed ward and the attorney.

Derived from Probate Code § 646(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.006. Representation Of Ward Or Proposed Ward By Attorney

(a) A ward or proposed ward [The following persons] may at any time retain an attorney who holds a certificate required by Subchapter E to represent the ward’s or proposed ward’s [person’s] interests, including the ward’s or proposed ward’s expressed wishes, in a guardianship proceeding, including a proceeding involving the complete restoration of the ward’s capacity or modification of the ward’s guardianship, instead of having those interests represented by an attorney ad litem appointed under Section 1054.001, Section 1202.101, or another provision of this title:

- (1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 1202.102; and
- (2) a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract.

(b) Subject to Subsection (c), if a ward or proposed ward has retained an attorney under Subsection (a), the court shall [finds that the ward or the proposed ward has capacity to contract, the court may] remove an attorney ad litem appointed under Section 1054.001, Section 1202.101, or any other provision of this title that requires the court to appoint an attorney ad litem to represent the interests of a ward or proposed ward and appoint a ward or a proposed ward’s retained counsel.

(c) On the motion of a party to a guardianship proceeding or on the court’s own motion, the court may hold a hearing on the ward’s or proposed ward’s capacity to retain an attorney under Subsection (a). The burden of proof is on the party motioning the court. If the court finds by a preponderance of evidence that the ward or proposed ward does not understand the guardianship proceeding or the purpose for which the attorney was retained, the court may appoint an attorney ad litem under Section 1054.001, Section 1202.101, or another provision of this title.

(d) An attorney retained by a ward or proposed ward under this section must represent the ward’s or proposed ward’s interests, including the ward’s or proposed ward’s expressed wishes.

New.

§ 1054.007. Attorneys Ad Litem

(a) Except in a situation in which this title requires the appointment to represent the interests of the person, a court may appoint an attorney ad litem in any guardianship proceeding to represent the interests of:

(1) an incapacitated person or another person who has a legal disability;
(2) a proposed ward;
(3) a nonresident;
(4) an unborn or unascertained person; or
(5) an unknown or missing potential heir.

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

(c) An attorney ad litem appointed for a ward or proposed ward under this title shall represent the ward’s or proposed ward’s interests, including the ward’s or proposed ward’s expressed wishes.

New.


Subchapter B. Guardians Ad Litem

§ 1054.051. Appointment of Guardian Ad Litem in Guardianship Proceeding

(a) Subject to Subsection (b), the judge may appoint a guardian ad litem to represent the interests of an incapacitated person in a guardianship proceeding.

(1) an interested person, as defined by Section 1002.018(1); or
(2) an attorney ad litem appointed for the guardianship proceeding except as provided by Section 1054.052, 1202.101, or 1203.051.

Derived from Probate Code § 645(a).


§ 1054.052. Appointment of Guardian Ad Litem Relating to Certain Other Suits

In the interest of judicial economy, the court may appoint as guardian ad litem under Section 1104.354(1) the person who has been appointed attorney ad litem under Section 1054.001 or the person who is serving as an ad litem for the ward’s benefit in any other proceeding.

Derived from Probate Code § 645(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.053. Term of Certain Appointments

Unless the court determines that the continued appointment of a guardian ad litem appointed in a proceeding for the appointment of a guardian is in the ward’s best interests, the guardian ad litem’s term of appointment expires, without a court order, on the date the court:

(1) appoints a guardian; or
(2) denies the application for appointment of a guardian.

Derived from Probate Code § 645(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.054. Duties

(a) A guardian ad litem is an officer of the court.

(b) A guardian ad litem shall protect the incapacitated person whose interests the guardian has been appointed to represent in a manner that will enable the court to determine the action that will be in that person’s best interests.

(c) The guardian ad litem shall:

(1) investigate whether a guardianship is necessary for the proposed ward; and

(2) evaluate alternatives to guardianship and supports and services available to the proposed ward that would avoid the need for appointment of a guardian.

(d) The information gathered by the guardian ad litem under Subsection (c) is subject to examination by the court.

Derived from Probate Code § 645(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsecs (c) and (d) added by Acts 2015, 84th Leg., ch. 214, § 5, eff. Sept. 1, 2015.

§ 1054.055. Compensation and Expenses

(a) A guardian ad litem is entitled to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

(b) The fees and expenses of a guardian ad litem appointed under Section 1104.354(1) are costs of the litigation proceeding that made the appointment necessary.

Derived from Probate Code §§ 645(b), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.056. Immunity

(a) Subject to Subsection (b), a guardian ad litem appointed under this subchapter or Section 1102.001 or 1202.054 to represent the interests of an incapacitated person in a guardianship proceeding involving the creation, modification, or termination of a guardianship is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem.

(b) This section does not apply to a recommendation or opinion that is:

(1) wilfully wrongful;
(2) given:

(A) with conscious indifference to or reckless disregard for the safety of another;
(B) with malice; or
(C) in bad faith; or
(3) grossly negligent.
Derived from Probate Code § 645A.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Court Visitors

§ 1054.101. Inapplicability of Subchapter to Certain Guardianships

This subchapter does not apply to a guardianship created only because the appointment of a guardian for a person is necessary for the person to receive funds from a governmental source.
Derived from Probate Code § 648(f).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.102. Operation of Court Visitor Program

(a) Each statutory probate court shall operate a court visitor program to assess the conditions of wards and proposed wards.

(b) A court, other than a statutory probate court, that has jurisdiction of a guardianship proceeding may operate a court visitor program in accordance with the population needs and financial abilities of the area the court serves.
Derived from Probate Code § 648(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.103. Evaluation of Ward or Proposed Ward

A court, at any time before a guardian is appointed for a proposed ward or during the pendency of a guardianship of the person or estate, may appoint a court visitor to evaluate the ward or proposed ward and provide a written report that substantially complies with Section 1054.104(b) on:

(1) the request of any interested person, including the ward or proposed ward; or

(2) the court’s own motion.
Derived from Probate Code § 648(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.104. Evaluation Report

(a) A court visitor appointed under Section 1054.103 shall file the report on the evaluation of a ward or proposed ward not later than the 14th day after the date the court visitor conducts the evaluation. The court visitor shall swear under penalty of perjury that the report is accurate to the best of the court visitor’s knowledge and belief.

(b) A court visitor’s report must include:

(1) a description of the nature and degree of the ward’s or proposed ward’s capacity and incapacity, including a description of the ward’s or proposed ward’s medical history, if reasonably available and not waived by the court;

(2) a medical prognosis and list of the ward’s or proposed ward’s treating physicians, when appropriate;

(3) a description of the ward’s or proposed ward’s living conditions and circumstances;

(4) a description of the ward’s or proposed ward’s social, intellectual, physical, and educational conditions;

(5) a statement that the court visitor has personally visited or observed the ward or proposed ward;

(6) a statement of the date of the guardian’s most recent visit, if a guardian has been appointed;

(7) a recommendation as to any modification needed in the guardianship or proposed guardianship, including removal or denial of the guardianship; and

(8) any other information required by the court.
Derived from Probate Code §§ 648(c), (d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.105. Compensation

(a) A court that operates a court visitor program shall use persons willing to serve as court visitors without compensation to the greatest extent possible.

(b) A court visitor who has not expressed a willingness to serve without compensation is entitled to reasonable compensation for services provided in an amount set by the court, to be taxed as costs in the proceeding.
Derived from Probate Code §§ 648(a), (e).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Court Investigators

§ 1054.151. Investigation of Guardianship Application

On the filing of an application for guardianship under Section 1101.001, a court investigator shall investigate the circumstances alleged in the application to determine whether a less restrictive alternative to guardianship is appropriate.
Derived from Probate Code § 648A(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.152. General Duties

A court investigator shall:

(1) supervise a court visitor program established under Subchapter C if the court for which the investigator is appointed operates that type of program and, in that capacity, shall serve as the chief court visitor;

(2) investigate a complaint received from any person about a guardianship and report to the judge, if necessary; and
§ 1054.153. Investigation Report

(a) A court investigator shall file with the court a report containing the court investigator's findings and conclusions after conducting an investigation under Section 1054.151 or 1054.152.

(b) In a contested case, the court investigator shall provide copies of the report of the court investigator’s findings and conclusions to the attorneys for the parties before the earlier of:
   (1) the seventh day after the date the court investigator completes the report; or
   (2) the 10th day before the date the trial is scheduled to begin.

(c) Disclosure to a jury of the contents of a court investigator's report is subject to the Texas Rules of Evidence.

Derived from Probate Code § 648A(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.154. Effect of Subchapter on Other Law

Nothing in this subchapter supersedes any duty or obligation of another to report or investigate abuse or neglect under any statute of this state.

Derived from Probate Code § 648A(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.155. Notice Regarding Request to Financial Institution for Customer Records

If a request is made to a financial institution for a customer record in connection with an investigation conducted under Section 1054.151 or 1054.152, the court shall provide written notice of that fact to the ward or proposed ward with respect to whom the investigation is conducted not later than the fifth day after the date the financial institution produces the customer record.

New.
Add by Acts 2015, 84th Leg., ch. 1031, § 6, eff. Sept. 1, 2015.

§ 1054.156. Appointment of Court Investigator for Certain Courts

(a) The judge of a court as defined by Section 1002.008(a)(1) or (2), other than a statutory probate court, may appoint a court investigator if the appointment is authorized by the commissioners court.

(b) The commissioners court may authorize additional court investigators for a county if necessary.

(c) The commissioners court shall set the salary of a court investigator.

(d) The appointment of a court investigator by the judge of a statutory probate court is governed by Section 25.0025, Government Code.

New.

§ 1054.157. Required Training

At least once every two years, a court investigator and a court visitor shall complete two hours of training, including one hour of training on alternatives to guardianship and supports and services available to a proposed ward in accordance with Section 22.0133, Government Code.

New.
Added by Acts 2023, 88th Leg., ch. 939, § 6, eff. Sept. 1, 2023.

Subchapter E. Qualifications to Serve as Court-Appointed Attorney

§ 1054.201. Certification Required

(a) Except as provided by Subsection (c), an attorney representing any person's interests in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas, or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.

(b) The State Bar of Texas shall require four hours of credit for certification under this subchapter, including one hour on alternatives to guardianship and supports and services available to proposed wards.

(c) An attorney may commence representation of a person’s interests and file an appearance in a guardianship proceeding before completing the course required for certification under Subsection (a), but must complete the course not later than the 14th day after the date of filing the appearance and before filing any substantive motion in the guardianship proceeding.

Derived from Probate Code §§ 646(b), 647A(a), (b).


(a) Except as provided by Subsection (b), a certificate issued under this subchapter expires on the second anniversary of the date the certificate is issued.

(b) A new certificate obtained by a person to whom a certificate under this subchapter was previously issued expires on the fourth anniversary of the date the new certificate is issued if the person has been certified each of
the four years immediately preceding the date the new certificate is issued.  
Derived from Probate Code §§ 647A(c), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.203.  Eligibility for Appointment on Expiration of Certificate
An attorney whose certificate issued under this subchapter has expired must obtain a new certificate to be eligible for appointment by a court to represent a person at a guardianship proceeding, including as an attorney ad litem.  
Derived from Probate Code §§ 646(c), 647A(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1055.  Trial and Hearing Matters

Subchapter A.  Standing and Pleadings

§ 1055.001.  Standing to Commence or Contest Proceeding
§ 1055.002.  Defect in Pleading
§ 1055.003.  Intervention by Interested Person

Subchapter B.  Trial and Hearing

§ 1055.051.  Hearing by Submission
§ 1055.052.  Trial by Jury
§ 1055.053.  Location of Hearing

Subchapter C.  Evidence

§ 1055.101.  Applicability of Certain Rules Relating to Witnesses and Evidence
§ 1055.102.  Use of Certain Records as Evidence

Subchapter D.  Mediation

§ 1055.151.  Mediation of Contested Guardianship Proceeding
§ 1055.152.  Mediated Settlement Agreements

Chapter 1055.  Trial and Hearing Matters

Subchapter A.  Standing and Pleadings

§ 1055.001.  Standing to Commence or Contest Proceeding
(a) Except as provided by Subsection (b), any person has the right to:
(1) commence a guardianship proceeding, including a proceeding for complete restoration of a ward’s capacity or modification of a ward’s guardianship; or
(2) appear and contest a guardianship proceeding or the appointment of a particular person as guardian.

(b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:
(1) file an application to create a guardianship for the proposed ward or incapacitated person;
(2) contest the creation of a guardianship for the proposed ward or incapacitated person;
(3) contest the appointment of a person as a guardian of the proposed ward or incapacitated person; or
(4) contest an application for complete restoration of a ward’s capacity or modification of a ward’s guardianship.

(c) The court shall determine by motion in limine the standing of a person who has an interest that is adverse to a proposed ward or incapacitated person.  
Derived from Probate Code § 642.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1055.002.  Defect in Pleading
A court may not invalidate a pleading in a guardianship proceeding, or an order based on the pleading, on the basis of a defect of form or substance in the pleading unless a timely objection has been made against the defect and the defect has been called to the attention of the court in which the proceeding was or is pending.  
Derived from Probate Code § 641.


§ 1055.003.  Intervention by Interested Person
(a) Notwithstanding the Texas Rules of Civil Procedure and except as provided by Subsection (d), an interested person may intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties.

(b) The motion must state the grounds for intervention in the proceeding and be accompanied by a pleading that sets out the purpose for which intervention is sought.

(c) The court has the discretion to grant or deny the motion and, in exercising that discretion, must consider whether:
(1) the intervention will unduly delay or prejudice the adjudication of the original parties’ rights; or
(2) the proposed intervenor has such an adverse relationship with the ward or proposed ward that the intervention would unduly prejudice the adjudication of the original parties’ rights.

(d) A person who is entitled to receive notice under Section 1051.104 is not required to file a motion under this section to intervene in a guardianship proceeding.

New.  
Subchapter B. Trial and Hearing

§ 1055.051. Hearing by Submission
(a) A court may consider by submission a motion or application filed under this title unless the proceeding is:
(1) contested; or
(2) an application for the appointment of a guardian.
(b) The party seeking relief under a motion or application being considered by the court on submission has the burden of proof at the hearing.
(c) The court may consider a person's failure to file a response to a motion or application that may be considered on submission as a representation that the person does not oppose the motion or application.
(d) A person's request for oral argument is not a response to a motion or application under this section.
(e) The court, on the court's own motion, may order oral argument on a motion or application that may be considered by submission.

Derived from Probate Code § 644.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1055.052. Trial by Jury
A party in a contested guardianship proceeding is entitled to a jury trial on request.

Derived from Probate Code § 643.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1055.053. Location of Hearing
(a) Except as provided by Subsection (b), the judge may hold a hearing on a guardianship proceeding involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship proceeding is pending. The hearing should be held in a physical setting that is not likely to have a harmful effect on the ward or proposed ward.
(b) On the request of the adult proposed ward, the adult ward, or the attorney of the proposed ward or ward, the hearing may not be held under the authority of this section at a place other than the courthouse.

Derived from Probate Code § 652.

Subchapter C. Evidence

§ 1055.101. Applicability of Certain Rules Relating to Witnesses and Evidence
The rules relating to witnesses and evidence that apply in the district court apply in a guardianship proceeding to the extent practicable.

Derived from Probate Code § 649.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1055.102. Use of Certain Records as Evidence
The following are admissible as evidence in any court of this state:
(1) record books described by Sections 1052.001, 1052.002, and 1052.003 and individual case files described by Section 1052.052, including records maintained in a manner allowed under Section 1052.004; and
(2) certified copies or reproductions of the records.

Derived from Probate Code § 628.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Mediation

§ 1055.151. Mediation of Contested Guardianship Proceeding
(a) Subject to Subsection (b), on the written agreement of the parties or on the court's own motion, the court may refer a contested guardianship proceeding to mediation.
(b) If the court refers to mediation a proceeding under Subsection (a) regarding the appointment of a guardian for a proposed ward:
(1) a determination of incapacity of the proposed ward may be an issue to be mediated, but the applicant for guardianship must still prove to the court that the proposed ward is an incapacitated person in accordance with the requirements of Chapter 1101; and
(2) all parties to the proceeding shall evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services and alternatives to guardianship would be feasible to avoid the need for appointment of a guardian.
(c) The cost of mediation shall be paid by the parties to the proceeding unless otherwise ordered by the court. If the parties are unable to pay the cost of mediation, the court may refer the parties to a local alternative dispute resolution center providing services as part of a system for resolution of disputes established under Section 152.002, Civil Practice and Remedies Code, if a system has been established in the county, and the local center may waive mediation costs as appropriate.

New.

§ 1055.152. Mediated Settlement Agreements
(a) A mediated settlement agreement is binding on the parties if the agreement:
(1) provides, in a prominently displayed statement that is in boldfaced type, in capital letters, or underlined, that the agreement is not subject to revocation by the parties;
(2) is signed by each party to the agreement; and
(3) is signed by the party’s attorney, if any, who is present at the time the agreement is signed.

(b) If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law.

(c) Notwithstanding Subsections (a) and (b), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the ward’s or proposed ward’s best interests.

New.


Chapter 1056. Execution, Attachment, and Bill of Review

Subchapter A. Execution

§ 1056.001. Executions In Guardianship Proceedings

(a) An execution in a guardianship proceeding must be:

(1) directed “to any sheriff or any constable within the State of Texas”; and

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

(3) made returnable in 60 days.

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

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

Derived from Probate Code § 653.


Subchapter B. Attachment of Estate Property

§ 1056.051. Order for Issuance of Writ of Attachment

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

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

(2) hold that property subject to further court order.

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

Derived from Probate Code § 654.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1056.052. Bond

Before a judge may issue a writ of attachment ordered under Section 1056.051, the complainant must execute a bond that is:

(1) payable to the guardian of the estate;

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

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

Derived from Probate Code § 654.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Bill of Review

§ 1056.101. Revision and Correction of Order or Judgment in Guardianship Proceeding

(a) An interested person, including a ward, may, by a bill of review filed in the court in which the guardianship proceeding was held, have an order or judgment rendered by the court revised and corrected on a showing of error in the order or judgment.

(b) Except as provided by Subsection (c), a bill of review to revise and correct an order or judgment may not be filed more than two years after the date of the order or judgment.

(c) A bill of review to revise and correct an order or judgment filed by a person whose disability has been
removed must be filed not later than the second anniversary of the date the person’s disability was removed.
Derived from Probate Code § 657.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1056.102. Injunction
A process or action under a court order or judgment subject to a bill of review filed under Section 1056.101 may be stayed only by writ of injunction.
Derived from Probate Code § 657.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1057. Change and Resignation of Resident Agent for Service Of Process

§ 1057.001. Change of Resident Agent
§ 1057.002. Resignation of Resident Agent

Chapter 1057. Change and Resignation of Resident Agent for Service of Process

§ 1057.001. Change of Resident Agent
(a) A guardian may change the guardian’s resident agent to accept service of process in a guardianship proceeding or other matter relating to the guardianship filing with the court in which the guardianship proceeding is pending a statement titled “Designation of Successor Resident Agent” that states the names and addresses of:
(1) the guardian;
(2) the resident agent; and
(3) the successor resident agent.
(b) The designation of a successor resident agent takes effect on the date the statement is filed with the court.
Derived from Probate Code § 760A.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1057.002. Resignation of Resident Agent
(a) A resident agent of a guardian may resign as resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement titled “Resignation of Resident Agent” that states:
(1) the name of the guardian;
(2) the guardian’s address most recently known by the resident agent;
(3) that notice of the resignation has been given to the guardian and the date that notice was given; and
(4) that the guardian does not have a resident agent.
(b) The resident agent shall send, by a qualified delivery method [certified mail, return receipt requested], a copy of a resignation statement filed under Subsection (a) to:
(1) the guardian at the address most recently known by the resident agent; and
(2) each party in the case or the party’s attorney or other designated representative of record.
(c) The resignation of the resident agent takes effect on the date the court enters an order accepting the resignation. A court may not enter an order accepting the resignation unless the resident agent complies with this section.
Derived from Probate Code § 760B.

SUBTITLE D. CREATION OF GUARDIANSHIP

Chapter 1101. General Procedure to Appoint Guardian

Subchapter A. Initiation of Proceeding for Appointment of Guardian
§ 1101.001. Application for Appointment of Guardian; Contents
§ 1101.002. Contents of Application; Confidentiality of Certain Addresses
§ 1101.003. Affidavit Containing Contact Information

Subchapter B. Hearing; Jury Trial
§ 1101.051. Hearing
§ 1101.052. Jury Trial
§ 1101.053. Provision of Records Required; Use of Records

Subchapter C. Determination of Necessity of Guardianship; Findings and Proof
§ 1101.100. Definitions
§ 1101.101. Findings and Proof Required
§ 1101.1011. Limitation on Acts by Advanced Practice Register Nurse
§ 1101.102. Determination of Incapacity of Certain Adults: Recurring Acts or Occurrences
§ 1101.103. Determination of Incapacity of Certain Adults: or Psychologist [Physician] Health Care Provider Examination
§ 1101.104. Examinations and Documentation Regarding Intellectual Disability

333

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1101.105.  Prohibition Against Consideration of Age as Sole Factor in Appointment of Guardian for Adults

§ 1101.106.  Evidence of Necessity of Guardianship to Receive Governmental Funds

Subchapter D.  Court Action

§ 1101.151.  Order Appointing Guardian With Full Authority

§ 1101.152.  Order Appointing Guardian With Limited Authority

§ 1101.153.  General Contents of Order Appointing Guardian

§ 1101.154.  Appointment of Guardian of Estate for Certain Minors Prohibited

§ 1101.155.  Dismissal of Application

§ 1101.156.  Deposit of Estate Assets

Chapter 1101.  General Procedure to Appoint Guardian

Subchapter A.  Initiation of Proceeding for Appointment of Guardian

§ 1101.100.  Definitions

In this subchapter:
(1) “Advanced practice registered nurse” has the meaning assigned by Section 301.152, Occupations Code.
(2) “Physician” means an individual licensed by the Texas Medical Board to practice medicine in this state.

New.  
Added by Acts 2023, 88th Leg., ch. 1012, § 1, eff. Sept. 1, 2023.

§ 1101.001.  Application for Appointment of Guardian; Contents

(a) Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue.

(b) The application must be sworn to by the applicant and state:
(1) the proposed ward’s name, sex, date of birth, and address;
(2) the name, former name, if any, relationship, and address of the person the applicant seeks to have appointed as guardian;
(3) whether guardianship of the person or estate, or both, is sought;
(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;
(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;
(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court’s order of appointment, including a termination of:
(A) the right of a proposed ward who is 18 years of age or older to vote in a public election;
(B) the proposed ward’s eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and
(C) the right of a proposed ward to make personal decisions regarding residence;
(5) the facts requiring the appointment of a guardian;
(6) the interest of the applicant in the appointment of a guardian;
(7) the nature and description of any kind of guardianship existing for the proposed ward in any other state;
(8) the name and address of any person or institution having the care and custody of the proposed ward;
(9) the approximate value and a detailed description of the proposed ward’s property, including:
(A) liquid assets, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled; and
(B) non-liquid assets, including real property;
(10) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;
(11) for a proposed ward who is a minor, the following information if known by the applicant:
(A) the name of each of the proposed ward’s parents and either the parent’s address or that the parent is deceased;
(B) the name and age of each of the proposed ward’s siblings, if any, and either the sibling’s address or that the sibling is deceased; and
(C) if each of the proposed ward’s parents and adult siblings are deceased, the names and addresses of the proposed ward’s other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;
(12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:
(A) the court involved;
(B) the nature of the proceeding; and
(C) any final disposition of the proceeding;
(13) for a proposed ward who is an adult, the following information if known by the applicant:
§ 1101.001. Applications and Hearings

(a) An application for the appointment of a guardian shall be made by an interested person.

(b) The application shall state:

(1) the name of the proposed ward’s spouse, if any, and either the spouse’s address or that the spouse is deceased;

(2) the name of each of the proposed ward’s parents and either the parent’s address or that the parent is deceased;

(3) the name and age of each of the proposed ward’s siblings, if any, and either the sibling’s address or that the sibling is deceased;

(4) the name and age of each of the proposed ward’s children, if any, and either the child’s address or that the child is deceased; and

(5) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward’s, the names and addresses of the proposed ward’s other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(6) facts showing that the court has venue of the proceeding; and

(7) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

(c) For purposes of this section, a proposed ward’s relatives within the third degree by consanguinity include the proposed ward’s:

(1) grandparent or grandchild; and

(2) great-grandparent, great-grandchild, aunt who is a sister of a parent of the proposed ward, uncle who is a brother of a parent of the proposed ward, nephew who is a child of a brother or sister of the proposed ward, or niece who is a child of a brother or sister of the proposed ward.

Derived from Probate Code § 682.


§ 1101.002. Contents of Application; Confidentiality of Certain Addresses

An application filed under Section 1101.001 may omit the address of a person named in the application if:

(1) the application states that the person is or was protected by a protective order issued under Chapter 85, Family Code;

(2) a copy of the protective order is attached to the application as an exhibit;

(3) the application states the county in which the person resides;

(4) the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and

(5) the application is accompanied by a request for an order under Section 1051.201 specifying the manner of issuance, service, and return of citation or notice on the person.


§ 1101.003. Affidavit Containing Contact Information

(a) Within the time prescribed by the court, a person who files an application under Section 1101.001 shall file an affidavit with the court that states the name, address, telephone number, e-mail address, and other contact information if known by the applicant for each person entitled to notice under Section 1051.104(a).

(b) An affidavit filed under this section is privileged and confidential. The affidavit may not be released or otherwise disclosed to the public.

(c) On qualification of a guardian, the court shall provide a copy of the affidavit filed under this section to the guardian if the guardian is not the person who filed the affidavit.

New.

Added by Acts 2023, 88th Leg., ch. 116, § 1, eff. Sept. 1, 2023.

Subchapter B. Hearing; Jury Trial

§ 1101.051. Hearing

(a) At a hearing for the appointment of a guardian, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult to:

(A) feed, clothe, and shelter himself or herself;

(B) care for his or her own physical health; and

(C) manage his or her property or financial affairs;

(2) ascertain the age of any proposed ward who is a minor;

(3) inquire into the governmental reports for any person who must have a guardian appointed to receive
funds due the person from any governmental source; and
(4) inquire into the qualifications, abilities, and
capabilities of the person seeking to be appointed
guardian.
(b) A proposed ward must be present at the hearing
unless the court, on the record or in the order, determines
that a personal appearance is not necessary.
(c) The court may close the hearing at the request of
the proposed ward or the proposed ward’s counsel.
Derived from Probate Code §§ 685(a), (c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1101.052. Jury Trial
A proposed ward is entitled to a jury trial on request.
Derived from Probate Code § 685(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1101.053. Provision of Records Required; Use of
Records
(a) Before a hearing may be held for the appointment
of a guardian, current and relevant medical,
psychological, and intellectual testing records of the
proposed ward must be provided to the attorney ad litem
appointed to represent the proposed ward unless:
(1) the proposed ward is a minor or a person who
must have a guardian appointed to receive funds due
the person from any governmental source; or
(2) the court makes a finding on the record that:
(A) current or relevant records do not exist;
and
(B) examining the proposed ward for the
purpose of creating the records is impractical.
(b) Current medical, psychological, and intellectual
testing records are a sufficient basis for a determination of
guardianship.
(c) The findings and recommendations contained in
the medical, psychological, and intellectual testing records
are not binding on the court.
Derived from Probate Code § 686.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

Subchapter C. Determination of Necessity of
Guardianship; Findings and Proof

§ 1101.101. Findings and Proof Required
(a) Before appointing a guardian for a proposed ward,
the court must:
(1) find by clear and convincing evidence that:
(A) the proposed ward is an incapacitated
person;
(B) it is in the proposed ward’s best interest to
have the court appoint a person as the proposed
ward’s guardian;
(C) the proposed ward’s rights or property
will be protected by the appointment of a
guardian;
(D) alternatives to guardianship that would
avoid the need for the appointment of a guardian
have been considered and determined not to be
feasible; and
(E) supports and services available to the
proposed ward that would avoid the need for the
appointment of a guardian have been considered
and determined not to be feasible; and
(2) find by a preponderance of the evidence that:
(A) the court has venue of the case;
(B) the person to be appointed guardian is
eligible to act as guardian and is entitled to
appointment, or, if no eligible person entitled to
appointment applies, the person appointed is a
proper person to act as guardian;
(C) if a guardian is appointed for a minor, the
guardianship is not created for the primary
purpose of enabling the minor to establish
residency for enrollment in a school or school
district for which the minor is not otherwise
eligible for enrollment; and
(D) the proposed ward:
(i) is totally without capacity as provided
by this title to care for himself or herself and
to manage his or her property; or
(ii) lacks the capacity to do some, but not
all, of the tasks necessary to care for himself
or herself or to manage his or her property.
(b) The court may not grant an application to create a
guardianship unless the applicant proves each element
required by this title.
(c) A finding under Subsection (a)(2)(D)(ii) must
specifically state whether the proposed ward lacks the
capacity, or lacks sufficient capacity with supports and
services, to make personal decisions regarding residence,
voting, operating a motor vehicle, and marriage.
Derived from Probate Code §§ 684(a), (b), (c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014. Subsec. (a) amended and subsec. (c) added by Acts
2015, 84th Leg., ch. 214, § 8, eff. Sept. 1, 2015.

§ 1101.102. Determination of Incapacity of Certain
Adults: Recurring Acts or Occurrences
A determination of incapacity of an adult proposed
ward, other than a person who must have a guardian
appointed to receive funds due the person from any
governmental source, must be evidenced by recurring acts
or occurrences in the preceding six months and not by
isolated instances of negligence or bad judgment.
Derived from Probate Code § 684(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.
§ 1101.103. Determination of Incapacity of Certain Adults: Physician [Health Care Provider]
Examination


(a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician or advanced practice registered nurse [licensed in this state] that is:

(1) dated not earlier than the 120th day before the date the application is filed; and
(2) based on an examination the physician or advanced practice registered nurse performed not earlier than the 120th day before the date the application is filed.

(a-1) For purposes of Subsection (a), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician.

(b) The letter or certificate must:

(1) describe the nature, degree, and severity of the proposed ward’s incapacity, including any functional deficits regarding the proposed ward’s ability to:
   (A) handle business and managerial matters;
   (B) manage financial matters;
   (C) operate a motor vehicle;
   (D) make personal decisions regarding residence, voting, and marriage; and
   (E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward’s ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician’s opinion the proposed ward:
   (A) has the mental capacity to vote in a public election; and
   (B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward’s physical condition and mental functioning and summarize the proposed ward’s medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward’s physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward’s ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward’s physical or mental health, including the proposed ward’s ability to:
   (A) understand or communicate;
   (B) recognize familiar objects and individuals;
   (C) solve problems;
   (D) reason logically; and
   (E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the proposed ward’s demeanor or the proposed ward’s ability to participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the court.

(b-1) For purposes of Subsection (b)(2), the opinion of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician’s opinion.

(c) If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the proposed ward. The court must make its determination with respect to the necessity for a physician’s or advanced practice registered nurse’s examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward’s attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician or advanced practice registered nurse who examines the proposed ward, other than a physician, advanced practice registered nurse, or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from the physician or advanced practice registered nurse that complies with the requirements of Subsections (a) and (b).

Derived from Probate Code §§ 687(a), (b).


§ 1101.103. Determination of Incapacity of Certain Adults: Physician or Psychologist Examination


(a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for
whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from:

(1) a physician licensed in this state, if the proposed ward's alleged incapacity results from a physical condition or mental condition; or

(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind, if the proposed ward's alleged incapacity results from a mental condition.

(a-1) The physician or psychologist who provides the letter or certificate under Subsection (a) must:

(1) have experience examining individuals with the physical or mental condition resulting in the proposed ward's alleged incapacity; or

(2) have an established patient-provider relationship with the proposed ward.

(a-2) The letter or certificate required by Subsection (a) must be:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician or advanced practice registered nurse performed not earlier than the 120th day before the date the application is filed.

(a-1) For purposes of Subsection (a), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician.

(b) A [The] letter or certificate from a physician must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

(D) make personal decisions regarding residence, voting, and marriage; and

(E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward’s ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician’s opinion the proposed ward:

(A) has the mental capacity to vote in a public election; and

(B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward’s physical condition and mental functioning and summarize the proposed ward’s medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward’s physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward’s ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward’s physical or mental health, including the proposed ward’s ability to:

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) solve problems;

(D) reason logically; and

(E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the proposed ward’s demeanor or the proposed ward’s ability to participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the court.

(b-1) Consistent with the scope of practice of a psychologist under Chapter 501, Occupations Code, a letter or certificate from a psychologist must include the information required under Subsection (b) only in relation to the proposed ward’s mental capacity.

(c) If the court determines it is necessary, the court may appoint a physician or psychologist [the necessary physician] to examine the proposed ward. The court must make its determination with respect to the necessity for a physician’s or psychologist’s examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward’s attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician or psychologist who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from:

(1) the physician that complies with the requirements of Subsections (a), (a-1), (a-2), and (b); or

(2) the psychologist that complies with the requirements of Subsections (a), (a-1), (a-2), and (b-1).

Derived from Probate Code §§ 887(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2015, 84th Leg., ch. 275.
§ 1101.104. Examinations and Documentation Regarding Intellectual Disability

As amended by Acts 2023, 88th Leg., ch. 1012, § 3, eff. Sept. 1, 2023.

(a) If an intellectual disability is the basis of the proposed ward’s alleged incapacity, the court may not grant an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) complies with Sections 1101.103(a) and (b); or

(2) shows that not earlier than 24 months before the hearing date:

(A) the proposed ward has been examined by a physician or advanced practice registered nurse or by a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules of the executive commissioner of the commission governing examinations of that kind, and the physician’s or psychologist’s written findings and recommendations include a determination of an intellectual disability; or

(B) a physician or psychologist licensed in this state or certified by the Health and Human Services Commission to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or psychologist licensed in this state or certified by the commission.

(b) A physician or psychologist described by Subsection (a)(2)(A) must preferably have experience examining individuals with an intellectual disability. For purposes of this subsection, a physician or psychologist is considered to have experience examining individuals with an intellectual disability if the physician or psychologist has an established patient-provider relationship with the proposed ward.

 Derived from Probate Code § 687(c).


§ 1101.105. Prohibition Against Consideration of Age as Sole Factor in Appointment of Guardian for Adults

In determining whether to appoint a guardian for an incapacitated person who is not a minor, the court may not use age as the sole factor.

 Derived from Probate Code § 602.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.106. Evidence of Necessity of Guardianship to Receive Governmental Funds

A certificate of the executive head or a representative of a bureau, department, or agency of the government, to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due the proposed ward from that governmental entity, is prima facie evidence of the necessity for the appointment of a guardian.

 Derived from Probate Code § 684(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
Subchapter D. Court Action

§ 1101.151. Order Appointing Guardian With Full Authority

(a) If it is found that the proposed ward is totally without capacity to care for himself or herself, manage his or her property, operate a motor vehicle, make personal decisions regarding residence, and vote in a public election, the court may appoint a guardian of the proposed ward’s person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) that the guardian has full authority over the incapacitated person;

(3) if necessary, the amount of funds from the corpus of the person’s estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(4) whether the person is totally incapacitated because of a mental condition;

(5) that the person does not have the capacity to operate a motor vehicle, make personal decisions regarding residence, and vote in a public election; and

(6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c) An order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

“NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD’S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER’S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER’S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER’S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000.”

Derived from Probate Code § 693(a).

§ 1101.152. Order Appointing Guardian With Limited Authority

(a) If it is found that the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property with or without supports and services, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself, including making personal decisions regarding residence, or to manage his or her property commensurate with the proposed ward’s ability.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) the specific powers, limitations, or duties of the guardian with respect to the person’s care or the management of the person’s property by the guardian;

(3) if necessary, the amount of funds from the corpus of the person’s estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person:

(A) retains the right to make personal decisions regarding residence or vote in a public election; or

(B) maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code.

(c) An order appointing a guardian under this section that includes the rights of the guardian to have physical possession of the ward or to establish the ward’s legal domicile as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

“NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD’S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER’S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER’S GOOD FAITH ACTS PERFORMED IN
THE SCOPE OF THE OFFICER’S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000.”

Derived from Probate Code § 693(b).


§ 1101.153.  General Contents of Order Appointing Guardian

(a) A court order appointing a guardian must:

(1) specify:

(A) the name of the person appointed;
(B) the name of the ward;
(C) whether the guardian is of the person or estate of the ward, or both;
(D) the amount of any bond required;
(E) if it is a guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisement to the court; and
(F) that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law; and

(2) if the court waives the guardian’s training requirement, contain a finding that the waiver is in accordance with rules adopted by the supreme court under Section 155.203, Government Code.

(a-1) If the letter or certificate under Section 1101.103(b)(3-a) stated that improvement in the ward’s physical condition or mental functioning is possible and specified a period of less than a year after which the ward should be reevaluated to determine continued necessity for the guardianship, an order appointing a guardian must include the date by which the guardian must submit to the court an updated letter or certificate containing the requirements of Section 1101.103(b).

(b) An order appointing a guardian may not duplicate or conflict with the powers and duties of any other guardian.

(c) An order appointing a guardian or a successor guardian may specify as authorized by Section 1202.001(c) a period during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

Derived from Probate Code §§ 693(c), (d), (e).


§ 1101.154.  Appointment of Guardian of Estate for Certain Minors Prohibited

A court may not appoint a guardian of the estate of a minor when a payment of claims is made under Chapter 1355.

Derived from Probate Code § 684(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.155.  Dismissal of Application

If it is found that a proposed ward who is an adult possesses the capacity to care for himself or herself and manage his or her property as would a reasonably prudent person, the court shall dismiss an application for guardianship.

Derived from Probate Code § 692.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.156.  Deposit of Estate Assets

(a) At the time or after an order appointing a guardian is signed by the court but before letters of guardianship are issued, a court may, on the request of a party, require the deposit for safekeeping of cash, securities, or other assets of a ward or proposed ward in a financial institution described by Section 1105.155(b).

(b) The amount of the bond required to be given by the guardian under Section 1105.101 shall be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section.

New.

Added by Acts 2015, 84th Leg., ch. 1031, § 9, eff. Sept. 1, 2015.

Chapter 1102.  Court-Initiated Procedure to Appoint Guardian

§ 1102.001.  Court-Initiated Investigation

§ 1102.002.  Establishment of Probable Cause for Investigation

§ 1102.003.  Information Letter

§ 1102.004.  Application for Guardianship Following Investigation

§ 1102.005.  Compensation of Guardian Ad Litem

§ 1102.006.  Notice Regarding Request to Financial Institution for Customer Records

Chapter 1102.  Court-Initiated Procedure to Appoint Guardian

§ 1102.001.  Court-Initiated Investigation

(a) If a court has probable cause to believe that a person domiciled or found in the county in which the
court is located is an incapacitated person, and the person does not have a guardian in this state, the court shall appoint a guardian ad litem or court investigator to investigate the person’s conditions and circumstances to determine whether:

1. the person is an incapacitated person; and
2. a guardianship is necessary.

(b) If a court appoints a guardian ad litem or court investigator under Subsection (a):

1. the court’s order appointing a guardian ad litem or court investigator must include a statement that the person believed to be incapacitated has the right to petition the court to have the appointment set aside;
2. at the initial meeting between the guardian ad litem or court investigator and the person believed to be incapacitated, the guardian ad litem or court investigator, as appropriate, shall provide a copy of the information letter under Section 1102.003 and the order to, and discuss the contents of the letter and order with, the person believed to be incapacitated; and
3. during the period beginning after the date of the initial meeting described by Subdivision (2) and ending on the date an application for the appointment of a guardian is filed, the person believed to be incapacitated may petition the court to have the appointment of the guardian ad litem or court investigator, as appropriate, set aside.

Derived from Probate Code § 683(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (b) added by Acts 2015, 84th Leg., ch. 1031, § 10, eff. Sept. 1, 2015.

§ 1102.002. Establishment of Probable Cause for Investigation


(a) In this section:

1. “Advanced practice registered nurse” has the meaning assigned by Section 301.152, Occupations Code.
2. “Physician” has the meaning assigned by Section 1101.100.

(b) An advanced practice registered nurse may act under this section only if the advanced practice registered nurse is acting under a physician’s delegation authority and supervision in accordance with Chapter 157, Occupations Code.

(c) To establish probable cause under Section 1102.001, the court may require:

1. an information letter about the person believed to be incapacitated that is submitted by an interested person and satisfies the requirements of Section 1102.003; or
2. a written letter or certificate from a physician or psychologist based on an examination that the person believed to be incapacitated has the right to petition the court to have the appointment set aside;
3. a written letter or certificate from a physician or psychologist based on an examination that the person believes to be incapacitated that satisfies the requirements of Section 1101.103, except that the letter must be:
   (A) dated not earlier than the 120th day before the date of the appointment of a guardian ad litem or court investigator under Section 1102.001; and
   (B) based on an examination the physician or advanced practice registered nurse performed not earlier than the 120th day before that date.
4. (d) For purposes of Subsection (c)(2), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician. The opinion of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and signed by the supervising physician is considered the supervising physician’s opinion.

Derived from Probate Code § 683(b).


To establish probable cause under Section 1102.001, the court may require:

1. an information letter about the person believed to be incapacitated that is submitted by an interested person and satisfies the requirements of Section 1102.003; or
2. a written letter or certificate from a physician or psychologist who has examined the person believed to be incapacitated that satisfies the requirements of Section 1101.103, except that the letter must be:
   (A) dated not earlier than the 120th day before the date of the appointment of a guardian ad litem or court investigator under Section 1102.001; and
   (B) based on an examination the physician or psychologist performed not earlier than the 120th day before that date.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1102.003. Information Letter

(a) An interested person who submits an information letter under Section 1102.002(1) about a person believed to be incapacitated must, to the best of the interested person’s knowledge:

1. state the person’s name, address, telephone number, county of residence, and date of birth;
2. state whether the person’s residence is a private residence, health care facility, or other type of residence;
3. describe the relationship between the person and the interested person submitting the letter;
4. state the names and telephone numbers of any known friends and relatives of the person;
5. state whether a guardian of the person or estate has been appointed in this state for the person;
(6) state whether the person has executed a power of attorney and, if so, the designee’s name, address, and telephone number;

(7) describe any property of the person, including the estimated value of that property;

(8) list the amount and source of any monthly income of the person;

(9) describe the nature and degree of the person’s alleged incapacity; and

(10) state whether the person is in imminent danger of serious impairment to the person’s physical health, safety, or estate.

(b) In addition to the requirements of Subsection (a), if an information letter under that subsection is submitted by an interested person who is a family member of the person believed to be incapacitated, the information letter must:

(1) be signed and sworn to before a notary public by the interested person; or

(2) include a written declaration signed by the interested person under penalty of perjury that the information contained in the information letter is true to the best of the person’s knowledge.

(c) Any information provided by the Department of Family and Protective Services under this section that is confidential under Chapter 48, Human Resources Code, remains confidential and is not subject to disclosure under Chapter 552, Government Code.

§ 1102.004. Application for Guardianship Following Investigation

A guardian ad litem or court investigator who, after an investigation as prescribed by Section 1102.001, believes that the person is an incapacitated person and that a guardianship is necessary shall file an application for the appointment of a guardian of the person or estate, or both, for the person.

Derived from Probate Code § 683A.

§ 1102.005. Compensation of Guardian Ad Litem

(a) Regardless of whether a guardianship is created for a proposed ward and except as provided by Section 1102.001, a court that appoints a guardian ad litem under Section 1102.001 may authorize compensation of the guardian ad litem from available funds of:

(1) the proposed ward’s estate; or

(2) the management trust, if a management trust has been created for the benefit of the proposed ward under Chapter 1301.

(b) Except as provided by Section 1155.151, after examining the proposed ward’s assets or the assets of any management trust created for the proposed ward’s benefit under Chapter 1301, and determining that the proposed ward or the management trust is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

Derived from Probate Code § 683(c).

§ 1102.006. Notice Regarding Request to Financial Institution for Customer Records

If a request is made to a financial institution for a customer record in connection with an investigation conducted under Section 1102.001, the court shall provide written notice of that fact to the proposed ward with respect to whom the investigation is conducted not later than the fifth day after the date the financial institution produces the customer record.

New.

Chapter 1103. Procedure to Appoint Guardian for Certain Minors Requiring Guardianships as Adults

§ 1103.001. Application for Appointment of Guardian

§ 1103.002. Appointment of Conservator as Guardian Without Hearing

§ 1103.003. Effective Date of Guardianship

§ 1103.004. Settlement and Closing of Prior Guardianship

Chapter 1103. Procedure to Appoint Guardian for Certain Minors Requiring Guardianships as Adults

§ 1103.001. Application for Appointment of Guardian

§ 1103.002. Appointment of Conservator as Guardian Without Hearing

§ 1103.003. Effective Date of Guardianship

§ 1103.004. Settlement and Closing of Prior Guardianship
1103.001 is a person who was appointed conservator of a disabled child and the proceeding is a guardianship proceeding described by Section 1002.015(1) in which the proposed ward is the incapacitated adult with respect to whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child, the applicant may present to the court a written letter or certificate that meets the requirements of Sections 1101.103(a) and (b).

(b) If, on receipt of the letter or certificate described by Subsection (a), the court is able to make the findings required by Section 1101.101, the court, notwithstanding Subchapter C, Chapter 1104, shall:

(1) appoint the conservator as guardian without conducting a hearing; and
(2) to the extent possible preserve the terms of possession and access to the ward that applied before the court obtained jurisdiction of the guardianship proceeding.

Derived from Probate Code § 682A(a-1) & (a-2).


§ 1103.003. Effective Date Of Guardianship

If the application filed under Section 1103.001 is heard before the proposed ward’s 18th birthday, a guardianship created under this chapter may not take effect and the person appointed guardian may not take the oath or make the declaration as required under Section 1105.051 or give a bond as required under Section 1105.101 until the proposed ward’s 18th birthday.

Derived from Probate Code § 682A(a).


§ 1103.004. Settlement and Closing of Prior Guardianship

Notwithstanding Section 1202.001(b), the guardianship of the person of a minor who is the subject of an application for the appointment of a guardian of the person filed under Section 1103.001 is settled and closed when:

(1) the court, after a hearing on the application, determines that the appointment of a guardian of the person for the proposed ward is not necessary; or
(2) the guardian appointed by the court, after a hearing on the application, has qualified under Section 1105.002.

Derived from Probate Code § 682A(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1104. Selection of and Eligibility to Serve as Guardian

Subchapter A. General Provisions Relating to Appointment of Guardian

§ 1104.001. Guardian of the Person or Estate
§ 1104.002. Preference of Incapacitated Person
§ 1104.003. Training Required

Subchapter B. Selection of Guardian for Minor

§ 1104.051. Guardian of Minor Children
§ 1104.052. Guardian for Minor Orphan
§ 1104.053. Guardian Designated by Will or Written Declaration
§ 1104.054. Selection of Guardian by Minor

Subchapter C. Selection of Guardian for Incapacitated Person Other Than Minor

§ 1104.101. Appointment According to Circumstances and Best Interests
§ 1104.102. Appointment Preferences
§ 1104.103. Designation of Guardian by Will or Written Declaration

Subchapter D. Written Declaration by Certain Parents to Appoint Guardian for Their Children

§ 1104.151. Definitions
§ 1104.152. Requirements for Declaration
§ 1104.153. Form and Content of Declaration and Self-Proving Affidavit
§ 1104.154. Alternative to Self-Proving Affidavit
§ 1104.155. Alternate Self-Proving of Declaration
§ 1104.156. Filing of Declaration and Self-Proving Affidavit
§ 1104.157. Proof of Declaration
§ 1104.158. Prima Facie Evidence
§ 1104.159. Revocation of Declaration
§ 1104.160. Alternate or Other Court-Appointed Guardian

Subchapter E. Written Declaration to Designate Guardian Before Need Arises

§ 1104.201. Definitions
§ 1104.203. Requirements for Declaration
§ 1104.204. Form and Content of Declaration and Self-Proving Affidavit
§ 1104.205. Alternative to Self-Proving Affidavit
§ 1104.206. Alternate Self-Proving of Declaration
§ 1104.207. Filing of Declaration and Self-Proving Affidavit
§ 1104.208. Proof of Declaration
§ 1104.001. Guardian of the Person or Estate
(a) Only one person may be appointed as guardian of the person or estate, but one person may be appointed guardian of the person and another person may be appointed guardian of the estate, if it is in the best interest of the incapacitated person or ward.
(b) Subsection (a) does not prohibit the joint appointment, if the court finds it to be in the best interest of the incapacitated person or ward, of:
   (1) a husband and wife;
   (2) joint managing conservators;
   (3) co-guardians appointed under the laws of a jurisdiction other than this state; or
   (4) both parents of an adult who is incapacitated if the incapacitated person:
      (A) has not been the subject of a suit affecting the parent-child relationship; or
      (B) has been the subject of a suit affecting the parent-child relationship and both of the incapacitated person’s parents were named as joint managing conservators in the suit but are no longer serving in that capacity.

Derived from Probate Code § 690.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.002. Preference of Incapacitated Person
Before appointing a guardian, the court shall make a reasonable effort to consider the incapacitated person’s preference of the person to be appointed guardian and, to the extent consistent with other provisions of this title, shall give due consideration to the preference indicated by
the incapacitated person, regardless of whether the person has designated by declaration a guardian before the need arises under Subchapter E.

Derived from Probate Code § 689.


§ 1104.003. Training Required

A court may not appoint an individual to serve as guardian under this title if the individual has not received the training required under Section 155.204, Government Code, unless waived by the court in accordance with rules adopted by the supreme court under Section 155.203, Government Code.

New.


Subchapter B. Selection of Guardian for Minor

Statutes in Context
Chapter 1104, Subchapter B

Chapter 1104, Subchapter B, explains how a guardian of a minor is selected. Upon the surviving parent's death or incapacity, the court will give great deference to a designation of a guardian in the parent's will or other written document.

§ 1104.051. Guardian of Minor Children

(a) If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents is entitled to be appointed guardian of the children's estates. If the parents disagree as to which parent should be appointed, the court shall make the appointment on the basis of which parent is better qualified to serve in that capacity.

(b) The rights of parents who do not live together are equal. The court shall assign the guardianship of their minor children to one parent considering only the best interests of the children.

(c) If one parent is deceased, the surviving parent is the natural guardian of the person of the minor children and is entitled to be appointed guardian of the minor children's estates.

Derived from Probate Code § 676(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.052. Guardian for Minor Orphan

In appointing a guardian for a minor orphan:

(1) if the last surviving parent did not appoint a guardian, the nearest ascendant in the direct line of the minor is entitled to guardianship of both the person and the estate of the minor;

(2) if more than one ascendant exists in the same degree in the direct line of the minor, the court shall appoint one ascendant according to circumstances and considering the minor’s best interests;

(3) if the minor does not have an ascendant in the direct line of the minor:

(A) the court shall appoint the nearest of kin;

or

(B) if two or more persons are in the same degree of kinship to the minor, the court shall appoint one of those persons according to circumstances and considering the minor’s best interests; and

(4) if the minor does not have a relative who is eligible to be guardian, or if none of the eligible persons apply to be guardian, the court shall appoint a qualified person as guardian.

Derived from Probate Code § 676(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.053. Guardian Designated by Will or Written Declaration

(a) Notwithstanding Section 1104.001 or 1104.051, the surviving parent of a minor may by will or written declaration appoint any eligible person to be guardian of the person of the parent’s minor children after the parent dies or in the event of the parent’s incapacity.

(b) After the surviving parent of a minor dies or if the court finds the surviving parent is an incapacitated person, the court shall appoint the person designated in the will or declaration to serve as guardian of the person of the parent’s minor children in preference to another otherwise entitled to serve as guardian under this title, unless the court finds that the person designated to serve as guardian:

(1) is disqualified;

(2) is deceased;

(3) refuses to serve; or

(4) would not serve the minor children’s best interests.

(c) On compliance with this title, an eligible person is also entitled to be appointed guardian of the minor children’s estates after the surviving parent dies or in the event of the surviving parent’s incapacity.

Derived from Probate Code §§ 676(d), (e), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.054. Selection of Guardian by Minor

(a) Notwithstanding any other provision of this subchapter, if an application is filed for the guardianship of the person or estate, or both, of a minor at least 12 years of age, the minor may select the guardian by a writing filed with the clerk, if the court finds that the selection is in the minor’s best interest and approves the selection.

(b) Notwithstanding any other provision of this subchapter, a minor at least 12 years of age may select
another guardian of the minor’s person or estate, or both, if the minor has a guardian appointed by the court, by will of the minor’s parent, or by written declaration of the minor’s parent, and that guardian dies, resigns, or is removed from guardianship. The minor must make the selection by filing an application in open court in person or by an attorney. The court shall make the appointment and revoke the letters of guardianship of the former guardian if the court is satisfied that:

(1) the person selected is suitable and competent; and

(2) the appointment of the person is in the minor’s best interest.

Derived from Probate Code §§ 676(a), 680.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Selection of Guardian for Incapacitated Person Other Than Minor

Statutes in Context
Chapter 1104, Subchapter C

Chapter 1104, Subchapter C, explains how a guardian of a non-minor is selected. Upon the surviving parent’s death or incapacity, the court will give great deference to a designation of a guardian in the parent’s will or other written document.

§ 1104.101. Appointment According to Circumstances and Best Interests

The court shall appoint a guardian for an incapacitated person other than a minor according to the circumstances and considering the incapacitated person’s best interests.

Derived from Probate Code § 677(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.102. Appointment Preferences

If the court finds that two or more eligible persons are equally entitled to be appointed guardian of an incapacitated person:

(1) the incapacitated person’s spouse is entitled to the guardianship in preference to any other person, if the spouse is one of the eligible persons;

(2) the eligible person nearest of kin to the incapacitated person is entitled to the guardianship, if the incapacitated person’s spouse is not one of the eligible persons; or

(3) the court shall appoint the eligible person who is best qualified to serve as guardian if:

(A) the persons entitled to serve under Subdivisions (1) and (2) refuse to serve;

(B) two or more persons entitled to serve under Subdivision (2) are related in the same degree of kinship to the incapacitated person; or

(C) neither the incapacitated person’s spouse nor any person related to the incapacitated person is an eligible person.

Derived from Probate Code § 677(A).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.103. Designation of Guardian by Will or Written Declaration

(a) The surviving parent of an adult individual who is an incapacitated person may, if the parent is the guardian of the person or estate of the adult individual, by will or written declaration appoint an eligible person to serve as guardian of the person or estate, as applicable, of the adult individual:

(1) after the parent dies;

(2) in the event the parent resigns as guardian of the person or estate; or

(3) in the event of the parent’s incapacity.

(a-1) If the surviving parent is both the guardian of the person and estate of the adult individual, the surviving parent may by will or written declaration appoint different eligible persons to serve as guardian of the person and guardian of the estate.

(b) After the surviving parent dies or resigns as guardian, or if the court finds the surviving parent has become an incapacitated person after being appointed the adult individual’s guardian, the court shall appoint the person or persons designated in the will or declaration to serve as guardian of the person, guardian of the estate, or both, in preference to any other person otherwise entitled to serve as guardian under this title, unless the court finds that the person designated to serve as guardian:

(1) is disqualified;

(2) is deceased;

(3) refuses to serve; or

(4) would not serve the adult individual’s best interests.

(c) On compliance with this title, the eligible person appointed under Subsection (b) is also entitled to be appointed guardian of the estate of the adult individual after the surviving parent dies or in the event of the surviving parent’s incapacity, if the surviving parent is the guardian of the estate of the adult individual.

Derived from Probate Code §§ 677(b), (c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) and (b) amended and subsec. (a-1) added by Acts 2023, 88th Leg., ch. 207, § 10, eff. Sept. 1, 2023. Subsec. (c) repealed by Acts 2023, 88th Leg., ch. 207, § 31, eff. Sept. 1, 2023.

Subchapter D. Written Declaration by Certain Parents to Appoint Guardian for Their Children

§ 1104.151. Definitions

In this subchapter:
(1) “Declaration” means a written declaration of a person that:
   (A) appoints a guardian for the person’s child
       under Section 1104.053(A) or 1104.103(A); and
   (B) satisfies the requirements of this subdivision and Sections 1104.152, 1104.153, 1104.154, 1104.156, 1104.159, and 1104.160.

(2) “Self-proving affidavit” means an affidavit the form and content of which substantially comply with the requirements of Section 1104.153.

(3) “Self-proving declaration” includes a self-proving affidavit that is attached or annexed to a declaration.

Derived from Probate Code §§ 677A(h), 677B(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Statutes in Context
§ 1104.152
Section 1104.152 sets forth the requirements for non-testamentary guardian declarations by a parent of a minor or adult who is in need of a guardian. Separate rules exist for holographic and attested declarations. Suggested forms are provided in § 1104.153 (two-step execution procedure with separate self-proving affidavit) and § 1104.154 (one-step execution procedure with integrated self-proving affidavit).

§ 1104.152. Requirements for Declaration
(a) A declaration appointing an eligible person to be guardian of the person of a parent’s child under Section 1104.053(a) or 1104.103(a) must be signed by the declarant and be:
   (1) written wholly in the declarant’s handwriting; or
   (2) attested to in the declarant’s presence by at least two credible witnesses who are:
       (A) 14 years of age or older; and
       (B) not named as guardian or alternate guardian in the declaration.

(b) Notwithstanding Subsection (a), a declaration that is not written wholly in the declarant’s handwriting may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) A declaration described by Subsection (a)(2) may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to:
   (1) the competence of the declarant; and
   (2) the execution of the declaration.

Derived from Probate Code §§ 677A(A), (b), (c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
Subscribed and sworn to before me by __________, the above named declarant, and __________ (names of affiants) affiants, on this ___ day of __________, 20__.  

Notary Public in and for the State of Texas  
My Commission expires: ________________  

Derived from Probate Code § 677A(g).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.154.  Alternative to Self-Proving Affidavit  
(a) As an alternative to the self-proving affidavit authorized by Section 1104.153, a declaration of appointment of a guardian for the declarant’s children in the event of the declarant’s death or incapacity may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:  
I, __________, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Appointment of Guardian for My Children in the Event of My Death or Incapacity, and that I willingly make and execute it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of ________, 20__.  

Declarant ________________________________________________________________________  

The undersigned, __________ and __________, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant’s Declaration of Appointment of Guardian for the Declarant’s Children in the Event of Declarant’s Death or Incapacity and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this _____ day of __________, 20__.  

Witness ________________________________________________________________________  
Witness ________________________________________________________________________  

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of __________, 20__.  

Notary Public in and for the State of Texas  
My Commission expires: ________________  

(b) A declaration that is executed as provided by Subsection (a) is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Section 1104.153 is considered self-proved.  

Derived from Probate Code §§ 677A(i), (j).  

§ 1104.155.  Alternate Self-Proving of Declaration  
At any time during the declarant’s lifetime, a declaration described by Section 1104.152(a)(1) may be made self-proved in the same form and manner that a will written wholly in the testator’s handwriting is made self-proved under Section 251.107.  

Derived from Probate Code § 677B(c).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.156.  Filing of Declaration and Self-Proving Affidavit  
The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.  

Derived from Probate Code § 677A(d).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.157.  Proof of Declaration  
(a) The court may admit a declaration that is self-proved into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.  

(b) A declaration described by Section 1104.152(a)(1) that is not self-proved may be proved in the same manner that a will written wholly in the testator’s handwriting is proved under Section 256.154.  

(c) A declaration described by Section 1104.152(a)(2) that is not self-proved may be proved in the same manner that an attested written will produced in court is proved under Section 256.153.  

Derived from Probate Code §§ 677B(b), (e), (f).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.158.  Prima Facie Evidence  
A properly executed and witnessed self-proving declaration, including a declaration and self-proving affidavit described by Section 1104.152(c), is prima facie evidence that:  

(1) the declarant was competent at the time the declarant executed the declaration; and  

(2) the guardian named in the declaration would serve the best interests of the ward or incapacitated person.  

Derived from Probate Code § 677B(d).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.159.  Revocation of Declaration  
The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 253.002, including the subsequent re-execution of the
§ 1104.160. Alternate or Other Court-Appointed Guardian

(a) The court shall appoint the next eligible designated alternate guardian named in a declaration if the designated guardian does not qualify, is deceased, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian.

(b) The court shall appoint another person to serve as guardian as otherwise provided by this title if the designated guardian and all designated alternate guardians named in the declaration:

(1) do not qualify;
(2) are deceased;
(3) refuse to serve; or
(4) later die or resign.

§ 1104.201. Definitions

In this subchapter:

(1) "Declaration" means a written declaration of a person that:

(A) designates another person to serve as a guardian of the person or estate of the declarant; and
(B) satisfies the requirements of this subdivision and Sections 1104.202, 1104.203, 1104.204, 1104.205, 1104.210, 1104.211, and 1104.212.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially comply with the requirements of Section 1104.204.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.


(a) A person other than an incapacitated person may designate by declaration a person to serve as guardian of the person or estate of the declarant if the declarant becomes incapacitated. The court shall appoint the person designated in the declaration to serve as guardian in preference to any other person otherwise entitled to serve as guardian under this title, unless the court finds that the person designated to serve as guardian:

(1) is disqualified; or
(2) would not serve the ward’s best interests.

(b) A declarant may, in the declaration, disqualify a named person from serving as guardian of the declarant's person or estate. The court may not under any circumstances appoint as guardian a person named under this subsection.

§ 1104.203. Requirements for Declaration

(a) Except as provided by Subsection (a-1), a declaration under this subchapter must be signed by the declarant and be:

(1) "Declaration" means a written declaration of a person that:

(A) designates another person to serve as a guardian of the person or estate of the declarant; and
(B) satisfies the requirements of this subdivision and Sections 1104.202, 1104.203, 1104.204, 1104.205, 1104.210, 1104.211, and 1104.212.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially comply with the requirements of Section 1104.204.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.

Debate exists over whether the same individuals should be named in the self-designation of guardian as in the durable power of attorney (Estates Code Chapter 752) and the medical power of attorney (Health & Safety Code § 166.164). One school of thought is that by naming the same persons, there will be consistency if an “evil” person attempts to take over from the agents by being named as a guardian. On the other hand, if different people are named, it is easier for the agents to be held accountable in case their conduct is less than honorable.

Statutes in Context

Chapter 1104, Subchapter E

Historically, most courts held that they were not required to give weight to an incompetent person's preference for a guardian. An incompetent's opinion was inherently suspect because a person lacking the capacity to handle property may lack the capacity to select a proper guardian and may be more susceptible to undue influence. The modern trend adopted by Texas is to permit a competent individual to designate the individual the person would like the court to appoint as the person's guardian before the onset of incompetency. Thus, should the need for a guardian arise, the court may follow the person's intent which was expressed at a time when the person was competent to do so.

A self-designation of guardian may be holographic or attested. Section 1104.203 sets forth the basic requirements. Suggested forms are provided in § 1104.204 (two-step execution procedure with separate self-proving affidavit) and § 1104.205 (one-step execution procedure with integrated self-proving affidavit).

A declarant may also disqualify a person from serving as a guardian even though the person would otherwise have priority. § 1104.204(b). This allows the declarant to, for example, designate the “good” child and disqualify the “bad” child.
(1) written wholly in the declarant’s handwriting; or
(2) attested to in the declarant’s presence by at least two credible witnesses who are:
   (A) 14 years of age or older; and
   (B) not named as guardian or alternate guardian in the declaration.

(a-1) If the declaration does not expressly disqualify any individual from serving as guardian of the declarant’s person or estate, the declaration must be signed by the declarant and may be acknowledged by a notary public instead of being attested to in the declarant’s presence by witnesses as required by Subsection (a)(2).

(b) Notwithstanding Subsection (a) or (a-1), a declaration that is not written wholly in the declarant’s handwriting may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) A declaration described by Subsection (a)(2) may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to:
   (1) the competence of the declarant; and
   (2) the execution of the declaration.

§ 1104.204. Form and Content of Declaration and Self-Proving Affidavit

(a) A declaration and affidavit may be in any form adequate to clearly indicate the declarant’s intention to designate a guardian.

(b) The following form may be used but is not required to be used:

DECLARATION OF GUARDIAN IN THE EVENT OF LATER INCAPACITY OR NEED OF GUARDIAN

1. I, __________, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

2. I designate __________ to serve as guardian of my person, __________ as first alternate guardian of my person, __________ as second alternate guardian of my person, and __________ as third alternate guardian of my person.

3. I designate __________ to serve as guardian of my estate, __________ as first alternate guardian of my estate, __________ as second alternate guardian of my estate, and __________ as third alternate guardian of my estate.

4. I expressly disqualify the following persons from serving as guardian of my person: __________, __________, and __________.

5. I expressly disqualify the following persons from serving as guardian of my estate: __________, __________, and __________.

Signed this ___ day of __________, 20__. Declarant ______________________________

Witness ____________________

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared __________, the declarant, and __________ and __________ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Guardian and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant ______________________________

Affiant ____________________

Subscribed and sworn to before me by the above named declarant and affiants on this ____ day of __________, 20__. Notary Public in and for the State of Texas

Notary’s printed name: ____________________

My commission expires: ____________________

(c) A declaration that complies with the requirements of Section 1104.203(a-1) may, but is not required to, be in the form specified by Subsection (b), except that instead of having attached the self-proving affidavit prescribed by that subsection, the declaration shall have attached the following acknowledgment:

STATE OF ________________
COUNTY OF ________________

This instrument was acknowledged before me on the ___ day of __________, 20__.

by ____________________ (Declarant).

Notary Public, in and for the State of Texas

Notary’s printed name: ____________________

My commission expires: ____________________

(d) A declaration that complies with the requirements of Section 1104.203(a-1) that has attached the acknowledgment provided by Subsection (c) is considered self-proved.

Derived from Probate Code § 679(i).


§ 1104.205. Alternative to Self-Proving Affidavit

(a) As an alternative to the self-proving affidavit authorized by Section 1104.204, a declaration of guardian in the event of later incapacity or need of guardian may be
simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, ____________________, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Guardian in the Event of Later Incapacity or Need of Guardian, and that I willingly make and execute it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of __________, 20__.

Declarant ____________________________

The undersigned, ___________________ and ____________________, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant’s Declaration of Guardian in the Event of Later Incapacity or Need of Guardian and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this _____ day of ____________, 20__.

Witness _______________________________
Witness _______________________________

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of __________, 20__.

Notary Public in and for the State of Texas
My Commission expires: ____________________________

(b) A declaration that is executed as provided by Subsection (a) is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Section 1104.204 is considered self-proved.

§ 1104.206. Alternate Self-Proving of Declaration

At any time during the declarant’s lifetime, a declaration described by Section 1104.203(a)(1) may be made self-proved in the same form and manner that a will written wholly in the testator’s handwriting is made self-proved under Section 251.107.

§ 1104.207. Filing of Declaration and Self-Proving Affidavit

The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

§ 1104.208. Proof of Declaration

(a) The court may admit a declaration that is self-proved into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

(b) A declaration described by Section 1104.203(a)(1) that is not self-proved may be proved in the same manner that a will written wholly in the testator’s handwriting is proved under Section 256.154.

(c) A declaration described by Section 1104.203(a)(2) that is not self-proved may be proved in the same manner that an attested written will produced in court is proved under Section 256.153.

§ 1104.209. Prima Facie Evidence

A properly executed and witnessed self-proving declaration, including a declaration and self-proving affidavit described by Section 1104.203(c), is prima facie evidence that:

1. the declarant was competent at the time the declarant executed the declaration; and
2. the guardian named in the declaration would serve the best interests of the ward or incapacitated person.

§ 1104.210. Revocation of Declaration

The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 253.002, including the subsequent re-execution of the declaration in the manner required for the original declaration.

§ 1104.211. Effect of Divorce on Designation of Spouse

If a declarant designates the declarant’s spouse to serve as guardian under this subchapter, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.
§ 1104.212. Alternate or Other Court-Appointed Guardian

(a) The court shall appoint the next eligible designated alternate guardian named in a declaration if the designated guardian does not qualify, is deceased, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian.

(b) The court shall appoint another person to serve as guardian as otherwise provided by this title if the designated guardian and all designated alternate guardians named in the declaration:

(1) do not qualify;
(2) are deceased;
(3) refuse to serve; or
(4) later die or resign.

Derived from Probate Code § 679(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F. Certification Requirements for Certain Guardians

§ 1104.251. Certification Required for Certain Guardians

(a) An individual must be certified under Subchapter C, Chapter 155, Government Code, if the individual:

(1) is a private professional guardian;
(2) will represent the interests of a ward as a guardian on behalf of a private professional guardian;
(3) is providing guardianship services to a ward of a guardianship program on the program’s behalf, except as provided by Section 1104.254; or
(4) is an employee of the Department of Aging and Disability Services providing guardianship services to a ward of the department.

(b) An individual employed by or contracting with a guardianship program must be certified as provided by Subsection (a) to provide guardianship services to a ward or incapacitated person.

Derived from Probate Code §§ 696A, 697B(a).


§ 1104.252. Effect of Provisional Certificate

For purposes of this subchapter, a person who holds a provisional certificate issued under Section 155.103, Government Code, is considered to be certified.

Derived from Probate Code § 697B(e).


§ 1104.253. Exception for Family Members and Friends

A family member or friend of an incapacitated person is not required to be certified under Subchapter C, Chapter 155, Government Code, or any other law to serve as the person’s guardian.

Derived from Probate Code § 696B.


§ 1104.254. Exception for Certain Volunteers

An individual volunteering with a guardianship program or with the Department of Aging and Disability Services is not required to be certified as provided by Section 1104.251 to provide guardianship services or other services under Section 161.114, Human Resources Code, on the program’s or the department’s behalf.

Derived from Probate Code § 697B(d).


§ 1104.255. Expiration of Certification

A person whose certification under Subchapter C, Chapter 155, Government Code, has expired must obtain a new certification under that subchapter to provide or continue providing guardianship services to a ward or incapacitated person under this title.

Derived from Probate Code § 697B(b).


§ 1104.256. Failure to Comply; Court’s Duty to Notify

The court shall notify the guardianship certification program of the Judicial Branch Certification Commission if the court becomes aware of a person who is not complying with:

(1) the terms of a certification issued under Subchapter C, Chapter 155, Government Code; or
(2) the standards and rules adopted under that subchapter.

Derived from Probate Code § 697B(c).


§ 1104.257. Information Regarding Services Provided by Guardianship Program

Not later than January 31 of each year, each guardianship program operating in a county shall submit to the county clerk a copy of the report submitted to the guardianship certification program of the Judicial Branch Certification Commission under Section 155.105, Government Code.

Derived from Probate Code § 697A(a).


353
§ 1104.258. Information Regarding Certain State Employees Providing Guardianship Services

Not later than January 31 of each year, the Department of Aging and Disability Services shall submit to the guardianship certification program of the Judicial Branch Certification Commission a statement containing:

(1) the name, address, and telephone number of each department employee who is or will be providing guardianship services to a ward or proposed ward on the department’s behalf; and

(2) the name of each county in which each employee named in Subdivision (1) is providing or is authorized to provide those services.

Derived from Probate Code § 697A(b).

Subchapter G. Private Professional Guardians

§ 1104.301. Certification and Registration Required

A court may not appoint a private professional guardian to serve as a guardian or permit a private professional guardian to continue to serve as a guardian under this title if the private professional guardian is not:

(1) certified as provided by Section 1104.251(a), 1104.252, 1104.255, or 1104.256; or

(2) in compliance with the registration requirements of this subchapter.

Derived from Probate Code § 696.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.302. Annual Certificate of Registration

A private professional guardian must annually apply for a certificate of registration.

Derived from Probate Code § 697(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.303. Requirements of Application

(a) An application for a certificate of registration must include a sworn statement containing the following information concerning a private professional guardian or each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian:

(1) place of residence;

(2) business address and business telephone number;

(3) educational background and professional experience;

(4) three or more professional references;

(5) the name of each ward for whom the private professional guardian or person is or will be serving as a guardian;

(6) the aggregate fair market value of the property of all wards that is or will be managed by the private professional guardian or person;

(7) whether the private professional guardian or person has ever been removed as a guardian by the court or resigned as a guardian in a particular case, and, if so:

(A) a description of the circumstances causing the removal or resignation; and

(B) the style of the suit, the docket number, and the court having jurisdiction over the proceeding; and

(8) the certification number or provisional certification number issued to the private professional guardian or person by the guardianship certification program of the Judicial Branch Certification Commission.

(b) The application must be:

(1) made to the clerk of the county having venue of the proceeding for the appointment of a guardian; and

(2) accompanied by a nonrefundable fee of $40 to cover the cost of administering this subchapter.

Derived from Probate Code § 697(a) & (b).

§ 1104.304. Term of Registration; Renewal

(a) The term of an initial registration begins on the date the requirements under Section 1104.303 are met and extends through December 31 of the year in which the application is made. After the term of the initial registration, the term of registration begins on January 1 and extends through December 31 of each year.

(b) An application to renew a registration must be completed during December of the year preceding the year for which the renewal is requested.

Derived from Probate Code § 697(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.305. Use of Registration Information

(a) The clerk shall bring the information received under Section 1104.303 to the judge’s attention for review.

(b) The judge shall use the information only to determine whether to appoint, remove, or continue the appointment of a private professional guardian.

Derived from Probate Code § 697(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.306. Use of Names and Business Addresses

Not later than January 31 of each year, the clerk shall submit to the guardianship certification program of the Judicial Branch Certification Commission the name and business address of each private professional guardian.
Subchapter H. Grounds for Disqualification

§ 1104.351. Incapacity or Inexperience
A person may not be appointed guardian if the person is:
(1) a minor or other incapacitated person; or
(2) a person who, because of inexperience, lack of education, or other good reason, is incapable of properly and prudently managing and controlling the person or estate of the ward.

§ 1104.352. Unsuitability
A person may not be appointed guardian if the person is a person, institution, or corporation found by the court to be unsuitable.

§ 1104.353. Notoriously Bad Conduct; Presumption Concerning Best Interest
(a) A person may not be appointed guardian if the person’s conduct is notoriously bad.
(b) It is presumed to be not in the best interests of a ward or incapacitated person to appoint as guardian of the ward or incapacitated person a person who has been finally convicted of:
(1) any sexual offense, including sexual assault, aggravated sexual assault, and prohibited sexual conduct;
(2) aggravated assault;
(3) injury to a child, elderly individual, or disabled individual;
(4) abandoning or endangering a child, elderly individual, or disabled individual;
(5) terroristic threat; or
(6) continuous violence against the family of the ward or incapacitated person.

§ 1104.354. Conflict of Interest
A person may not be appointed guardian if the person:
(1) is a party or is a person whose parent is a party to a lawsuit concerning or affecting the welfare of the proposed ward, unless the court:
(A) determines that the lawsuit claim of the person who has applied to be appointed guardian is not in conflict with the lawsuit claim of the proposed ward; or
(B) appoints a guardian ad litem to represent the interests of the proposed ward throughout the litigation of the ward’s lawsuit claim;
(2) is indebted to the proposed ward, unless the person pays the debt before appointment; or
(3) asserts a claim adverse to the proposed ward or the proposed ward’s property.

§ 1104.355. Disqualified in Declaration
A person may not be appointed guardian if the person is disqualified in a declaration under Section 1104.202(b).

§ 1104.356. Lack of Certain Required Certification
A person may not be appointed guardian if the person does not have the certification to serve as guardian that is required by Subchapter F.

§ 1104.357. Nonresident Without Resident Agent
A person may not be appointed guardian if the person is a nonresident who has failed to file with the court the name of a resident agent to accept service of process in all actions or proceedings relating to the guardianship.

§ 1104.358. Subject to Protective Order for Family Violence
A person found to have committed family violence who is subject to a protective order issued under Chapter 85, Family Code, may not be appointed guardian of a proposed ward or ward who is protected by the protective order.

§ 1104.359. Effect of Lack of Required Registration
(a) A guardianship program may not be appointed guardian:
(1) if the program is not registered as required under Subchapter F, Chapter 155, Government Code;
TEXAS ESTATES CODE

(2) if a registration certificate issued to the program under Subchapter F, Chapter 155, Government Code, is expired or refused renewal, or has been revoked and not been reissued; or
(3) during the time a registration certificate issued to the program under Subchapter F, Chapter 155, Government Code, is suspended.

(b) This section does not prevent the appointment, on the individual’s own behalf, of an individual who is employed by or contracts with a guardianship program to provide guardianship and related services independently of the program.

New.


Subchapter I. Access to Criminal History Records

§ 1104.401. Definition.

In this subchapter, “department” means the Department of Aging and Disability Services.

New.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.402. Court Clerk’s Duty to Obtain Criminal History Record Information; Authority to Charge Fee

(a) Except as provided by Section [1104.403, 1104.404(a)], or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to: (1) a private professional guardian; (2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian; (3) each person employed by a private professional guardian who will: (A) have personal contact with a ward or proposed ward; (B) exercise control over and manage a ward’s estate; or (C) perform any duties with respect to the management of a ward’s estate; (4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program’s behalf; or (5) any [other] person proposed to serve as a guardian under this title, including a proposed temporary guardian, [and] a proposed successor guardian, or any person who will have contact with the proposed ward or the proposed ward’s estate on behalf of the proposed guardian, other than an attorney or a person who is a certified guardian.

(b) The clerk may charge a $10 fee to recover the costs of obtaining criminal history record information under Subsection (a).

Derived from Probate Code §§ 698(a), (e).


§ 1104.403. Submission of Criminal History Record Information by Proposed Guardian

Not later than the 10th day before the date of the hearing to appoint a guardian, a person may submit to the clerk a copy of the person’s criminal history record information required under Section 1104.402(a)(5) that the person obtains not earlier than the 30th day before the date of the hearing from: (1) the Department of Public Safety; or (2) the Federal Bureau of Investigation.

Derived from Probate Code § 698(a-5).


§ 1104.404. Exception for Information Concerning Certain Persons

(a) The clerk described by Section 1104.402 is not required to obtain criminal history record information from the Department of Public Safety for a person if the Judicial Branch Certification Commission conducted a criminal history check on the person under Sections 155.203 and 155.207 [Chapter 155], Government Code.

New.


§ 1104.405. Information for Exclusive Use of Court

(a) Criminal history record information obtained or provided under Section 1104.402, 1104.403, or 1104.404 is privileged and confidential and is for the exclusive use of the court. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order [or consent of the person being investigated]. The court may use the criminal history record information only to determine whether to:
(a) The department shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to each individual who is or will be providing guardianship services to a ward of or referred by the department, including:

(1) an employee of or an applicant selected for an employment position with the department;
(2) a volunteer or an applicant selected to volunteer with the department;
(3) an employee of or an applicant selected for an employment position with a business entity or other person who contracts with the department to provide guardianship services to a ward referred by the department;
(4) a volunteer or an applicant selected to volunteer with a business entity or other person described by Subdivision (3); and
(5) a contractor or an employee of a contractor who provides services to a ward of the Department of Aging and Disability Services under a contract with the estate of the ward.

(b) The department must obtain the information in Subsection (a) before:

(1) making an offer of employment to an applicant for an employment position; or
(2) a volunteer contacts a ward of or referred by the department.

(c) The department must annually obtain the information in Subsection (a) regarding employees, contractors, or volunteers providing guardianship services.

§ 1104.407. Duty to Provide Information on Request
The department shall provide the information obtained under Section 1104.406(a) to:

(1) the clerk of the county having venue of the guardianship proceeding at the court's request; and
(2) the guardianship certification program of the Judicial Branch Certification Commission at the commission’s request.

§ 1104.408. Information for Exclusive Use of Court or Guardianship Certification Program of Judicial Branch Certification Commission
(a) Criminal history record information obtained under Section 1104.407 is privileged and confidential and is for the exclusive use of the court or guardianship certification program of the Judicial Branch Certification Commission, as appropriate. The information may not be released or otherwise disclosed to any person or agency except:

(1) on court order;
(2) with the consent of the person being investigated; or
(3) as authorized by Section 1104.401 of this code or Section 111.1386(a-6), Government Code.

(b) The county clerk or guardianship certification program of the Judicial Branch Certification Commission may destroy the criminal history record information after the information is used for the purposes authorized by this subchapter.

§ 1104.409. Use of Information by Court
The court shall use the information obtained under this subchapter only in determining whether to:

(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the department; or
(2) appoint any other person proposed to serve as a guardian under this title, including a proposed temporary guardian, a proposed successor guardian, or any person who will have contact with the proposed ward or the proposed ward’s estate on behalf of the proposed guardian, other than an attorney or a certified guardian.

(b) The county clerk may destroy the criminal history record information after the information is used for the purposes authorized by this subchapter.


§ 1104.406. Department’s Duty to Obtain Criminal History Record Information
(a) The department shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to each individual who is or will be providing guardianship services to a ward of or referred by the department, including:

(1) an employee of or an applicant selected for an employment position with the department;
(2) a volunteer or an applicant selected to volunteer with the department;
(3) an employee of or an applicant selected for an employment position with a business entity or other person who contracts with the department to provide guardianship services to a ward referred by the department;
(4) a volunteer or an applicant selected to volunteer with a business entity or other person described by Subdivision (3); and
(5) a contractor or an employee of a contractor who provides services to a ward of the Department of Aging and Disability Services under a contract with the estate of the ward.

(b) The department must obtain the information in Subsection (a) before:

(1) making an offer of employment to an applicant for an employment position; or
(2) a volunteer contacts a ward of or referred by the department.

(c) The department must annually obtain the information in Subsection (a) regarding employees, contractors, or volunteers providing guardianship services.

§ 1104.410. Use of Information by Guardianship Certification Program of Judicial Branch Certification Commission

Criminal history record information obtained by the guardianship certification program of the Judicial Branch Certification Commission under Section 1104.407(2) may be used for any purpose related to the issuance, denial, renewal, suspension, or revocation of a certificate issued by the commission.

Derived from Probate Code § 698(c-1).


§ 1104.411. Criminal Offense for Unauthorized Release or Disclosure

(a) A person commits an offense if the person releases or discloses any information received under this subchapter without the authorization prescribed by Section 1104.405 or 1104.408.

(b) An offense under this section is a Class A misdemeanor.

Derived from Probate Code § 698(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.412. Effect of Subchapter on Department’s Authority to Obtain or Use Information

This subchapter does not prohibit the department from obtaining and using criminal history record information as provided by other law.

Derived from Probate Code § 698(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1105. Qualification of Guardians

Subchapter A. General Provisions

§ 1105.001. Definitions
§ 1105.002. Manner of Qualification of Guardian
§ 1105.003. Period For Taking Oath or Making Declaration and Giving Bond

Subchapter B. Oaths and Declarations

§ 1105.051. Oath or Declaration of Guardian
§ 1105.052. Administration of Oath or Making of Declaration

Subchapter C. General Provisions Relating to Bonds

§ 1105.101. Bond Generally Required; Exceptions
§ 1105.102. Bond for Certain Guardians of the Person
§ 1105.103. Bond Required from Guardian Otherwise Exempt

§ 1105.104. Bonds of Joint Guardians
§ 1105.105. Bond of Married Person
§ 1105.106. Bond of Married Person Younger Than 18 Years of Age
§ 1105.107. Bond of Guardianship Program
§ 1105.108. Subscription of Bond by Principals and Sureties
§ 1105.109. Form of Bond
§ 1105.110. Filing of Bond
§ 1105.111. Failure to Give Bond
§ 1105.112. Bond Not Void on First Recovery

Subchapter D. Other Provisions Relating to Bonds of Guardians of the Estate

§ 1105.151. General Formalities
§ 1105.152. General Standard Regarding Amount of Bond
§ 1105.153. Evidentiary Hearing on Amount of Bond
§ 1105.154. Specific Bond Amount
§ 1105.155. Agreement Regarding Deposit of Estate Assets
§ 1105.156. Deposit of Estate Assets on Terms Prescribed by Court
§ 1105.157. Deposits of Guardian
§ 1105.158. Bond Required Instead of Deposits
§ 1105.159. Withdrawal of Deposits on Closing of Guardianship
§ 1105.160. Authorized Corporate or Personal Sureties
§ 1105.161. Sureties for Certain Bonds
§ 1105.162. Deposits by Personal Surety
§ 1105.163. Applicability of Subchapter to Certain Court Orders

Subchapter E. Provisions Relating to Personal Sureties

§ 1105.201. Affidavit of Personal Surety
§ 1105.202. Lien on Real Property Owned by Personal Surety
§ 1105.203. Subordination of Lien on Real Property Owned by Personal Surety
§ 1105.204. Release of Lien on Real Property Owned by Personal Sureties

Subchapter F. New Bonds

§ 1105.251. Grounds for Requiring New Bond
§ 1105.252. Court Order or Citation on New Bond
§ 1105.253. Show Cause Hearing on New Bond Requirement
§ 1105.254. Effect Of Order Requiring New Bond
§ 1105.255. New Bond in Decreased Amount
§ 1105.256. Request by Surety for New Bond
§ 1105.257. Discharge of Former Sureties on Approval of New Bond

Chapter 1105. Qualification of Guardians

Subchapter A. General Provisions

§ 1105.001. Definitions

In this chapter:

(1) "Bond" means a bond required by this chapter to be given by a person appointed to serve as a guardian.

(1-a) "Declaration" means a declaration taken by a person appointed to serve as a guardian to qualify to serve.

(2) "Oath" means an oath taken by a person appointed to serve as a guardian to qualify to serve.


§ 1105.002. Manner of Qualification of Guardian

(a) Except as provided by Subsection (b), a guardian is considered to have qualified when the guardian has:

(1) taken and filed the oath, or made and filed the declaration, required under Section 1105.051;

(2) given the required bond;

(3) [filed the bond with the clerk; and (4)] obtained the judge’s approval of the bond; and

(4) filed the bond with the clerk.

(b) A guardian who is not required to give a bond is considered to have qualified when the guardian has taken and filed the oath, or made and filed the declaration, as required under Section 1105.051.


§ 1105.003. Period For Taking Oath or Making Declaration and Giving Bond

(a) Except as provided by Section 1103.003, an oath may be taken and subscribed or a declaration may be made, and a bond may be given and approved at any time before:

(1) the 21st day after the date of the order granting letters of guardianship; or

(2) the letters of guardianship are revoked for a failure to qualify within the period allowed.

(b) A guardian of an estate must give a bond before being issued letters of guardianship unless a bond is not required under this title.


Subchapter B. Oaths and Declarations

§ 1105.051. Oath or Declaration of Guardian

(a) A guardian shall:

(1) take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward; or

(2) make a declaration as prescribed by Subsection (d).

(b) If the Health and Human Services Commission is appointed guardian, a commission representative shall take the oath or make the declaration required by Subsection (a).

(c) An oath taken by a person named as guardian or temporary guardian, as applicable, must be substantially as follows:

I, __________ (insert person’s name), do solemnly swear that I will discharge faithfully the duties of guardian of __________ (insert “the person,” “the estate,” or “the person and estate”) of __________ (insert ward’s name), an incapacitated person, according to law.

(d) A declaration made by a person named as guardian or temporary guardian, as applicable, must be substantially as follows:

My name is __________ (insert person’s name), my date of birth is __________ (insert person’s date of birth), and my address is __________ (insert person’s address, including country). I declare under penalty of perjury that the information in this declaration is true and correct. I solemnly declare that I will discharge faithfully the duties of __________ (insert “guardian” or “temporary guardian,” as applicable) of __________ (insert “the person,” “the estate,” or “the person and estate”) of __________ (insert ward’s name), an incapacitated person, according to law.

Signed on __________ (insert date of signing).


§ 1105.052. Administration of Oath or Making of Declaration

The oath prescribed by Section 1105.051 may be taken before any person authorized to administer oaths under the laws of this state. The declaration prescribed by Section 1105.051 must be signed by the declarant.


Subchapter C. General Provisions Relating to Bonds

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1105.101. Bond Generally Required; Exceptions

(a) Except as provided by this section, a guardian of the person or the estate of a ward shall give a bond.

(b) A bond is not required if the guardian is:

(1) a corporate fiduciary; or

(2) a guardianship program operated by a county.

(c) The court shall issue letters of guardianship of the person to a person without the requirement of a bond if:

(1) the person is named to be appointed guardian in a will made by a surviving parent that is probated by a court in this state, or in a written declaration made by a surviving parent, and the will or declaration directs that the guardian serve without a bond; and

(2) the court finds that the guardian is qualified.

(d) The court may not waive the requirement of bond for the guardian of the estate of a ward, regardless of whether a surviving parent’s will or written declaration directs the court to waive the bond.

Derived from Probate Code § 702.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.102. Bond for Certain Guardians of the Person

(a) This section applies only to a bond required to be posted by a guardian of the person of a ward when there is no guardian of the ward’s estate.

(b) To ensure the performance of the guardian’s duties, a court may accept only:

(1) a corporate surety bond;

(2) a personal surety bond;

(3) a deposit of money instead of a surety bond; or

(4) a personal bond.

(c) In determining the appropriate type and amount of bond to set for the guardian, the court shall consider:

(1) the familial relationship of the guardian to the ward;

(2) the guardian’s ties to the community;

(3) the guardian’s financial condition;

(4) the guardian’s past history of compliance with the court; and

(5) the reason the guardian may have previously been denied a corporate surety bond.

Derived from Probate Code § 702A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.103. Bond Required from Guardian Otherwise Exempt

(a) This section applies only to an individual guardian of the estate from whom a bond was not required.

(b) A person who has a debt, claim, or demand against the guardianship, with respect to the justice of which an oath has been made by the person, the person’s agent or attorney, or another person interested in the guardianship, in person or as the representative of another person, may file a written complaint under oath in the court in which the guardian was appointed.

(c) After a complaint is filed under Subsection (b), the court shall cite the guardian to appear and show cause why the guardian should not be required to give a bond.

(d) On hearing a complaint filed under Subsection (b), if it appears to the court that the guardian is wasting, mismanaging, or misapplying the guardianship estate and that a creditor may probably lose the creditor’s debt, or that a person’s interest in the guardianship may be diminished or lost, the court shall enter an order requiring the guardian to give a bond not later than the 10th day after the date of the order.

(e) A bond required under Subsection (d) must be:

(1) in an amount sufficient to protect the guardianship and the guardianship’s creditors;

(2) approved by and payable to the judge; and

(3) conditioned that the guardian:

(A) will well and truly administer the guardianship; and

(B) will not waste, mismanage, or misapply the guardianship estate.

(f) If the guardian fails to give the bond required under Subsection (d) and the judge has not extended the period for giving the bond, the judge, without citation, shall remove the guardian and appoint a competent person as guardian, who shall:

(1) administer the guardianship according to the provisions of a will or law;

(2) take the oath or make the declaration required of a guardian under Section 1105.051 before the person enters on the administration of the guardianship; and

(3) give bond in the same manner and in the same amount provided by this title for the issuance of original letters of guardianship.

Derived from Probate Code §§ 722, 723, 724, 725.


§ 1105.104. Bonds of Joint Guardians

If two or more persons are appointed as guardians and are required to give a bond by the court or under this title, the court may require:

(1) a separate bond from each person; or

(2) a joint bond from all of the persons.

Derived from Probate Code § 706.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.105. Bond of Married Person

(a) A married person appointed as guardian may jointly execute, with or without, the person’s spouse, a bond required by law.

(b) A bond executed by a married person:

(1) binds the person’s separate estate; and

(2) may bind the person’s spouse only if the spouse signs the bond.

Derived from Probate Code § 707.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
§ 1105.106. Bond of Married Person Younger Than 18 Years of Age

A bond required to be executed by a person who is younger than 18 years of age, is or has been married, and accepts and qualifies as guardian is as valid and binding for all purposes as if the person were of legal age.

Derived from Probate Code § 708.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.107. Bond of Guardianship Program

The judge may require a guardianship program appointed guardian under this title to file one bond that:

(1) meets all the conditions required under this title; and
(2) is in an amount sufficient to protect all of the guardianships and the creditors of the guardianships of the wards receiving services from the guardianship program.

Derived from Probate Code § 708A.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.108. Subscription of Bond by Principals and Sureties

A bond required under this title shall be subscribed by the principals and sureties.

Derived from Probate Code § 705.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.109. Form of Bond

The following form, or a form with the same substance, may be used for the bond of a guardian:

“The State of Texas
“County of __________

Know all persons by these presents that we, _____ (insert name of each principal), as principal, and ____ (insert name of each surety), as sureties, are held and firmly bound to the judge of ____ (insert reference to appropriate judge), and that judge’s successors in office, in the sum of $_____; conditioned that the above bound principal or principals, appointed by the judge as guardian or temporary guardian of the person or of the estate, or both, of __________ (insert name of ward, stating in each case whether the person is a minor or an incapacitated person other than a minor), shall well and truly perform all of the duties required of the guardian or temporary guardian by law under appointment.”

Derived from Probate Code § 704.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.110. Filing of Bond

A bond required under this title shall be filed with the clerk after the court approves the bond.

Derived from Probate Code § 705.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.111. Failure to Give Bond

Another person may be appointed as guardian to replace a guardian who fails to give the bond required by the court within the period required under this title.

Derived from Probate Code § 721.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.112. Bond Not Void on First Recovery

A guardian’s bond is not void on the first recovery, but the bond may be sued on and prosecuted from time to time until the entire amount of the bond is recovered.

Derived from Probate Code § 726.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Other Provisions Relating to Bonds of Guardians of the Estate

§ 1105.151. General Formalities

A bond given by a guardian of the estate must:

(1) be conditioned as required by law;
(2) be payable to the judge or that judge’s successors in office;
(3) have the written approval of the judge in the judge’s official capacity; and
(4) be executed and approved in accordance with this subchapter.

Derived from Probate Code § 703(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.152. General Standard Regarding Amount of Bond

(a) The judge shall set the amount of a bond for a guardian of an estate in an amount sufficient to protect the guardianship and the guardianship’s creditors, as provided by this title.

(b) In determining the amount of the bond, the court may not consider estate assets placed in a management trust under Chapter 1301.

Derived from Probate Code §§ 703(b), (s).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.153. Evidentiary Hearing on Amount of Bond

Before setting the amount of a bond required of a guardian of an estate, the court shall hear evidence and determine:

(1) the amount of cash on hand and where that cash is deposited;
(2) the amount of cash estimated to be needed for administrative purposes, including the operation of a
§ 1105.154. Specific Bond Amount

(a) Except as otherwise provided by this section, the judge shall set the amount of a bond of a guardian of an estate in an amount equal to the sum of:

(1) the estimated value of all personal property belonging to the ward; and

(2) an additional amount to cover revenue anticipated to be derived during the succeeding 12 months from:

(A) interest and dividends;

(B) collectible claims;

(C) the aggregate amount of any installments or periodic payments, excluding income derived or to be derived from federal social security payments; and

(D) rentals for the use of property.

(b) The judge shall reduce the amount of the original bond under Subsection (a) in proportion to the amount of cash or the value of securities or other assets:

(1) authorized or required to be deposited by court order; or

(2) voluntarily deposited by the guardian or the sureties on the guardian’s bond as provided in Sections 1105.156 and 1105.157(a).

(c) The judge shall set the amount of the bond for a temporary guardian.

Derived from Probate Code §§ 703(d), (q).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.155. Agreement Regarding Deposit of Estate Assets

(a) If the court considers it to be in the best interests of the ward, the court may require the guardian of the estate and the corporate or personal sureties on the guardian’s bond to agree to deposit cash and other assets of the guardianship estate in a depository described by Subsection (b). If the depository is otherwise proper, the court may require the deposit to be made in a manner so as to prevent the withdrawal of the money or other assets in the guardianship estate without the written consent of the surety or on court order made after notice to the surety.

(b) Cash and assets must be deposited under this section in a financial institution as defined by Section 201.101, Finance Code, that:

(1) has its main office or a branch office in this state; and

(2) is qualified to act as a depository in this state under the laws of this state or the United States.

(c) An agreement made by a guardian and the sureties on the guardian’s bond under this section does not release the principal or sureties from liability, or change the liability of the principal or sureties, as established by the terms of the bond.

Derived from Probate Code § 703(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.156. Deposit of Estate Assets on Terms Prescribed by Court

(a) Cash, securities, or other personal assets of a ward to which the ward is entitled may, or if considered by the court to be in the best interests of the ward, shall, be deposited in one or more depositories described by this subchapter on terms prescribed by the court.

(b) The court in which the guardianship proceeding is pending may authorize or require additional estate assets currently on hand or that accrue during the pendency of the proceeding to be deposited as provided by Subsection (a) on:

(1) the court’s own motion; or

(2) the written application of the guardian or any other person interested in the ward.

(c) The amount of the bond required to be given by the guardian of the estate shall be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section.

(d) Cash, securities, or other assets deposited under this section may be withdrawn wholly or partly from the depository only in accordance with a court order, and the amount of the guardian’s bond shall be increased in proportion to the amount of the cash or the value of the securities or other assets authorized to be withdrawn.

Derived from Probate Code § 703(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.157. Deposits of Guardian

(a) Instead of giving a surety or sureties on a bond, or to reduce the amount of a bond, the guardian of an estate may deposit the guardian’s own cash or securities acceptable to the court with a financial institution as defined by Section 201.101, Finance Code, that has its main office or a branch office in this state.

362
(b) If the deposit is otherwise proper, the deposit must be in an amount or value equal to the amount of the bond required or the bond shall be reduced by the value of assets that are deposited.

(c) A depository that receives a deposit made under Subsection (a) shall issue a receipt for the deposit that:
   (1) shows the amount of cash deposited or the amount and description of the securities deposited, as applicable; and
   (2) states that the depository agrees to disburse or deliver the cash or securities only on receipt of a certified copy of an order of the court in which the proceeding is pending.

(d) A receipt issued by a depository under Subsection (c) must be attached to the guardian’s bond and be delivered to and filed by the county clerk after the receipt is approved by the judge.

(e) The amount of cash or securities on deposit may be increased or decreased, by court order from time to time, as the interests of the guardianship require.

(f) A deposit of cash or securities made instead of a surety on the bond may be withdrawn or released only on order of a court that has jurisdiction.

(g) A creditor has the same rights against a guardian of the estate and the deposits as are provided for recovery against sureties on a bond.

Derived from Probate Code §§ 703(g), (h), (i), (j), (k).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.158. Bond Required Instead of Deposits

(a) The court may on its own motion or on the written application by the guardian of an estate or any other person interested in the guardianship:
   (1) require the guardian to give adequate bond instead of the deposit; or
   (2) authorize withdrawal of the deposit and substitution of a bond with sureties.

(b) Before the 21st day after the date the guardian is personally served with notice of the filing of the application or the date the court enters the court’s motion, the guardian shall file a sworn statement showing the condition of the guardianship.

(c) A guardian who fails to comply with Subsection (b) is subject to removal as in other cases.

(d) The deposit may not be released or withdrawn until the court:
   (1) is satisfied as to the condition of the guardianship estate;
   (2) determines the amount of the bond; and
   (3) receives and approves the bond.

Derived from Probate Code § 703(l).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.159. Withdrawal of Deposits on Closing of Guardianship

(a) Any deposit of assets of the guardian of an estate, the guardianship, or a surety that remains at the time a guardianship is closed shall be released by court order and paid to the person entitled to the assets.

(b) Except as provided by Subsection (c), a writ of attachment or garnishment does not lie against a deposit described by Subsection (a).

(c) A writ of attachment or garnishment may lie against a deposit described by Subsection (a) as to a claim of a creditor of the guardianship or a person interested in the guardianship, including a distributee or ward, only to the extent the court has ordered distribution.

Derived from Probate Code § 703(m).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.160. Authorized Corporate or Personal Sureties

(a) The surety on a bond of a guardian of an estate may be an authorized corporate or personal surety.

(b) A bond of a guardian of an estate with sureties who are individuals must have at least two sureties, each of whom must:
   (1) execute an affidavit in the manner provided by Subchapter E; and
   (2) own property in this state, excluding property exempt by law, that the judge is satisfied is sufficient to qualify the person as a surety as required by law.

(c) A bond with an authorized corporate surety is only required to have one surety, except as otherwise provided by law.

Derived from Probate Code §§ 703(n), (p).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.161. Sureties for Certain Bonds

(a) If the amount of the bond of a guardian of an estate exceeds $50,000, the court may require that the bond be signed by:
   (1) at least two authorized corporate sureties; or
   (2) one corporate surety and at least two good and sufficient personal sureties.

(b) The guardianship shall pay the cost of a bond with corporate sureties.

Derived from Probate Code § 703(o).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.162. Deposits by Personal Surety

Instead of executing an affidavit under Section 1105.201 or creating a lien under Section 1105.202 when required, a personal surety may deposit the surety’s own cash or securities in the same manner as a guardian instead of pledging real property as security, subject to the provisions governing the deposits if made by a guardian.

Derived from Probate Code § 703(p).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1105.163. Applicability of Subchapter to Certain Court Orders

To the extent applicable, the provisions of this subchapter relating to the deposit of cash and securities cover the orders entered by the court when:

(1) property of a guardianship has been authorized to be sold or rented;

(2) money is borrowed from the guardianship;

(3) real property, or an interest in real property, has been authorized to be leased for mineral development or made subject to unitization;

(4) the general bond has been found insufficient; or

(5) money is borrowed or invested on behalf of a ward.

Derived from Probate Code § 703(r).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Provisions Relating to Personal Sureties

§ 1105.201. Affidavit of Personal Surety

(a) Before a judge considers a bond with a personal surety, each personal surety must execute an affidavit stating the amount by which the surety’s assets that are reachable by creditors exceeds the surety’s liabilities. The total of the surety’s worth must equal at least twice the amount of the bond.

(b) Each affidavit must be presented to the judge for consideration and, if approved, shall be attached to and form part of the bond.

Derived from Probate Code § 709(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.202. Lien on Real Property Owned by Personal Surety

(a) If a judge finds that the estimated value of personal property of the guardianship that cannot be deposited, as provided by Subchapter D, is such that personal sureties cannot be accepted without the creation of a specific lien on the real property owned by the sureties, the judge shall enter an order requiring each surety to designate real property that is owned by the surety, located in this state, and subject to execution. The designated property must have a value that exceeds all liens and unpaid taxes by an amount at least equal to the amount of the bond and must have an adequate legal description, all of which the surety shall incorporate in an affidavit. Following approval by the judge, the affidavit shall be attached to and form part of the bond.

(b) A lien arises as security for the performance of the obligation of the bond only on the real property designated in the affidavit.

(c) Before letters of guardianship are issued to the guardian whose bond includes an affidavit under this section, the court clerk shall mail a statement to the office of the county clerk of each county in which any real property designated in the affidavit is located. The statement must be signed by the court clerk and include:

(1) a sufficient description of the real property;

(2) the names of the principal and sureties on the bond;

(3) the amount of the bond;

(4) the name of the guardianship; and

(5) the name of the court in which the bond is given.

(d) Each county clerk who receives a statement required by Subsection (c) shall record the statement in the county deed records. Each recorded statement shall be indexed in a manner that permits the convenient determination of the existence and character of the lien described in the statement.

(e) The recording and indexing required by Subsection (d) is constructive notice to a person regarding the existence of the lien on the real property located in the county, effective as of the date of the indexing.

(f) If each personal surety subject to a court order under this section does not comply with the order, the judge may require that the bond be signed by:

(1) an authorized corporate surety; or

(2) an authorized corporate surety and at least two personal sureties.

Derived from Probate Code §§ 709(b), 710.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.203. Subordination of Lien on Real Property Owned by Personal Surety

(a) A personal surety required to create a lien on specific real property under Section 1105.202 who wishes to lease the real property for mineral development may file a written application in the court in which the proceeding is pending requesting subordination of the lien to the proposed lease.

(b) The judge may enter an order granting the application.

(c) A certified copy of an order entered under this section that is filed and recorded in the deed records of the proper county is sufficient to subordinate the lien to the rights of a lessee under the proposed lease.

Derived from Probate Code § 709(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.204. Release of Lien on Real Property Owned by Personal Sureties

(a) A personal surety who has given a lien under Section 1105.202 may apply to the court to have the lien released.

(b) The court shall order the lien released if:

(1) the court is satisfied that the bond is sufficient without the lien; or

(2) sufficient other real or personal property of the surety is substituted on the same terms required for the lien that is to be released.
(c) If the personal surety does not offer a lien on other substituted property under Subsection (b)(2) and the court is not satisfied that the bond is sufficient without the substitution of other property, the court shall order the guardian to appear and give a new bond.

(d) A certified copy of the court’s order releasing the lien and describing the property that was subject to the lien has the effect of canceling the lien if the order is filed with the county clerk and recorded in the deed records of the county in which the property is located.

Derived from Probate Code §§ 719, 720.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F.  New Bonds

§ 1105.251.  Grounds for Requiring New Bond

(a) A guardian may be required to give a new bond if:
(1) a surety on a bond dies, removes beyond the limits of this state, or becomes insolvent;
(2) in the court’s opinion:
(A) the sureties on a bond are insufficient; or
(B) a bond is defective;
(3) the amount of a bond is insufficient;
(4) a surety on a bond petitions the court to be discharged from future liability on the bond; or
(5) a bond and the record of the bond have been lost or destroyed.

(b) A person interested in the guardianship may have the guardian cited to appear and show cause why the guardian should not be required to give a new bond by filing a written application with the county clerk of the county in which the guardianship proceeding is pending. The application must allege that:
(1) the bond is insufficient or defective; or
(2) the bond and the record of the bond have been lost or destroyed.

Derived from Probate Code §§ 711, 712.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.252.  Court Order or Citation on New Bond Requirement

(a) When a judge is made aware that a bond is insufficient or that a bond and the record of the bond have been lost or destroyed, the judge shall:
(1) without delay and without notice enter an order requiring the guardian to give a new bond; or
(2) without delay have the guardian cited to show cause why the guardian should not be required to give a new bond.

(b) An order entered under Subsection (a)(1) must state:
(1) the reasons for requiring a new bond;
(2) the amount of the new bond; and
(3) the period within which the new bond must be given, which may not expire earlier than the 10th day after the date of the order.

(c) A guardian who opposes an order entered under Subsection (a)(1) may demand a hearing on the order. The hearing must be held before the expiration of the period within which the new bond must be given.

Derived from Probate Code §§ 713, 714(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.253.  Show Cause Hearing on New Bond Requirement

(a) On the return of a citation ordering a guardian to show cause why the guardian should not be required to give a new bond, the judge shall, on the date specified in the return of citation for the hearing of the matter, inquire into the sufficiency of the reasons for requiring a new bond.

(b) If the judge is satisfied that a new bond should be required, the judge shall enter an order requiring a new bond. The order must state:
(1) the amount of the new bond; and
(2) the period within which the new bond must be given, which may not expire later than the 20th day after the date of the order.

Derived from Probate Code § 714(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.254.  Effect of Order Requiring New Bond

(a) An order requiring a guardian to give a new bond has the effect of suspending the guardian’s powers.

(b) After the order is entered, the guardian may not pay out any of the guardianship’s money or take any other official action, except to preserve the guardianship’s property, until the new bond is given and approved.

Derived from Probate Code § 715.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.255.  New Bond in Decreased Amount

(a) A guardian required to give a bond may at any time file with the clerk a written application requesting that the court reduce the amount of the bond.

(b) After the guardian files an application under Subsection (a), the clerk shall issue and have posted notice to all persons interested in the estate and to a surety on the bond. The notice must inform the interested persons and surety of:
(1) the fact that the application has been filed;
(2) the nature of the application; and
(3) the time the judge will hear the application.

(c) The judge may permit the filing of a new bond in a reduced amount if:
(1) proof is submitted that a bond in an amount less than the bond in effect will be adequate to meet the requirements of law and protect the guardianship; and
(2) the judge approves an accounting filed at the time of the application.

Derived from Probate Code § 716.
§ 1105.256. Request by Surety for New Bond
(a) A surety on a guardian’s bond may at any time file with the clerk a petition requesting that the court in which the proceeding is pending:
(1) require the guardian to give a new bond; and
(2) discharge the petitioner from all liability for the future acts of the guardian.
(b) If a petition is filed under Subsection (a), the guardian shall be cited to appear and give a new bond.
Derived from Probate Code § 718.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.257. Discharge of Former Sureties on Approval of New Bond
When a new bond has been given and approved, the judge shall enter an order discharging the sureties on the former bond from all liability for the future acts of the principal on the bond.
Derived from Probate Code § 717.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1106. Letters of Guardianship
§ 1106.001. Issuance of Certificate as Letters of Guardianship
§ 1106.002. Expiration of Letters of Guardianship
§ 1106.003. Renewal of Letters of Guardianship
§ 1106.004. Replacement and Other Additional Letters of Guardianship
§ 1106.005. Effect of Letters or Certificate
§ 1106.006. Validation of Certain Letters of Guardianship

Chapter 1106. Letters of Guardianship
§ 1106.001. Issuance of Certificate as Letters of Guardianship
(a) When a person who is appointed guardian has qualified under Section 1105.002, the clerk shall issue to the guardian a certificate under the court’s seal stating:
(1) the fact of the appointment and of the qualification;
(2) the date of the appointment and of the qualification; and
(3) the date the letters of guardianship expire.
(b) The certificate issued by the clerk under Subsection (a) constitutes letters of guardianship.
Derived from Probate Code § 659(a).

§ 1106.002. Expiration of Letters of Guardianship
Letters of guardianship expire one year and four months after the date the letters are issued, unless renewed.
Derived from Probate Code § 659(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1106.003. Renewal of Letters of Guardianship
(a) The clerk may not renew letters of guardianship relating to the appointment of a guardian of the estate until the court receives and approves the guardian’s annual account.
(b) The clerk may not renew letters of guardianship relating to the appointment of a guardian of the person until the court receives and approves the guardian’s annual report.
(c) If a guardian’s annual account or annual report is disapproved or is not timely filed, the clerk may not issue further letters of guardianship to the delinquent guardian unless ordered by the court.
(d) Except as otherwise provided by this subsection, regardless of the date the court approves an annual account or annual report for purposes of this section, a renewal of letters of guardianship relates back to the date the original letters were issued. If the accounting period has been changed as provided by this title, a renewal relates back to the first day of the accounting period.
Derived from Probate Code §§ 659(c), (d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1106.004. Replacement and Other Additional Letters of Guardianship
When letters of guardianship have been destroyed or lost, the clerk shall issue new letters that have the same effect as the original letters. The clerk shall also issue any number of letters on request of the person who holds the letters.
Derived from Probate Code § 661.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1106.005. Effect of Letters or Certificate
(a) Letters of guardianship [or a certificate] issued as prescribed by [under] Section 1106.001 under the court’s seal by [of] the clerk of the court that granted the letters are [is] sufficient evidence of:
(1) the appointment and qualification of the guardian; and
(2) the date of qualification.
(b) The court order that appoints the guardian is evidence of the authority granted to the guardian and of the scope of the powers and duties that the guardian may exercise only after the date letters of guardianship [or a certificate has] have been issued under Section 1106.001.
Derived from Probate Code § 660.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
§ 1106.006. Validation of Certain Letters of Guardianship

(a) Letters of guardianship existing on September 1, 1993, that were issued to a nonresident guardian without the procedure or any part of the procedure provided in this chapter, or without a notice or citation required of a resident guardian, are validated as of the letters’ dates, to the extent that the absence of the procedure, notice, or citation is concerned. An otherwise valid conveyance, mineral lease, or other act of a nonresident guardian qualified and acting in connection with the letters of guardianship and under supporting orders of a county or probate court of this state is validated.

(b) This section does not apply to letters of guardianship, a conveyance, a lease, or another act of a nonresident guardian under this section if the absence of the procedure, notice, or citation involving the letters, conveyance, lease, or other act of the nonresident guardian is an issue in a lawsuit pending in this state on September 1, 1993.

Derived from Probate Code § 663.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. General Powers and Duties of Guardians of the Estate

§ 1151.101. General Powers and Duties

§ 1151.102. Exercise of Authority Under Court Order

§ 1151.103. Exercise of Authority Without Court Order

§ 1151.104. Authority to Commence Suits

§ 1151.105. Ordinary Diligence Required

Subchapter D. Possession and Care of Ward’s Property by Guardian of the Estate

§ 1151.151. Duty of Care

§ 1151.152. Possession of Personal Property and Records

§ 1151.153. Possession of Property Held in Common Ownership

§ 1151.154. Administration of Partnership Interest

§ 1151.155. Operation or Rental of Farm, Ranch, Factory, or Other Business

Subchapter E. Authority of Guardian to Engage in Certain Borrowing

§ 1151.201. Mortgage or Pledge of Estate Property Authorized in Certain Circumstances

§ 1151.202. Application; Order

§ 1151.203. Term of Loan or Renewal

Subchapter F. Guardians Appointed for Ward to Receive Government Funds

§ 1151.251. Powers and Duties of Guardian Appointed as Necessary for Ward to Receive Government Funds

§ 1151.252. Validation of Certain Prior Acts of Guardian

Subchapter G. Notice by Guardian to Department of Veterans Affairs

§ 1151.301. Notice of Filing Required; Hearing Date

Subchapter H. Rights of Wards

§ 1151.351. Bill of Rights for Wards

Chapter 1151. Rights, Powers, and Duties Under Guardianship

Subchapter A. Rights, Powers, and Duties in General

§ 1151.001. Rights and Powers Retained by Ward

§ 1151.002. Rights of Good Faith Purchasers

§ 1151.003. Guardian May Not Dispute Ward’s Right to Property; Exception

§ 1151.004. Powers and Duties of Person Serving as Guardian of Both Person and Estate

§ 1150.005. Legal Proceedings in Which Ward is Party or Witness

§ 1151.055. Application by Certain Relatives for Access to Ward; Hearing and Court Order

§ 1151.056. Guardian’s Duty to Inform Certain Relatives About Ward’s Health and Residence
§ 1151.001. Rights and Powers Retained by Ward
An incapacitated person for whom a guardian is
appointed retains all legal and civil rights and powers
except those designated by court order as legal disabilities
by virtue of having been specifically granted to the
guardian.
Derived from Probate Code § 675.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1151.002. Rights of Good Faith Purchasers
(a) This section applies only to a guardian who has
qualified acting as guardian and in conformity with the
law and the guardian’s authority.
(b) A guardian’s act is valid for all purposes regarding
the rights of an innocent purchaser of property of the
guardianship estate who purchased the property from the
guardian for valuable consideration, in good faith, and
without notice of any illegality in the title to the property,
regardless of whether the guardian’s act or the authority
under which the act was performed is subsequently set
aside, annulled, or declared invalid.
Derived from Probate Code § 662.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1151.003. Guardian May Not Dispute Ward’s Right
to Property; Exception
A guardian, or an heir, executor, administrator, or
assignee of a guardian, may not dispute the right of the
ward to any property that came into the guardian’s
possession as guardian of the ward, except property:
(1) that is recovered from the guardian; or
(2) on which there is a personal action pending.
Derived from Probate Code § 778.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1151.004. Powers and Duties of Person Serving as
Guardian of Both Person and Estate
The guardian of both the person and the estate of a
ward has all the rights and powers and shall perform all
the duties of the guardian of the person and the guardian
of the estate.
Derived from Probate Code § 769.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1151.005. Legal Proceedings in Which Ward is
Party or Witness
Legal Proceedings in Which Ward is Party or
Witness. The guardian of the person or of the estate of a
ward may not be excluded from attending a legal
proceeding in which the ward is:
(1) a party; or
(2) participating as a witness.
New.
Added by Acts 2021, 87th Leg., ch. 576, § 21, eff. Sept. 1,
2021 and by Acts 2021, 87th Leg., ch. 521, § 31, eff. Sept.
1, 2021.

Subchapter B. Powers and Duties of
Guardians Relating to Care of Ward

§ 1151.051. General Powers and Duties of Guardians
of the Person
(a) The guardian of the person of a ward is entitled to
take charge of the person of the ward.
(b) The duties of the guardian of the person
 correspond with the rights of the guardian.
(c) A guardian of the person has:
(1) the right to have physical possession of the
 ward and to establish the ward’s legal domicile;
(2) the duty to provide care, supervision, and
 protection for the ward;
(3) the duty to provide the ward with clothing,
 food, medical care, and shelter;
(4) the power to consent to medical, psychiatric,
 and surgical treatment other than the inpatient
 psychiatric commitment of the ward;
(5) on application to and order of the court, the
 power to establish a trust in accordance with 42
 U.S.C. Section 1396p(d)(4)(B) and direct that the
 income of the ward as defined by that section be paid
directly to the trust, solely for the purpose of the
 ward’s eligibility for medical assistance under
 Chapter 32, Human Resources Code; and
(6) the power to sign documents necessary or
appropriate to facilitate employment of the ward if:
(A) the guardian was appointed with full
 authority over the person of the ward under
 Section 1101.151; or
(B) the power is specified in the court order
appointing the guardian with limited powers over
the person of the ward under Section 1101.152.
(d) Notwithstanding Subsection (c)(4), a guardian of
the person of a ward has the power to personally transport
the ward or to direct the ward’s transport by emergency
medical services or other means to an inpatient mental
health facility for a preliminary examination in
accordance with Subchapters A and C, Chapter 573,
Health and Safety Code. The guardian shall immediately
provide written notice to the court that granted the
guardianship as required by Section 573.004, Health and
Safety Code, of the filing of an application under that
section.
(e) Notwithstanding Subsection (c)(1) and except in
cases of emergency, a guardian of the person of a ward
may only place the ward in a more restrictive care facility
if the guardian provides notice of the proposed placement
to the court, the ward, and any person who has requested
notice and after:
(1) the court orders the placement at a hearing on
the matter, if the ward or another person objects to the
proposed placement before the eighth business day
after the person’s receipt of the notice; or
§ 1151.052. Care of Adult Ward

(a) The guardian of an adult ward may spend funds of the guardianship as provided by court order to care for and maintain the ward.

(b) The guardian of an adult ward who has decision-making ability may apply on the ward's behalf for residential care and services provided by a public or private facility if the ward agrees to be placed in the facility. The guardian shall report the condition of the ward to the court at regular intervals at least annually, unless the court orders more frequent reports. The guardian shall include in a report of an adult ward who is receiving residential care in a public or private residential care facility a statement as to the necessity for continued care in the facility.

Derived from Probate Code § 770(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.0525. Access and Management of Ward’s Funds by Guardian of Person

(a) This section applies only to the guardian of the person of a ward for whom the court has not appointed a guardian of the estate.

(b) On application to and order from the court, the guardian of a person may access, manage, and spend the ward’s funds in an amount not to exceed $20,000 per year for the ward’s benefit. The court shall require the guardian to file a new bond or a rider to an existing bond that meets the surety requirements for a guardian of the estate’s bond under Section 1105.160.

(c) A guardian of a person shall include any expenditures made for the benefit of the ward if authorized by court order under Subsection (b) in the annual report required by Section 1163.101.

(d) When there is no longer a need for the guardian of the person to access, manage, or spend the ward’s funds, the guardian of the person shall file a sworn affidavit of fulfillment with the court. After the filing of the affidavit, the court, on motion filed with the court, may authorize the guardian to file a new bond or a rider to an existing bond that meets the requirements for a guardian of the person’s bond under Section 1105.102, and may discharge the guardian of the person and the guardian’s sureties on a bond required by Subsection (b).

New.

Added by Acts 2023, 88th Leg., ch. 207, § 14, eff. Sept. 1, 2023.

§ 1151.053. Commitment of Ward

(a) Except as provided by Subsection (b) or (c), a guardian may not voluntarily admit a ward to a public or private inpatient psychiatric facility operated by the Department of State Health Services for care and treatment or to a residential facility operated by the Department of Aging and Disability Services for care and treatment. If care and treatment in a psychiatric or residential facility is necessary, the ward or the ward’s guardian may:

1. apply for services under Section 593.027 or 593.028, Health and Safety Code;
2. apply to a court to commit the person under Subtitle C or D, Title 7, Health and Safety Code, or Chapter 462, Health and Safety Code; or
3. transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

(b) A guardian of a person younger than 18 years of age may voluntarily admit the ward to a public or private inpatient psychiatric facility for care and treatment.

(c) A guardian of a person may voluntarily admit an incapacitated person to a residential care facility for emergency care or respite care under Section 593.027 or 593.028, Health and Safety Code.

Derived from Probate Code §§ 770(b), (c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.054. Administration of Medication

(a) In this section, “psychoactive medication” has the meaning assigned by Section 574.101, Health and Safety Code.

(b) The guardian of the person of a ward who is not a minor and who is under a protective custody order as provided by Subchapter B, Chapter 574, Health and Safety Code, may consent to the administration of psychoactive medication as prescribed by the ward’s treating physician regardless of the ward’s expressed preferences regarding treatment with psychoactive medication.

Derived from Probate Code § 770A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.055. Application by Certain Relatives for Access to Ward; Hearing and Court Order

(a) This section applies to a relative described under Sections 1101.001(b)(13)(A)-(D).

(b) A relative of a ward may file an application with the court requesting access to the ward, including the opportunity to establish visitation or communication with the ward.

(c) Except as provided by Subsection (d), the court shall schedule a hearing on the application not later than
the 60th day after the date an application is filed under Subsection (b). The court may grant a continuance of a hearing under this section for good cause.

(d) If an application under Subsection (b) states that the ward’s health is in significant decline or that the ward’s death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but not later than the 10th day after the date the application is filed under Subsection (b).

(e) The guardian of a ward with respect to whom an application is filed under Subsection (b) shall be personally served with a copy of the application and cited to appear at a hearing under:

(1) Subsection (c) at least 21 days before the date of the hearing; and

(2) Subsection (d) as soon as practicable.

(f) The court shall issue an order after notice and a hearing under this section. An order issued under this section may:

(1) prohibit the guardian of a ward from preventing the applicant access to the ward if the applicant shows by a preponderance of the evidence that:

(A) the guardian’s past act or acts prevented access to the ward; and

(B) the ward desires contact with the applicant; and

(2) specify the frequency, time, place, location, and any other terms of access.

(g) In deciding whether to issue or modify an order issued under this section, the court:

(1) shall consider:

(A) whether any protective orders have been issued against the applicant to protect the ward;

(B) whether a court or other state agency has found that the applicant abused, neglected, or exploited the ward; and

(C) the best interest of the ward; and

(2) may consider whether:

(A) visitation by the applicant should be limited to situations in which a third person, specified by the court, is present; or

(B) visitation should be suspended or denied.

(h) The court may, in its discretion, award the prevailing party in any action brought under this section court costs and attorney’s fees, if any. Court costs or attorney’s fees awarded under this subsection may not be paid from the ward’s estate.

New.

Added by Acts 2015, 84th Leg., ch. 1087, § 1, eff. June 1, 2015.

§ 1151.056. Guardian’s Duty to Inform Certain Relatives About Ward’s Health and Residence

(a) This section applies only with respect to a relative described under Sections 1101.001(b)(13)(A)-(D):

(1) against whom a protective order has not been issued to protect the ward;

(2) who has not been found by a court or other state agency to have abused, neglected, or exploited the ward; and

(3) who has elected in writing to receive the notice about a ward under this section.

(b) Except as provided by Subsection (e), the guardian of an adult ward shall as soon as practicable inform relatives if:

(1) the ward dies;

(2) the ward is admitted to a medical facility for acute care for a period of three days or more;

(3) the ward’s residence has changed; or

(4) the ward is staying at a location other than the ward’s residence for a period that exceeds one calendar week.

(c) In the case of the ward’s death, the guardian shall inform relatives of any funeral arrangements and the location of the ward’s final resting place.

(d) A relative entitled to notice about a ward under this section may elect to not receive the notice by providing a written request to that effect to the guardian. A guardian shall file any written request received by the guardian under this subsection with the court.

(e) On motion filed with the court showing good cause and after a relative is provided an opportunity to present evidence to the court under Subsection (f), the court, subject to Subsection (g), may relieve the guardian of the duty to provide notice about a ward to a relative under this section.

(f) A copy of the motion required under Subsection (e) shall be provided to the relative specifically named in the motion unless the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative. The relative provided notice under this subsection may file evidence with the court in response to the motion, and the court shall consider that evidence before making a decision on the motion.

(g) In considering a motion under Subsection (e), the court shall relieve the guardian of the duty to provide notice about a ward to a relative under this section if the court finds that:

(1) the motion includes a written request from a relative electing to not receive the notice;

(2) the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative;

(3) the guardian was able to locate the relative, but was unable to establish communication with the relative after making reasonable efforts to establish communication; or

(4) notice is not in the best interest of the ward.

(h) Unless the guardian knows the information is not correct, a guardian of a ward shall rely on the contact information contained in the affidavit required by Section 1101.003 to provide notice about the ward to a relative of the ward under this section.

New.

Added by Acts 2015, 84th Leg., ch. 1087, § 1, eff. June 1, 2015. Subsecs. (a) & (g) amended and subsecs. (h) & (i) added by Acts 2017, 85th Leg., ch. 1125, § 3, eff. June 15,
Subchapter C. General Powers and Duties of Guardians of the Estate

§ 1151.101. General Powers and Duties

(a) Subject to Subsection (b), the guardian of the estate of a ward is entitled to:

(1) possess and manage all property belonging to the ward;
(2) collect all debts, rentals, or claims that are due to the ward;
(3) enforce all obligations in favor of the ward;
(4) bring and defend suits by or against the ward; and
(5) access the ward’s digital assets as provided by Chapter 2001.

(b) In the management of a ward’s estate, the guardian of the estate is governed by the provisions of this title.

(c) In this section, “digital asset” has the meaning assigned by Section 2001.002.

Derived from Probate Code § 768.

§ 1151.102. Exercise of Authority Under Court Order

(a) The guardian of the estate may renew or extend any obligation owed by or to the ward on application and if authorized by order.

(b) On written application to the court, a guardian of the estate may take an action described by Subsection (c) if:

(1) the guardian considers the action in the best interests of the estate; and
(2) the action is authorized by court order.

(c) A guardian of the estate who complies with Subsection (b) may:

(1) purchase or exchange property;
(2) take a claim or property for the use and benefit of the estate in payment of a debt due or owing to the estate;
(3) compound a bad or doubtful debt due or owing to the estate;
(4) make a compromise or a settlement in relation to property or a claim in dispute or litigation;
(5) compromise or pay in full any secured claim that has been allowed and approved as required by law against the estate by conveying to the holder of the secured claim the real estate or personal property securing the claim:

(A) in full payment, liquidation, and satisfaction of the claim; and
(B) in consideration of cancellation of a note, deed of trust, mortgage, chattel mortgage, or other evidence of a lien that secures the payment of the claim;
(6) abandon worthless or burdensome property and the administration of that property;
(7) purchase a prepaid funeral benefits contract; and
(8) establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B), and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward’s eligibility for medical assistance under Chapter 32, Human Resources Code.

(d) A mortgagee, another secured party, or a trustee may foreclose on property abandoned under Subsection (c)(6) without further court order.

Derived from Probate Code § 774(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.103. Exercise of Authority Without Court Order

(a) The guardian of the estate of a ward may, without application to or order of the court:

(1) release a lien on payment at maturity of the debt secured by the lien;
(2) vote stocks by limited or general proxy;
(3) pay calls and assessments;
(4) insure the estate against liability in appropriate cases;
(5) insure estate property against fire, theft, and other hazards; and
(6) pay taxes, court costs, and bond premiums.

(b) A guardian of the estate may apply and obtain a court order if the guardian doubts the propriety of the exercise of any power listed in Subsection (a).

Derived from Probate Code § 774(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.104. Authority to Commence Suits

(a) The guardian of the estate of a ward appointed in this state may commence a suit for:

(1) the recovery of personal property, debts, or damages; or
(2) title to or possession of land, any right attached to or arising from that land, or injury or damage done.

(b) A judgment in a suit described by Subsection (a) is conclusive, but may be set aside by any person interested for fraud or collusion on the guardian’s part.

Derived from Probate Code § 773.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.105. Ordinary Diligence Required

(a) If there is a reasonable prospect of collecting the claims or recovering the property, the guardian of the estate shall use ordinary diligence to:

(1) collect all claims and debts due the ward; and
(2) recover possession of all property to which the ward has claim or title.
(b) If the guardian wilfully neglects to use ordinary diligence, the guardian and the sureties on the guardian’s bond are liable, on the suit of any person interested in the estate, for the use of the estate, the amount of the claims, or the value of the property that has been lost due to the guardian’s neglect.

Derived from Probate Code § 772.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Possession and Care of Ward’s Property by Guardian of the Estate

§ 1151.151. Duty Of Care

(a) The guardian of the estate shall take care of and manage the estate as a prudent person would manage the person’s own property, except as otherwise provided by this title.

(b) The guardian of the estate shall account for all rents, profits, and revenues that the estate would have produced by prudent management as required by Subsection (a).

Derived from Probate Code § 768.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.152. Possession of Personal Property and Records

(a) Immediately after receiving letters of guardianship, the guardian of the estate shall collect and take possession of the ward’s personal property, record books, title papers, and other business papers.

(b) The guardian of the estate shall deliver the ward’s personal property, record books, title papers, and other business papers to a person legally entitled to that property when:

(1) the guardianship has been closed; or

(2) a successor guardian has received letters of guardianship.

Derived from Probate Code § 771.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.153. Possession of Property Held in Common Ownership

The guardian of the estate is entitled to possession of a ward’s property held or owned in common with a part owner in the same manner as another owner in common or joint owner is entitled.

Derived from Probate Code § 775.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.154. Administration of Partnership Interest

(a) This section applies only to a general partnership governed by a partnership agreement or articles of partnership that provide that, on the incapacity of a partner, the guardian of the estate of the partner is entitled to the place of the incapacitated partner in the partnership.

(b) If a ward was a partner in a general partnership, the guardian who contracts to come into the partnership is, to the extent allowed by law, liable to a third person only to the extent of:

(1) the incapacitated partner’s capital in the partnership; and

(2) the assets of the incapacitated partner’s estate that are held by the guardian.

(c) This section does not exonerate a guardian from liability for the guardian’s negligence.

Derived from Probate Code § 780.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Authority of Guardian to Engage in Certain Borrowing

§ 1151.201. Mortgage or Pledge of Estate Property Authorized in Certain Circumstances

(a) Under court order, the guardian may mortgage or pledge any property of a guardianship estate by deed of trust or otherwise as security for an indebtedness when necessary for:

(1) the payment of any ad valorem, income, gift, or transfer tax due from a ward, regardless of whether the tax is assessed by a state, a political subdivision of the state, the federal government, or a foreign country; and

(2) the payment of any expense of administration, including amounts necessary for the operation of a business, farm, or ranch owned by the estate;
(3) the payment of any claim allowed and approved, or established by suit, against the ward or the ward’s estate;

(4) the renewal and extension of an existing lien;

(5) an improvement or repair to the ward’s real estate if:
   A) the real estate is not revenue producing but could be made revenue producing by certain improvements and repairs; or
   B) the revenue from the real estate could be increased by making improvements or repairs to the real estate;

(6) the purchase of a residence for the ward or a dependent of the ward, if the court finds that borrowing money for that purpose is in the ward’s best interests; and

(7) funeral expenses of the ward and expenses of the ward’s last illness, if the guardianship is kept open after the ward’s death.

(b) Under court order, the guardian of the estate may also receive an extension of credit on the ward’s behalf that is wholly or partly secured by a lien on real property that is the ward’s homestead when necessary to:

(1) make an improvement or repair to the homestead; or

(2) pay for the ward’s education or medical expenses.

(c) Proceeds of a home equity loan described by Subsection (b) may be used only for the purposes authorized under Subsection (b) and to pay the outstanding balance of the loan.

 Derived from Probate Code §§ 781(a), (a-1), (a-2).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.202. Application; Order

(a) The guardian of the estate must file a sworn application with the court for authority to:

(1) borrow money for a purpose authorized by Section 1151.201(a) or (b); or

(2) create or extend a lien on estate property as security.

(b) The application must state fully and in detail the circumstances that the guardian of the estate believes make the granting of the authority necessary.

(c) On the filing of an application under Subsection (a), the clerk shall issue and have posted a citation to all interested persons stating the nature of the application and requiring the interested persons to appear and show cause why the application should not be granted.

(d) If the court is satisfied by the evidence presented at the hearing on an application filed under Subsection (a) that it is in the interest of the ward or the ward’s estate to borrow money or to extend and renew an existing lien, the court shall issue an order to that effect, setting out the terms of the authority granted.

(e) If a new lien is created on guardianship estate property, the court may require, for the protection of the guardianship estate and the estate’s creditors, that the guardian’s general bond be increased or an additional bond be given, as for the sale of real property belonging to the estate.

 Derived from Probate Code §§ 781(b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.203. Term of Loan or Renewal

The term of a loan or renewal authorized under Section 1151.202 must be for the length of time that the court determines to be in the best interests of the ward or the ward’s estate.

 Derived from Probate Code § 781(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F. Guardians Appointed for Ward to Receive Government Funds

§ 1151.251. Powers and Duties of Guardian Appointed as Necessary for Ward to Receive Government Funds

(a) A guardian of the person for whom it is necessary to have a guardian appointed to receive funds from a governmental source may:

(1) administer only:
   A) the funds received from the governmental source;
   B) all earnings, interest, or profits derived from the funds; and
   C) all property acquired with the funds; and

(2) receive the funds and pay the expenses of administering the guardianship and the expenses for the support, maintenance, or education of the ward or the ward’s dependents.

 Derived from Probate Code § 782(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.252. Validation of Certain Prior Acts of Guardian

An act performed before September 1, 1993, by a guardian of the estate of a person for whom it is necessary to have a guardian appointed to receive and disburse funds that are due the person from a governmental source is validated if the act was performed in conformance with an order of a court that has venue with respect to the support, maintenance, and education of the ward or the ward’s dependents and the investment of surplus funds of the ward under this title and if the validity of the act was not an issue in a probate proceeding or civil lawsuit that was pending on September 1, 1993.

 Derived from Probate Code § 782(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
Subchapter G. Notice by Guardian to Department of Veterans Affairs

§ 1151.301. Notice of Filing Required; Hearing Date
(a) This section applies only to:
   (1) a filing by a guardian whose ward is a beneficiary of the Department of Veterans Affairs of:
      (A) an annual or other account of funds; or
      (B) an application for the expenditure or investment of funds; or
   (2) a filing of a claim against the estate of a ward who is a beneficiary of the Department of Veterans Affairs.
(b) The court shall set a date for a hearing of a matter initiated by a filing to which this section applies not earlier than 20 days from the date of the filing.
(c) Not later than the fifth day after the date of a filing to which this section applies, the person who makes the filing shall give notice of the date of the filing by mailing a certified copy of the filing to the office of the Department of Veterans Affairs in whose territory the court is located.
(d) An office of the Department of Veterans Affairs through its attorney may waive the service of notice or the time required for setting a hearing under this section.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter H. Rights of Wards

§ 1151.351 Bill of Rights for Wards
(a) A ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.
(b) Unless limited by a court or otherwise restricted by law, a ward is authorized to the following:
   (1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;
   (2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;
   (3) to be treated with respect, consideration, and recognition of the ward’s dignity and individuality;
   (4) to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);
   (5) to consideration of the ward’s current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;
   (6) to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;
   (7) to receive timely and appropriate health care and medical treatment that does not violate the ward’s rights granted by the constitution and laws of this state and the United States;
   (8) to exercise full control of all aspects of life not specifically granted by the court to the guardian;
   (9) to control the ward’s personal environment based on the ward’s preferences;
   (10) to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;
   (11) to receive notice in the ward’s native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward’s preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;
   (12) to have a court investigator or guardian ad litem appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;
   (13) to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward’s choice in the most integrated setting;
   (14) to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;
   (15) to personal privacy and confidentiality in personal matters, subject to state and federal law;
   (16) to unimpeded, private, and uncensored communication and visitation with persons of the ward’s choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward:
      (A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and
      (B) the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);
   (17) to petition the court and retain counsel of the ward’s choice who holds a certificate required by Subchapter E, Chapter 1054, to represent the ward’s interest for capacity restoration, modification of the
guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006;
(18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;
(19) to personal visits from the guardian or the guardian’s designee at least once every three months, but more often, if necessary, unless the court orders otherwise;
(20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;
(21) to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;
(22) to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;
(23) to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation;
(24) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward’s native language, or preferred mode of communication, and in a manner accessible to the ward; and
(25) to make decisions related to sexual assault crisis services, including consenting to a forensic medical examination and treatment, authorizing the collection of forensic evidence, consenting to the release of evidence contained in an evidence collection kit and disclosure of related confidential information, and receiving counseling and other support services; and
(26) to have private communications with the ward’s physicians or other medical professionals, unless the court, after a hearing requested by the ward’s guardian, orders the private communications to be limited due to:
(A) the risk of substantial harm to the ward; or
(B) the communications being unduly burdensome to the physician or medical professional.
(c) This section does not supersede or abrogate other remedies existing in law.

New.


Chapter 1152. Guardianship Pending Appeal of Appointment

§ 1152.001. Guardian to Serve Pending Appeal of Appointment

§ 1152.002. Appeal Bond

Chapter 1152. Guardianship Pending Appeal of Appointment

§ 1152.001. Guardian to Serve Pending Appeal of Appointment

Pending an appeal from an order or judgment appointing a guardian, the appointee shall continue to:
(1) act as guardian; and
(2) prosecute a pending suit in favor of the guardianship.

Derived from Probate Code § 655.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1152.002. Appeal Bond

(a) Except as provided by Subsection (b), if a guardian appeals, an appeal bond is not required.
(b) A guardian must give an appeal bond if the appeal personally concerns the guardian.

Derived from Probate Code § 656.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1153. Notice to Claimants

§ 1153.001. Required Notice Regarding Presentment of Claims in General

§ 1153.002. Proof of Publication

§ 1153.003. Required Notice to Certain Claimants

§ 1153.004. Permissive Notice to Unsecured Creditor Regarding Period for Presentment of Claim

§ 1153.005. One Notice Sufficient; Liability for Failure to Give Required Notice

Chapter 1153. Notice to Claimants

§ 1153.001. Required Notice Regarding Presentment of Claims in General

(a) Within one month after receiving letters of guardianship, a guardian of an estate shall provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law. The notice must be:
(1) published in a newspaper of general circulation in the county in which the letters were issued; and
(2) sent to the comptroller by a qualified delivery method [certified or registered mail], if the ward remitted or should have remitted taxes administered by the comptroller.

(b) Notice provided under Subsection (a) must include:
(1) the date the letters of guardianship were issued to the guardian of the estate;
(2) the address to which a claim may be presented; and
(3) an instruction of the guardian’s choice that the claim be addressed in care of:
   (A) the guardian;
   (B) the guardian’s attorney; or
   (C) “Guardian, Estate of ____________” (naming the estate).

(c) If there is no newspaper of general circulation in the county in which the letters of guardianship were issued, the notice must be posted and the return made and filed as otherwise required by this title.

Derived from Probate Code §§ 783(a), (c).


§ 1153.002.   Proof of Publication

A copy of the published notice required by Section 1153.001(a)(1), with the publisher’s affidavit, sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this title for the service of citation or notice by publication, shall be filed in the court in which the cause is pending.

Derived from Probate Code § 783(b).


§ 1153.003.   Required Notice to Certain Claimants

(a) Within four months after receiving letters of guardianship, the guardian of an estate shall give notice of the issuance of the letters to each person who has a claim for money against the ward’s estate:
   (1) that is secured by a deed of trust, mortgage, or vendor’s, mechanic’s, or other contractor’s lien on real estate belonging to the estate; or
   (2) about which the guardian has actual knowledge.

(b) Notice provided under this section must be:
   (1) sent by a qualified delivery method [certified or registered mail, return receipt requested], and
   (2) addressed to the record holder of the claim at the record holder’s last known post office address,

(c) The following shall be filed in the court from which the letters of guardianship were issued:
   (1) a copy of each notice required by Subsection (a)(1) with the return receipt or other proof of delivery, if available; and
   (2) the guardian’s affidavit stating:
      (A) that the notice was sent [mailed] as required by law; and
      (B) the name of the person to whom the notice was sent [mailed], if that name is not shown on the notice or receipt.

Derived from Probate Code §§ 784(A), (b), (c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsecs. (b) and (c) amended by Acts 2023, 88th Leg., ch. 123, § 11, eff. Sept. 1, 2023 and Acts 2023, 88th Leg., ch. 207, § 15, eff. Sept. 1, 2023.

§ 1153.004.   Permissive Notice to Unsecured Creditor Regarding Period for Presentment of Claim

The guardian of the estate may expressly state in a notice given to an unsecured creditor under Section 1153.003(a)(2) that the creditor must present a claim not later than the 120th day after the date the creditor receives the notice or the claim is barred, if the claim is not barred by the general statutes of limitation. A statement under this section must include:

   (1) the address to which the claim may be presented; and
   (2) an instruction that the claim be filed with the clerk of the court that issued the letters of guardianship.

Derived from Probate Code § 784(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1153.005.   One Notice Sufficient; Liability for Failure to Give Required Notice

(a) A guardian of an estate is not required to give a notice required by Section 1153.001 or 1153.003 if another person also appointed as guardian or a former guardian has given that notice.

(b) If the guardian fails to give a notice required by other sections of this title or to cause the notice to be given, the guardian and the sureties on the guardian’s bond are liable for any damage a person suffers because of the neglect, unless it appears that the person otherwise had notice.

Derived from Probate Code § 785.


Chapter 1154. Inventory, Appraisement, and List of Claims

Subchapter A. Appraisers

§ 1154.001.   Appointment of Appraisers
§ 1154.002.   Appraisers’ Fees
§ 1154.003.   Failure or Refusal to Act by Appraisers

Electronic copy available at: https://ssrn.com/abstract=4537861
Subchapter B. Requirements for Inventory, Appraisement, and List of Claims

§ 1154.051. Inventory and Appraisement
(a) Not later than the 30th day after the date the guardian of the estate qualifies, unless a longer period is granted by the court, the guardian shall file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all the ward’s property that has come into the guardian’s possession or of which the guardian has knowledge. The inventory must:
(1) include:
(A) all the ward’s real property located in this state; and
(B) all the ward’s personal property regardless of where the property is located; and
(2) specify:
(A) which portion of the property is separate property and which is community property; and
(B) if the property is owned in common with other persons, the ward’s interest in that property.
(b) The guardian shall:
(1) set out in the inventory the guardian’s appraisement of the fair market value of each item in the inventory on the date of the grant of letters of guardianship; or
(2) if the court has appointed an appraiser for the estate:
(A) determine the fair market value of each item in the inventory with the assistance of the appraiser; and
(B) set out in the inventory the appraisement made by the appraiser.
(c) The court for good cause shown may require the guardian to file the inventory and appraisement not later than the 30th day after the date of qualification of the guardian.
(d) The inventory, when approved by the court and filed with the court clerk, is for all purposes the inventory and appraisement of the estate referred to in this title.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.052. List of Claims

Subchapter B. Requirements for Inventory, Appraisement, and List of Claims

§ 1154.053. Affidavit of Guardian

Subchapter C. Changes to Inventory, Appraisement, and List of Claims

§ 1154.101. Discovery of Additional Property or Claims

Subchapter D. Use of Inventory, Appraisement, and List of Claims as Evidence

Chapter 1154. Inventory, Appraisement, and List of Claims

Subchapter A. Appraisers

§ 1154.001. Appointment of Appraisers
(a) After letters of guardianship of the estate are granted, the court, for good cause shown, on the court’s own motion or the motion of any interested person, shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the ward’s property.
(b) If the court makes an appointment under Subsection (a) and part of the estate is located in a county other than the county in which the letters were granted, the court, if the court considers it necessary, may appoint at least one but not more than three disinterested persons who are residents of the county in which the relevant part of the estate is located to appraise the estate property located in that county.

Derived from Probate Code § 727.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.002. Appraisers’ Fees

An appraiser appointed by the court is entitled to receive a reasonable fee, payable out of the estate, for the performance of the appraiser’s duties as an appraiser.

Derived from Probate Code § 732.

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1154.052. List of Claims
The guardian of the estate shall make and attach to the inventory and appraisement required by Section 1154.051 a complete list of claims due or owing to the ward. The list of claims must state:
(1) the name and, if known, address of each person indebted to the ward; and
(2) regarding each claim:
(A) the nature of the debt, whether it is a note, bill, bond, or other written obligation, or whether it is an account or verbal contract;
(B) the date the debt was incurred;
(C) the date the debt was or is due;
(D) the amount of the claim, the rate of interest on the claim, and the period for which the claim bears interest; and
(E) if any portion of the claim is held in common with others, the interest of the estate in the claim.

Derived from Probate Code § 730.

§ 1154.053. Affidavit of Guardian
The guardian of the estate shall attach to the inventory, appraisement, and list of claims the guardian’s affidavit, subscribed and sworn to before an officer in the county authorized by law to administer oaths, that the inventory, appraisement, and list of claims are a true and complete statement of the property and claims of the estate of which the guardian has knowledge.

Derived from Probate Code § 731.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.054. Approval or Disapproval by the Court
(a) On the filing of the inventory, appraisement, and list of claims the guardian’s affidavit, subscribed and sworn to before an officer in the county authorized by law to administer oaths, that the inventory, appraisement, and list of claims are a true and complete statement of the property and claims of the estate of which the guardian has knowledge.

(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, and list of claims, the judge:
   (1) shall enter an order to that effect requiring the filing of another inventory, appraisement, or list of claims, whichever is not approved, within a period specified in the order not to exceed 20 days after the date the order is entered; and
   (2) may, if considered necessary, appoint new appraisers.

Derived from Probate Code § 733.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.055. Failure of Joint Guardians to File Inventory, Appraisement, and List of Claims
(a) If more than one guardian of the estate qualifies to serve, any one or more of the guardians, on the neglect of the other guardians, may make and file an inventory, appraisement, and list of claims.
(b) A guardian who neglects to make or file an inventory, appraisement, and list of claims may not interfere with and does not have any power over the estate after another guardian makes and files an inventory, appraisement, and list of claims.
(c) The guardian who files the inventory, appraisement, and list of claims is entitled to the whole administration unless, not later than the 60th day after the date the guardian files the inventory, appraisement, and list of claims, each of the delinquent guardians files with the court a written, sworn, and reasonable excuse that the court considers satisfactory. The court shall enter an order removing one or more delinquent guardians and revoking those guardians’ letters if:
   (1) an excuse is not filed; or
   (2) the court does not consider the filed excuse sufficient.

Derived from Probate Code § 738.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Changes to Inventory, Appraisement, and List of Claims
§ 1154.101. Discovery of Additional Property or Claims
If after the filing of the inventory, appraisement, and list of claims the guardian of the estate acquires possession or knowledge of property or claims of the estate not included in the inventory, appraisement, and list of claims, the guardian shall promptly file with the court clerk a verified, full, and detailed supplemental inventory, appraisement, and list of claims.

Derived from Probate Code § 734.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.102. Additional Inventory and Appraisement or List of Claims
(a) On the written complaint of any interested person that property or claims of the estate have not been included in the filed inventory, appraisement, and list of claims, the guardian shall be cited to appear before the court in which the cause is pending and show cause why the guardian should not be required to make and file an additional inventory and appraisement or list of claims.

(b) After hearing the complaint, if the court is satisfied of the truth of the complaint, the court shall enter an order requiring the guardian to make and file an additional inventory and appraisement or list of claims, or
both. The additional inventory and appraisement or list of claims:

(1) must be made and filed in the same manner as the original inventory and appraisement or list of claims within the period prescribed by the court, not to exceed 20 days after the date of the order; and

(2) may include only property or claims not previously included in the inventory and appraisement or list of claims.

Derived from Probate Code § 735.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.103. Correction of Inventory, Appraisement, or List of Claims for Erroneous or Unjust Item

(a) A person interested in an estate who considers an inventory, appraisement, or list of claims filed by the guardian of the estate to be erroneous or unjust in any particular form may:

(1) file a written complaint setting forth the alleged erroneous or unjust item; and

(2) have the guardian cited to appear before the court and show cause why the item should not be corrected.

(b) On the hearing of the complaint, if the court is satisfied from the evidence that the inventory, appraisement, or list of claims is erroneous or unjust as alleged in the complaint, the court shall enter an order:

(1) specifying the erroneous or unjust item and the corrections to be made; and

(2) appointing an appraiser to make a new appraisement correcting the erroneous or unjust item and requiring the filing of the new appraisement not later than the 20th day after the date of the order.

(c) The court, on the court’s own motion or a motion of the guardian of the estate, may also have a new appraisement made for the purposes described by this section.

Derived from Probate Code § 736.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.104. Reappraisal

(a) A reappraisal made, filed, and approved by the court replaces the original appraisement. Not more than one reappraisal may be made.

(b) Notwithstanding Subsection (a), a person interested in an estate may object to a reappraisal regardless of whether the court has approved the reappraisal. If the court finds that the reappraisal is erroneous or unjust, the court shall appraise the property on the basis of the evidence before the court.

Derived from Probate Code § 737.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Use of Inventory, Appraisement, and List of Claims as Evidence
Subchapter D. Costs in General  
§ 1155.152. Costs in Guardianship Proceeding Generally  
§ 1155.152. Certain Costs Adjudged Against Guardian  

Subchapter E. Compensation and Costs in Guardianships for Certain Medical Assistance Recipients  
§ 1155.201. Definitions  
§ 1155.202. Compensation and Costs Payable Under Medical Assistance Program  

Chapter 1155. Compensation, Expenses, and Court Costs  

Subchapter A. Compensation of Guardians in General  

§ 1155.001. Definitions  
In this subchapter:  
(1) “Gross income” does not include United States Department of Veterans Affairs or social security benefits received by a ward.  
(2) “Money paid out” does not include any money loaned, invested, or paid over on the settlement of a guardianship or a tax-motivated gift made by a ward.  

Derived from Probate Code § 665(h).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.  

§ 1155.002. Compensation for Certain Guardians of the Person  
(a) The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of the ward’s estate or other funds available for that purpose. The court may set the compensation in an amount not to exceed the greater of $3,000 per year or five percent of the ward’s gross income.  
(b) If the ward’s estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.  

Derived from Probate Code §§ 665(a), (g).  

§ 1155.003. Compensation for Guardian of the Estate  
(a) The guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves an annual or final accounting filed by the guardian under this title.  
(b) A fee of five percent of the gross income of the ward’s estate and five percent of all money paid out of the estate, subject to the award of an additional amount under Section 1155.006(a) following a review under Section 1155.006(a)(1), is considered reasonable under this section if the court finds that the guardian has taken care of and managed the estate in compliance with the standards of this title.  

Derived from Probate Code § 665(b).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.  

§ 1155.004. Considerations in Authorizing Compensation  
In determining whether to authorize compensation for a guardian under this subchapter, the court shall consider:  
(1) the ward’s monthly income from all sources; and  
(2) whether the ward receives medical assistance under the state Medicaid program.  

Derived from Probate Code § 665(a-1).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.  

§ 1155.005. Maximum Aggregate Compensation  
Except as provided by Section 1155.006(a) for a fee the court determines is unreasonably low, the aggregate fee of the guardian of the person and guardian of the estate may not exceed an amount equal to five percent of the gross income of the ward’s estate plus five percent of all money paid out of the estate.  

Derived from Probate Code § 665(f).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.  

§ 1155.006. Modification of Unreasonably Low Compensation; Authorization for Payment of Estimated Quarterly Compensation  
(a) On application of an interested person or on the court’s own motion, the court may:  
(1) review and modify the amount of compensation authorized under Section 1155.002(a) or 1155.003 if the court finds that the amount is unreasonably low when considering the services provided as guardian; and  
(2) authorize compensation for the guardian in an estimated amount the court finds reasonable, to be paid on a quarterly basis before the guardian files an annual or final accounting, if the court finds that delaying the payment of compensation until the guardian files an accounting would create a hardship for the guardian.  

(b) A finding of unreasonably low compensation may not be established under Subsection (a) solely because the amount of compensation is less than the usual and customary charges of the person or entity serving as guardian.  

Derived from Probate Code §§ 665(c), (d).  
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.  

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1155.007. Reduction or Elimination of Estimated Quarterly Compensation

(a) A court that authorizes payment of estimated quarterly compensation under Section 1155.006(a) may later reduce or eliminate the guardian’s compensation if, on review of an annual or final accounting or otherwise, the court finds that the guardian:

(1) received compensation in excess of the amount permitted under this subchapter;
(2) has not adequately performed the duties required of a guardian under this title; or
(3) has been removed for cause.

(b) If a court reduces or eliminates a guardian’s compensation as provided by Subsection (a), the guardian and the surety on the guardian’s bond are liable to the guardianship estate for any excess compensation received.

Derived from Probate Code § 665(d), (d-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.008. Denial of Compensation

On application of an interested person or on the court’s own motion, the court may wholly or partly deny a fee authorized under this subchapter if:

(1) the court finds that the guardian has not adequately performed the duties required of a guardian under this title; or
(2) the guardian has been removed for cause.

Derived from Probate Code § 665(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Compensation for Professional Services

§ 1155.052. Attorney Serving as Guardian and Providing Related Legal Services

(a) Notwithstanding any other provision of this chapter, an attorney who serves as guardian and who also provides legal services in connection with the guardianship is not entitled to compensation for the guardianship services or payment of attorney’s fees for the legal services from the ward’s estate or other funds available for that purpose unless the attorney files with the court a detailed description of the services performed that identifies which of the services provided were guardianship services and which were legal services.

(b) An attorney described by Subsection (a) is not entitled to payment of attorney’s fees for guardianship services that are not legal services.

(c) The court shall set the compensation of an attorney described by Subsection (a) for the performance of guardianship services in accordance with Subchapter A. The court shall set attorney’s fees for an attorney described by Subsection (a) for legal services provided in accordance with Sections 1155.054, 1155.101, and 1155.151.

Derived from Probate Code § 665D.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) and (c) amended by Acts 2013, 83rd Leg., ch. 982, § 17, eff. Jan. 1, 2014.

§ 1155.053. Compensation for Services to Recover Property

(a) Subject only to the approval of the court in which the estate is being administered and except as provided by Subsection (b), a guardian of an estate may convey or contract to convey a contingent interest in any property sought to be recovered, not to exceed one-third of the property for services of attorneys.

(b) A guardian of an estate may convey or contract to convey for services of attorneys a contingent interest that exceeds one-third of the property sought to be recovered under this section only on the approval of the court in which the estate is being administered. The court must approve a contract entered into or conveyance made under this section before an attorney performs any legal services. A contract entered into or conveyance made in violation of this section is void unless the court ratifies or reformats the contract or documents relating to the conveyance to the extent necessary to cause the contract or conveyance to meet the requirements of this section.

(c) In approving a contract or conveyance under Subsection (a) or (b) for services of an attorney, the court shall consider:

(1) the time and labor that will be required, the novelty and difficulty of the questions to be involved, and the skill that will be required to perform the legal services properly;
(2) the fee customarily charged in the locality for similar legal services;
(3) the value of property recovered or sought to be recovered by the guardian under this section;
(4) the benefits to the estate that the attorney will be responsible for securing; and
(5) the experience and ability of the attorney who will be performing the services.

Derived from Probate Code § 665C.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.054. Payment Of Attorney’s Fees To Certain Attorneys.

(a) A court that creates a guardianship or creates a management trust under Chapter 1301 for a ward, on request of a person who filed an application to be appointed guardian of the proposed ward, an application for the appointment of another suitable person as guardian of the proposed ward, or an application for the creation of the management trust, may authorize the payment of reasonable and necessary attorney’s fees, as determined by the court, in amounts the court considers equitable and just, to an attorney who represents the person who filed the application at the application hearing, regardless of whether the person is appointed the ward’s guardian or whether a management trust is created, from available funds of the ward’s estate or management trust, if created, subject to Subsections (b) and (d).
(b) The court may authorize amounts that otherwise would be paid from the ward’s estate or the management trust as provided by Subsection (a) to instead be paid from the county treasury, subject to Subsection (e), if:

(1) the ward’s estate or management trust is insufficient to pay the amounts; and

(2) funds in the county treasury are budgeted for that purpose.

(c) The court may not authorize attorney’s fees under this section unless the court finds that the applicant acted in good faith and for just cause in the filing and prosecution of the application.

(d) If the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court may order the party to reimburse the ward’s estate for all or part of the attorney’s fees awarded under this section and shall issue judgment against the party and in favor of the estate for the amount of attorney’s fees ordered to be reimbursed to the estate.

(e) The court may authorize the payment of attorney’s fees from the county treasury under Subsection (b) only if the court is satisfied that the attorney to whom the fees will be paid has not received, and is not seeking, payment for the services described by that subsection from any other source.

Derived from Probate Code §§ 665B.


Subchapter C. Expenses

§ 1155.101. Reimbursement of Expenses in General

A guardian is entitled to reimbursement from the guardianship estate for all necessary and reasonable expenses incurred in performing any duty as a guardian, including reimbursement for the payment of reasonable attorney’s fees necessarily incurred by the guardian in connection with the management of the estate or any other matter in the guardianship.

Derived from Probate Code § 666.


§ 1155.102. Reimbursement of Expenses for Collection of Claim or Debt

On satisfactory proof to the court, a guardian of an estate is entitled to all necessary and reasonable expenses incurred by the guardian in collecting or attempting to collect a claim or debt owed to the estate or in recovering or attempting to recover property to which the estate has title or a claim.

Derived from Probate Code § 665C(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.103. Expense Charges: Requirements

All expense charges shall be:

(1) in writing, showing specifically each item of expense and the date of the expense;

(2) verified by affidavit of the guardian;

(3) filed with the clerk; and

(4) paid only if the payment is authorized by court order.

Derived from Probate Code § 667.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Costs in General

§ 1155.151. Costs in Guardianship Proceeding Generally

(a) In a guardianship proceeding, the court costs of the proceeding, including the costs described by Subsection (a-1), shall, except as provided by Subsection (c), be paid as follows, and the court shall issue the judgment accordingly:

(1) out of the guardianship estate;

(2) out of the management trust, if a management trust has been created for the benefit of the ward under Chapter 1301 and the court determines it is in the ward’s best interest;

(3) by the party to the proceeding who incurred the costs, unless that party filed, on the party’s own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs, if:

(A) there is no guardianship estate or no management trust has been created for the ward’s benefit; or

(B) the assets of the guardianship estate or management trust, as appropriate, are insufficient to pay the costs; or

(4) out of the county treasury if:

(A) there is no guardianship estate or management trust or the assets of the guardianship estate or management trust, as appropriate, are insufficient to pay the costs; and

(B) the party to the proceeding who incurred the costs filed, on the party’s own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs.

(a-1) In a guardianship proceeding, the cost of any guardians ad litem, attorneys ad litem, court visitors, mental health professionals, and interpreters appointed under this title shall be set in an amount the court considers equitable and just.

(a-2) Notwithstanding any other law requiring the payment of court costs in a guardianship proceeding, the following are not required to pay court costs on the filing of or during a guardianship proceeding:

(1) an attorney ad litem;

(2) a guardian ad litem;
(3) a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the person or entity is unable to afford the costs;

(4) a nonprofit guardianship program;

(5) a governmental entity; and

(6) a government agency or nonprofit agency providing guardianship services.

(a-3) For purposes of Subsections (a) and (a-2), a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, is unable to afford the costs if the affidavit shows that the person or entity:

(1) is currently receiving assistance or other benefits from a government program under which assistance or other benefits are provided to individuals on a means-tested basis;

(2) is eligible for and currently receiving free legal services in the guardianship proceeding through the following:

(A) a legal services provider funded partly by the Texas Access to Justice Foundation;

(B) a legal services provider funded partly by the Legal Services Corporation; or

(C) a nonprofit corporation formed under the laws of this state that provides legal services to low-income individuals whose household income is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services;

(3) applied and was eligible for free legal services through a person or entity listed in Subdivision (2) but was declined representation; or

(4) has a household income that is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services and has money or other available assets, excluding any homestead and exempt property under Chapter 42, Property Code, in an amount that does not exceed $2,000.

(a-4) If an affidavit of inability to pay costs filed under Rule 145, Texas Rules of Civil Procedure, is contested, the court, at a hearing, shall review the contents of and attachments to the affidavit and any other evidence offered at the hearing and make a determination as to whether the person or entity is unable to afford the costs. If the court finds that the person or entity is able to afford the costs, the person or entity must pay the court costs. Except with leave of court, no further action in the guardianship proceeding may be taken by a person or entity found able to afford costs until payment of those costs is made.

(b) The costs attributable to the services of a person described by Subsection (a-1) shall be paid under this section at any time after the commencement of the proceeding as ordered by the court.

(c) If the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court may order the party to pay all or part of the costs of the proceeding. If the party found to be acting in bad faith or without just cause was required to provide security for the probable costs of the proceeding under Section 1053.052, the court shall first apply the amount provided as security as payment for costs ordered by the court under this subsection. If the amount provided as security is insufficient to pay the entire amount ordered by the court, the court shall render judgment in favor of the estate against the party for the remaining amount.

(d) If a guardianship of the estate or management trust under Chapter 1301 is created, a person or entity who paid any costs on the filing of or during the proceeding is entitled to be reimbursed out of assets of the guardianship estate or management trust, as appropriate, for the costs if:

(1) the assets of the estate or trust, as appropriate, are sufficient to cover the reimbursement of the costs; and

(2) the person or entity has not been ordered by the court to pay the costs as all or part of the payment of court costs under Subsection (c).

(e) If at any time after a guardianship of the estate or management trust under Chapter 1301 is created there are sufficient assets of the estate or trust, as appropriate, to pay the amount of any of the costs exempt from payment under Subsection (a-2), the court shall require the guardian to pay out of the guardianship estate or management trust, as appropriate, to the court clerk for deposit in the county treasury the amount of any of those costs.

(f) To the extent that this section conflicts with the Texas Rules of Civil Procedure or other rules, this section controls.

Derived from Probate Code § 669.


§ 1155.152. Certain Costs Adjudged Against Guardian

If costs are incurred because a guardian neglects to perform a required duty or is removed for cause, the guardian and the sureties on the guardian’s bond are liable for:

(1) any costs of removal and other additional costs incurred that are not expenditures authorized under this title; and

(2) reasonable attorney’s fees incurred in:

(A) removing the guardian; or

(B) obtaining compliance regarding any statutory duty the guardian has neglected.

Derived from Probate Code § 668.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
Subchapter E. Compensation and Costs in Guardianships for Certain Medical Assistance Recipients

§ 1155.201. Definitions

In this subchapter:
(1) “Applied income” means the portion of the earned and unearned income of a recipient of medical assistance, or if applicable the recipient and the recipient’s spouse, that is paid under the medical assistance program to an institution or long-term care facility in which the recipient resides.
(2) “Medical assistance” has the meaning assigned by Section 32.003, Human Resources Code.

Derived from Probate Code § 670(a).

§ 1155.202. Compensation and Costs Payable Under Medical Assistance Program

(a) Notwithstanding any other provision of this title and to the extent permitted by federal law, a court that appoints a guardian for a recipient of medical assistance who has applied income may order the following to be deducted as an additional personal needs allowance in the computation of the recipient’s applied income in accordance with Section 32.02451, Human Resources Code:
(1) compensation to the guardian in an amount not to exceed $250 per month;
(2) costs directly related to establishing or terminating the guardianship, not to exceed $1,000 except as provided by Subsection (b); and
(3) other administrative costs related to the guardianship, not to exceed $1,000 during any three-year period.
(b) Costs ordered to be deducted under Subsection (a)(2) may include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney’s fees for an attorney representing the guardian. The costs ordered to be paid may exceed $1,000 if the costs in excess of that amount are supported by documentation acceptable to the court and the costs are approved by the court.
(c) A court may not order:
(1) that the deduction for compensation and costs under Subsection (a) take effect before the later of:
(A) the month in which the court order issued under that subsection is signed; or
(B) the first month of medical assistance eligibility for which the recipient is subject to a copayment; or
(2) a deduction for services provided before the effective date of the deduction as provided by Subdivision (1).

Derived from Probate Code § 670(b) & (c).

Chapter 1156. Education and Maintenance Allowances Paid from Ward’s Estate

Subchapter A. Allowances for Ward

§ 1156.001. Application for Allowance

§ 1156.002. Court Determination of Allowance Amount

§ 1156.003. Court Order Setting Allowance

§ 1156.004. Expenditures Exceeding Allowance

Subchapter B. Allowances for Ward’s Family

§ 1156.051.Certain Allowances Prohibited When Parent is Guardian of Minor Ward

§ 1156.052. Allowance for Ward’s Spouse or Dependent

Chapter 1156. Education and Maintenance Allowances Paid from Ward’s Estate

Subchapter A. Allowances for Ward

§ 1156.001. Application for Allowance

(a) Subject to Section 1156.051, if a monthly allowance for a ward was not ordered in the court’s order appointing a guardian, the guardian of the estate of the ward shall file with the court an application requesting a monthly allowance to be spent from the income and corpus of the ward’s estate for:
(1) the education and maintenance of the ward; and
(2) the maintenance of the ward’s property.
(b) The guardian must file the application not later than the 30th day after the date the guardian qualifies as guardian or the date specified by the court, whichever is later.
(c) The application must clearly separate amounts requested for the ward’s education and maintenance from amounts requested for maintenance of the ward’s property.

Derived from Probate Code §§ 776(a), (a-1).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1156.002. Court Determination of Allowance Amount

In determining the amount of the monthly allowance for the ward and the ward’s property, the court shall consider the condition of the estate and the income and corpus of the estate necessary to pay the reasonably anticipated regular education and maintenance expenses
of the ward and maintenance expenses of the ward’s property.

Derived from Probate Code § 776(a-2).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1156.003. Court Order Setting Allowance

(a) The court’s order setting a monthly allowance must specify the types of expenditures the guardian may make on a monthly basis for the ward or the ward’s property.

(b) If different persons have the guardianship of the person and of the estate of a ward, the court’s order setting a monthly allowance must specify:

(1) the amount, if any, set by the court for the ward’s education and maintenance that the guardian of the estate shall pay; and

(2) the amount, if any, that the guardian of the estate shall pay to the guardian of the person, at a time specified by the court, for the ward’s education and maintenance.

(c) If the guardian of the estate fails to pay to the guardian of the person the monthly allowance set by the court, the guardian of the estate shall be compelled by court order to make the payment after the guardian is cited to appear.

(d) An order setting a monthly allowance does not affect the guardian’s duty to account for expenditures of the allowance in the annual account required by Subchapter A, Chapter 1163.

Derived from Probate Code §§ 776(a-2), (a-3).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1156.004. Expenditures Exceeding Allowance

If a guardian in good faith has spent money from the income and corpus of the estate of the ward for the ward’s support and maintenance and the expenditures exceed the monthly allowance authorized by the court, the guardian shall file a motion with the court requesting approval of the expenditures. The court may approve the excess expenditures if:

(1) the expenditures were made when it was not convenient or possible for the guardian to first secure court approval;

(2) the proof is clear and convincing that the expenditures were reasonable and proper;

(3) the court would have granted authority in advance to make the expenditures; and

(4) the ward received the benefits of the expenditures.

Derived from Probate Code § 776(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Allowances for Ward’s Family

§ 1156.051. Certain Allowances Prohibited When Parent is Guardian of Minor Ward

(a) Except as provided by Subsection (b), a parent who is the guardian of the person of a ward who is 17 years of age or younger may not use the income or the corpus from the ward’s estate for the ward’s support, education, or maintenance.

(b) A court with proper jurisdiction may authorize the guardian of the person to spend the income or the corpus from the ward’s estate to support, educate, or maintain the ward if the guardian presents to the court clear and convincing evidence that the ward’s parents are unable without unreasonable hardship to pay for all of the expenses related to the ward’s support.

 Derived from Probate Code § 777.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1156.052. Allowance for Ward’s Spouse or Dependent

(a) Subject to Section 1156.051 and on application to the court, the court may order the guardian of the estate of a ward to spend money from the ward’s estate for the education and maintenance of the ward’s spouse or dependent.

(b) In determining whether to order the expenditure of money from a ward’s estate for the ward’s spouse or dependent, as appropriate, under this section, the court shall consider:

(1) the circumstances of the ward, the ward’s spouse, and the ward’s dependents;

(2) the ability and duty of the ward’s spouse to support himself or herself and the ward’s dependent;

(3) the size of the ward’s estate;

(4) a beneficial interest the ward or the ward’s spouse or dependent has in a trust; and

(5) an existing estate plan, including a trust or will, that provides a benefit to the ward’s spouse or dependent.

(c) A person who makes an application to the court under this section shall send notice of the application by a qualified delivery method to all interested persons.

 Derived from Probate Code § 776A.


Chapter 1157. Presentment and Payment of Claims

Subchapter A. Presentment of Claims Against Guardianship Estate in General

§ 1157.001. Presentment of Claim to Guardian of the Estate

§ 1157.002. Presentment of Claim to Clerk
§ 1157.003. Inclusion of Attorney’s Fees in Claim

§ 1157.004. Affidavit Authenticating Claim for Money in General

§ 1157.005. Affidavit Authenticating Claim of Corporation or by Certain Other Representatives

§ 1157.006. Lost or Destroyed Evidence Concerning Claim

§ 1157.007. Waiver of Certain Defects of Form or Claims of Insufficiency

§ 1157.008. Effect on Statutes of Limitation of Filing of or Suit on Claim

Subchapter B. Action on Claims

§ 1157.051. Allowance or Rejection of Claim

§ 1157.052. Failure to Endorse or Attach Memorandum or Allow or Reject Claim

§ 1157.053. Claim Entered on Claim Docket

§ 1157.054. Contest of Claim

§ 1157.055. Court’s Action on Claim

§ 1157.056. Hearing on Certain Claims

§ 1157.057. Court Order Regarding Action on Claim

§ 1157.058. Appeal Of Court’s Action on Claim

§ 1157.059. Allowance and Approval Prohibited Without Affidavit

§ 1157.060. Unsecured Claims Barred Under Certain Circumstances

§ 1157.061. Allowing Barred Claim Prohibited; Court Disapproval

§ 1157.062. Certain Actions on Claims With Lost or Destroyed Evidence Void

§ 1157.063. Suit on Rejected Claim

§ 1157.064. Presentation of Claim Prerequisite for Judgment

§ 1157.065. Judgment in Suit on Rejected Claim

Subchapter C. Payment of Claims, Allowances, and Expenses

§ 1157.101. Payment of Approved or Established Claim

§ 1157.102. Payment of Unauthenticated Claim

§ 1157.103. Priority of Payment of Claims

§ 1157.104. Payment of Proceeds from Sale of Property Securing Debt

§ 1157.105. Claimant’s Petition for Allowance and Payment of Claim

§ 1157.106. Payment When Assets Insufficient to Pay Certain Claims

§ 1157.107. Payment of Court Costs Relating to Claim

§ 1157.108. Liability for Nonpayment of Claim

Subchapter D. Presentment and Payment of Secured Claims

§ 1157.151. Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien

§ 1157.152. Preferred Debt and Lien

§ 1157.153. Payment of Maturities on Preferred Debt and Lien

Subchapter E. Claims Involving Guardians

§ 1157.201. Claim by Guardian


Chapter 1157. Presentment and Payment of Claims

Subchapter A. Presentment of Claims Against Guardianship Estate in General

§ 1157.001. Presentment of Claim to Guardian of the Estate

A claim may be presented to the guardian of the estate at any time if:

(1) the estate has not been closed; and

(2) suit on the claim has not been barred by the general statutes of limitation.

Derived from Probate Code § 786(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.002. Presentment of Claim to Clerk

(a) A claim may also be presented by depositing the claim with the clerk with vouchers and the necessary exhibits and affidavit attached to the claim. On receiving a claim deposited under this subsection, the clerk shall advise the guardian of the estate or the guardian’s attorney of the deposit of the claim by a letter mailed to the guardian’s last known address.

(b) A claim deposited under Subsection (a) is presumed to be rejected if the guardian fails to act on the claim on or before the 30th day after the date the claim is filed.

(c) Failure of the clerk to give the notice required under Subsection (a) does not affect the validity of the presentment or the presumption of rejection of the claim because the guardian does not act on the claim within the 30-day period prescribed by Subsection (b).

Derived from Probate Code § 795.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.003. Inclusion of Attorney’s Fees in Claim

If the instrument evidencing or supporting a claim provides for attorney’s fees, the claimant may include as a part of the claim the portion of the attorney’s fees the claimant has paid or contracted to pay to an attorney to prepare, present, and collect the claim.

Derived from Probate Code § 794.
§ 1157.004. Affidavit Authenticating Claim for Money in General

(a) Except as provided by Sections 1157.005 and 1157.102, a claim for money against an estate must be supported by an affidavit that states:
   (1) that the claim is just;
   (2) that all legal offsets, payments, and credits known to the affiant have been allowed; and
   (3) if the claim is not founded on a written instrument or account, the facts on which the claim is founded.

(b) A photostatic copy of an exhibit or voucher necessary to prove a claim under this section may be offered with and attached to the claim instead of attaching the original.

Derived from Probate Code § 788.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.005. Affidavit Authenticating Claim of Corporation or by Certain Other Representatives

(a) The cashier, treasurer, or managing official of a corporation shall make the affidavit required to authenticate a claim of the corporation.

(b) In an affidavit made by an officer of a corporation, or by an executor, administrator, guardian, trustee, assignee, agent, or attorney, it is sufficient to state that the affiant has made diligent inquiry and examination and believes the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

Derived from Probate Code § 791.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.006. Lost or Destroyed Evidence Concerning Claim

If evidence of a claim is lost or destroyed, the claimant or the claimant’s representative may make an affidavit to the fact of the loss or destruction. The affidavit must state:
   (1) the amount, date, and nature of the claim;
   (2) the due date of the claim;
   (3) that the claim is just;
   (4) that all legal offsets, payments, and credits known to the affiant have been allowed; and
   (5) that the claimant is still the owner of the claim.

Derived from Probate Code § 790.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.007. Waiver of Certain Defects of Form or Claims of Insufficiency

A defect of form or a claim of insufficiency of a presented exhibit or voucher is considered waived by the guardian of the estate unless a written objection to the form, exhibit, or voucher is:
   (1) made not later than the 30th day after the date the claim is presented; and
   (2) filed with the county clerk.

Derived from Probate Code § 789.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.008. Effect on Statutes of Limitation of Filing of or Suit on Claim

The general statutes of limitation are tolled by:
   (1) filing a claim that is legally allowed and approved; or
   (2) bringing a suit on a rejected and disapproved claim not later than the 90th day after the date the claim is rejected or disapproved.

Derived from Probate Code § 787.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Action on Claims

§ 1157.051. Allowance or Rejection of Claim

A guardian of the estate shall, not later than the 30th day after the date an authenticated claim against the guardianship estate is presented to the guardian or filed with the clerk as provided by this chapter, endorse on or attach to the claim a memorandum signed by the guardian stating:
   (1) the date of presentation or filing of the claim; and
   (2) whether the guardian allows or rejects the claim, or, if the guardian allows or rejects a part of the claim, the portion of the claim the guardian allows or rejects.

Derived from Probate Code § 796.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.052. Failure to Endorse or Attach Memorandum or Allow or Reject Claim

The failure of a guardian of the estate to endorse on or attach to a claim presented to the guardian the memorandum required by Section 1157.051 or, not later than the 30th day after the date a claim is presented, to allow or reject the claim or portion of the claim constitutes a rejection of the claim. If the claim is later established by suit:
   (1) the costs shall be taxed against the guardian, individually; or
   (2) the guardian may be removed as in other cases of removal on the written complaint of any person interested in the claim after personal service of citation, hearing, and proof.

Derived from Probate Code § 797.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
§ 1157.053. Claim Entered on Claim Docket

After a claim against a ward’s estate has been presented to and allowed by the guardian of the estate, wholly or partly, the claim must be filed with the county clerk of the proper county. The clerk shall enter the claim on the claim docket.

Derived from Probate Code § 798.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.054. Contest of Claim

(a) A person interested in a ward may, at any time before the court has acted on a claim, appear and object in writing to the approval of the claim or any part of the claim.

(b) If a person objects under Subsection (a):

(1) the parties are entitled to process for witnesses; and

(2) the court shall hear evidence and render judgment as in ordinary suits.

Derived from Probate Code § 799(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.055. Court’s Action On Claim

The court shall:

(1) approve, wholly or partly, or reject a claim that has been allowed and entered on the claim docket for a period of 10 days; and

(2) concurrently classify the claim.

Derived from Probate Code § 799(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.056. Hearing on Certain Claims

(a) If a claim is properly authenticated and allowed, but the court is not satisfied that the claim is just, the court shall:

(1) examine the claimant and the guardian of the estate under oath; and

(2) hear other evidence necessary to determine the issue.

(b) If after the examination and hearing the court is not convinced that the claim is just, the court shall disapprove the claim.

Derived from Probate Code § 799(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.057. Court Order Regarding Action on Claim

(a) The court acting on a claim shall endorse on or attach to the claim a written memorandum that:

(1) is dated and officially signed; and

(2) states:

(A) the exact action taken by the court on the claim, whether the claim is approved or disapproved, or is approved in part and rejected in part; and

(b) the classification of the claim.

(b) An order under Subsection (a) has the effect of a final judgment.

Derived from Probate Code § 799(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.058. Appeal of Court’s Action on Claim

If a claimant or any person interested in a ward is dissatisfied with the court’s action on a claim, the claimant or interested person may appeal the action to the court of appeals in the manner other judgments of the county court in probate matters are appealed.

Derived from Probate Code § 799(e).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.059. Allowance and Approval Prohibited Without Affidavit

Except as provided by Section 1157.102, a guardian of the estate may not allow, and the court may not approve, a claim for money against the estate unless the claim is supported by an affidavit that meets the applicable requirements of Sections 1157.004 and 1157.005.

Derived from Probate Code § 799(f).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.060. Unsecured Claims Barred Under Certain Circumstances

A claim of an unsecured creditor for money that is not presented within the time prescribed by the notice of presentment permitted by Section 1153.004 is barred.

Derived from Probate Code § 786(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.061. Allowing Barred Claim Prohibited; Court Disapproval

A guardian of the estate may not allow a claim against a ward if a suit on the claim is barred by an applicable general statute of limitation. A claim against a ward that is allowed by the guardian shall be disapproved if the court is satisfied that the limitation has run.

Derived from Probate Code § 786(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.062. Certain Actions on Claims With Lost or Destroyed Evidence Void

(a) Before a claim the evidence for which is lost or destroyed is approved, the claim must be proved by disinterested testimony taken in open court or by oral or written deposition.

(b) The allowance or approval of a claim the evidence for which is lost or destroyed is void if the claim is:
§ 1157.063. Suit on Rejected Claim  
(a) A claim or part of a claim that has been rejected by the guardian of the estate is barred unless not later than the 90th day after the date of rejection the claimant commences suit on the claim in the court of original probate jurisdiction in which the guardianship is pending or in any other court of proper jurisdiction.  
(b) In a suit commenced on the rejected claim, the memorandum endorsed on or attached to the claim is taken to be true without further proof unless denied under oath.

$\text{Derived from Probate Code } \S 800.$
$\text{Added by Acts 2011, 82nd Leg., ch. 823, } \S 1.02, \text{ eff. Jan. 1, 2014.}$

§ 1157.064. Presentment of Claim Prerequisite for Judgment  
(a) Except as provided by Subsection (b), a judgment may not be rendered in favor of a claimant on a claim for money that has not been:  
(1) legally presented to the guardian of the estate of the ward; and  
(2) wholly or partly rejected by the guardian or the court.  
(b) Subsection (a) does not apply to a claim against the estate of a ward for delinquent ad valorem taxes that is being administered in probate in a county other than the county in which the taxes were imposed.

$\text{Derived from Probate Code } \S 801.$
$\text{Added by Acts 2011, 82nd Leg., ch. 823, } \S 1.02, \text{ eff. Jan. 1, 2014.}$

§ 1157.065. Judgment in Suit on Rejected Claim  
No execution may issue on a rejected claim or part of a claim that is established by suit. The judgment in the suit shall be:  
(1) certified not later than the 30th day after the date of rendition, if the judgment is from a court other than the court of original probate jurisdiction;  
(2) filed in the court in which the guardianship is pending;  
(3) entered on the claim docket;  
(4) classified by the court; and  
(5) handled as if originally allowed and approved in due course of administration.

$\text{Derived from Probate Code } \S 800.$
$\text{Added by Acts 2011, 82nd Leg., ch. 823, } \S 1.02, \text{ eff. Jan. 1, 2014.}$

Subchapter C. Payment of Claims, Allowances, and Expenses

§ 1157.101. Payment of Approved or Established Claim  
Except as provided for payment of an unauthenticated claim at the risk of a guardian, a claim or any part of a claim for money against the estate of a ward may not be paid until the claim or part of the claim has been approved by the court or established by the judgment of a court of competent jurisdiction.

$\text{Derived from Probate Code } \S 804.$
$\text{Added by Acts 2011, 82nd Leg., ch. 823, } \S 1.02, \text{ eff. Jan. 1, 2014.}$

§ 1157.102. Payment of Unauthenticated Claim  
(a) Subject to Subsection (b), a guardian of the estate may pay an unauthenticated claim against the ward’s estate if the guardian believes the claim to be just.  
(b) A guardian who pays a claim under Subsection (a) and the sureties on the guardian’s bond are liable for the amount of any payment of the claim if the court finds that the claim is not just.

$\text{Derived from Probate Code } \S 792.$
$\text{Added by Acts 2011, 82nd Leg., ch. 823, } \S 1.02, \text{ eff. Jan. 1, 2014.}$

§ 1157.103. Priority of Payment of Claims  
(a) Except as provided by Subsection (b), the guardian of the estate shall pay a claim against the ward’s estate that has been allowed and approved or established by suit, as soon as practicable and in the following order:  
(1) expenses for the care, maintenance, and education of the ward or the ward’s dependents;  
(2) funeral expenses of the ward and expenses of the ward’s last illness, if the guardianship is kept open after the ward’s death as provided under this title, except that any claim against the ward’s estate that has been allowed and approved or established by suit before the ward’s death shall be paid before the funeral expenses and expenses of the last illness;  
(3) expenses of administration; and  
(4) other claims against the ward or the ward’s estate.  
(b) If the estate is insolvent, the guardian shall give first priority to the payment of a claim relating to the administration of the guardianship. The guardian shall pay other claims against the ward’s estate in the order prescribed by Subsection (a).

$\text{Derived from Probate Code } \S\S 805(a), (b).$
$\text{Added by Acts 2011, 82nd Leg., ch. 823, } \S 1.02, \text{ eff. Jan. 1, 2014.}$

§ 1157.104. Payment of Proceeds from Sale of Property Securing Debt  
(a) If a guardian of the estate has on hand the proceeds of a sale made to satisfy a mortgage or other lien and the proceeds or any part of the proceeds are not required for the payment of any debts against the estate that have a preference over the mortgage or other lien, the guardian shall pay the proceeds to a holder of the mortgage or other lien.
(b) If the guardian fails to pay the proceeds as required by this section, the holder of a mortgage or other lien, on proof of the mortgage or other lien, may obtain an order from the court directing the payment of proceeds to be made.

Derived from Probate Code § 808.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.105. Claimant’s Petition for Allowance and Payment of Claim

A claimant whose claim has not been paid may:

(1) petition the court for determination of the claim at any time before the claim is barred by an applicable statute of limitations; and

(2) procure on due proof an order for the claim’s allowance and payment from the estate.

Derived from Probate Code § 805(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.106. Payment When Assets Insufficient to Pay Certain Claims

(a) If there are insufficient assets to pay all claims of the same class, the claims in that class shall be paid pro rata, as directed by the court, and in the order directed.

(b) A guardian of the estate may not be allowed to pay any claims other than with the pro rata amount of the estate funds that have come into the guardian’s possession, regardless of whether the estate is solvent or insolvent.

Derived from Probate Code § 806.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.107. Payment of Court Costs Relating to Claim

All costs incurred in the probate court with respect to a claim are taxed as follows:

(1) if the claim is allowed and approved, the guardianship estate shall pay the costs;

(2) if the claim is allowed but disapproved, the claimant shall pay the costs;

(3) if the claim is rejected but established by suit, the guardianship estate shall pay the costs;

(4) if the claim is rejected but not established by suit, the claimant shall pay the costs; or

(5) in a suit to establish the claim after the claim is rejected in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved for the claim, the claimant shall pay all costs.

Derived from Probate Code § 802.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.108. Liability for Nonpayment of Claim

(a) A person or claimant, except the state treasury, entitled to payment from a guardianship estate of money the court orders to be paid is authorized to have execution issued against the property of the guardianship for the amount due, with interest and costs, if:

(1) a guardian of the estate fails to pay the money on demand;

(2) guardianship estate funds are available to make the payment; and

(3) the person or claimant makes an affidavit of the demand for payment and the guardian’s failure to pay.

(b) The court may cite the guardian and the sureties on the guardian’s bond to show cause why the guardian or sureties should not be held liable for the debt, interest, costs, or damages:

(1) on return of the execution under Subsection (a) not satisfied; or

(2) on the affidavit of demand and failure to pay under Subsection (a).

(c) On the return of citation served under Subsection (b), the court shall render judgment against the cited guardian and sureties, in favor of the claim holder, if good cause why the guardian and sureties should not be held liable is not shown. The judgment must be for:

(1) the unpaid amount ordered to be paid or established by suit, with interest and costs; and

(2) damages on the amount neglected to be paid at the rate of five percent per month for each month, or fraction of a month, that the payment was neglected to be paid after demand for payment was made.

(d) Damages ordered under Subsection (c)(2) may be collected in any court of competent jurisdiction.

Derived from Probate Code § 809.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Presentment and Payment of Secured Claims

§ 1157.151. Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien

(a) If a secured claim against a ward is presented, the claimant shall specify in the claim, in addition to all other matters required to be specified in the claim, whether the claim shall be:

(1) allowed and approved as a matured secured claim to be paid in due course of administration, in which case the claim shall be paid in that manner if allowed and approved; or

(2) allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract that secured the lien, in which case the claim shall be so allowed and approved if it is a valid lien.

(b) Notwithstanding Subsection (a)(2), the guardian of the estate may pay a claim that the claimant specified as a claim to be allowed, approved, and fixed as a preferred debt and lien as described by Subsection (a)(2) before maturity if that payment is in the best interests of the estate.
(c) If a secured claim is not presented within the time provided by law, the claim shall be treated as a claim to be paid in accordance with Subsection (a)(2).
Derived from Probate Code §§ 793(a), (b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.152. Preferred Debt and Lien
When a claim for a debt has been allowed and approved under Section 1157.151(a)(2):
(1) a further claim for the debt may not be made against other estate assets;
(2) the claim remains a preferred lien against the property securing the claim; and
(3) the property remains security for the debt in any distribution or sale of the property before final maturity and payment of the debt.
Derived from Probate Code § 793(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.153. Payment of Maturities on Preferred Debt and Lien
(a) If, not later than the 12th month after the date letters of guardianship are granted, the property securing a debt for which a claim is allowed, approved, and fixed under Section 1157.151(a)(2) is not sold or distributed, the guardian of the estate shall:
(1) promptly pay all maturities that have accrued on the debt according to the terms of the maturities; and
(2) perform all the terms of any contract securing the maturities.
(b) If the guardian defaults in payment or performance under Subsection (a):
(1) on the motion of the claim holder, the court shall require the sale of the property subject to the unmatured part of the debt and apply the proceeds of the sale to the liquidation of the maturities; or
(2) at the claim holder’s option, a motion may be made in the same manner as a motion under Subdivision (1) to require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt.
Derived from Probate Code § 793(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Claims Involving Guardians

§ 1157.201. Claim by Guardian
(a) A claim that a guardian of the person or estate held against the ward at the time of the guardian’s appointment, or that accrues after the appointment, shall be verified by affidavit as required in other cases and presented to the clerk of the court in which the guardianship is pending. The clerk shall enter the claim on the claim docket and the claim shall take the same course as other claims.
(b) A claim by a guardian that has been filed with the court within the required period shall be entered on the claim docket and acted on by the court in the same manner as in other cases.
(c) An appeal from a judgment of the court acting on a claim under this section may be taken as in other cases.
Derived from Probate Code § 803.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

(a) A guardian may not purchase, for the guardian’s own use or for any other purpose, a claim against the guardianship the guardian represents.
(b) On written complaint by a person interested in the guardianship estate and on satisfactory proof of a violation of Subsection (a), the court after citation and hearing shall enter an order canceling the claim described by Subsection (a). No part of the canceled claim may be paid out of the guardianship.
(c) The court may remove a guardian for a violation of this section.
Derived from Probate Code § 807.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1158. Sale or Partition of Ward’s Property

Subchapter A. General Provisions
§ 1158.001. Court Order Authorizing Sale

Subchapter B. Certain Estate Property Required to be Sold
§ 1158.051. Sale of Certain Personal Property Required

Subchapter C. Sale of Personal Property
§ 1158.101. Order for Sale
§ 1158.102. Requirements for Application and Order
§ 1158.103. Sale at Public Auction
§ 1158.104. Sale on Credit
§ 1158.105. Report; Evidence of Title

Subchapter D. Sale of Livestock
§ 1158.151. Authority for Sale
§ 1158.152. Contents of Application; Hearing
§ 1158.153. Grant of Application
§ 1158.154. Report; Passage of Title
§ 1158.155. Commission Merchant Charges

Subchapter E. Sale of Mortgaged Property
§ 1158.201. Application for Sale of Mortgaged Property
§ 1158.202. Citation  
§ 1158.203. Order  

Subchapter F. Sale of Real Property: Application and Order for Sale  
§ 1158.251. Application for Order of Sale  
§ 1158.252. Contents of Application  
§ 1158.253. Citation  
§ 1158.254. Opposition to Sale  
§ 1158.255. Hearing on Application and Any Opposition  
§ 1158.256. Order  
§ 1158.257. Sale for Payment of Debts  

Subchapter G. Sale of Real Estate: Terms of Sale  
§ 1158.301. Permissible Terms  
§ 1158.302. Sale on Credit  

Subchapter H. Reconveyance of Real Estate Following Foreclosure  
§ 1158.351. Applicability of Subchapter  
§ 1158.352. Application and Order for Reconveyance  
§ 1158.353. Exchange for Bonds  

Subchapter I. Sale of Real Estate: Public Auction  
§ 1158.401. Required Notice  
§ 1158.402. Completion of Auction  
§ 1158.403. Time and Place of Auction  
§ 1158.404. Continuance of Auction  
§ 1158.405. Failure of Bidder to Comply  

Subchapter J. Sale of Real Estate: Contract for Private Sale  
§ 1158.451. Terms of Sale  

Subchapter K. Sale of Easement or Right-of-Way  
§ 1158.501. Authorization  
§ 1158.502. Procedure  

Subchapter L. Approval of Sale of Real Property and Transfer of Title  
§ 1158.551. Report  
§ 1158.552. Action of Court on Report  
§ 1158.553. Approval of Sale When Bond Not Required  
§ 1158.554. Sufficiency of Bond  
§ 1158.555. Increased or Additional Bond Not Required  
§ 1158.556. Approval or Disapproval Order  
§ 1158.557. Deed  

Texas Estates Code  

§ 1158.558. Delivery of Deed  
§ 1158.559. Damages; Removal  

Subchapter M. Procedure on Failure to Apply For Sale  
§ 1158.601. Failure to Apply for Sale  
§ 1158.602. Court Order  

Subchapter N. Purchase of Estate Property by Guardian  
§ 1158.651. General Prohibition on Purchase  
§ 1158.652. Exception: Executory Contract  
§ 1158.653. Exception: Best Interest of Estate  
§ 1158.654. Purchase In Violation of Subchapter  

Subchapter O. Partition of Ward’s Interest in Real Estate  
§ 1158.701. Partition by Agreement  
§ 1158.702. Application for Approval of Partition Agreement  
§ 1158.703. Hearing  
§ 1158.704. Order  
§ 1158.705. Partition Without Court Approval; Ratification of Partition Agreement  
§ 1158.706. Partition by Suit  

Chapter 1158. Sale or Partition of Ward’s Property  

Subchapter A. General Provisions  
§ 1158.001. Court Order Authorizing Sale  
(a) Except as provided by this chapter, any property of a ward may not be sold without a court order authorizing the sale.  
(b) Except as otherwise specifically provided by this title, the court may order property of a ward to be sold for cash or on credit, at public auction or privately, as the court considers most advantageous to the estate.  
Derived from Probate Code § 811.  

Subchapter B. Certain Estate Property Required to be Sold  
§ 1158.051. Sale of Certain Personal Property Required  
(a) After approval of the inventory, appraisement, and list of claims, the guardian of the estate of a ward promptly shall apply for a court order to sell, at public auction or privately, for cash or on credit for a term not to exceed six months, all estate property that is liable to
perish, waste, or deteriorate in value, or that will be an expense or disadvantage to the estate if kept.

(b) The following may not be included in a sale under Subsection (a):

(1) property exempt from forced sale;

(2) property that is the subject of a specific legacy; and

(3) personal property necessary to carry on a farm, ranch, factory, or other business that is thought best to operate.

(c) In determining whether to order the sale of an asset under Subsection (a), the court shall consider:

(1) the guardian's duty to take care of and manage the estate in the manner a person of ordinary prudence, discretion, and intelligence would manage the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Subchapter F, Chapter 113, Property Code, or Chapter 117, Property Code.

Derived from Probate Code § 812.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Sale of Personal Property

§ 1158.101. Order for Sale

(a) Except as provided by Subsection (b), on the application of the guardian of the estate of a ward or any interested person, the court may order the sale of any estate personal property not required to be sold by Section 1158.051, including livestock or growing or harvested crops, if the court finds that the sale of the property is in the best interests of the ward or the ward's estate to pay, from the proceeds of the sale:

(1) expenses of the care, maintenance, and education of the ward or the ward's dependents;

(2) expenses of administration;

(3) allowances;

(4) claims against the ward or the ward’s estate; and

(5) if the guardianship is kept open after the death of the ward, the ward’s funeral expenses and expenses of the ward’s last illness.

(b) The court may not order under this section the sale of exempt property.

Derived from Probate Code § 813.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.102. Requirements for Application and Order

To the extent possible, an application and order for the sale of estate personal property under Section 1158.101 must conform to the requirements under Subchapter F for an application and order for the sale of real estate.

Derived from Probate Code § 813.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Sale of Livestock

§ 1158.151. Authority for Sale

(a) A guardian of the estate who has possession of livestock and who considers selling the livestock to be necessary or to the estate's advantage may, in addition to any other method provided by law for the sale of personal property, obtain authority from the court in which the estate is pending to sell the livestock through:
§ 1158.152. Contents of Application; Hearing

(a) An application under Section 1158.151 must:
(1) describe the livestock sought to be sold; and
(2) state why granting the application is necessary or to the estate’s advantage.

(b) The court:
(1) shall consider the application; and
(2) may hear evidence for or against the application, with or without notice, as the facts warrant.

§ 1158.153. Grant of Application

If the court grants an application for the sale of livestock, the court shall:
(1) enter an order to that effect; and
(2) authorize delivery of the livestock to a commission merchant described by Section 1158.151(a) for sale in the regular course of business.

§ 1158.154. Report; Passage of Title

The guardian of the estate shall promptly report to the court a sale of livestock, supported by a verified copy of the commission merchant’s account of the sale. A court order of confirmation is not required to pass title to the purchaser of the livestock.

§ 1158.201. Application for Sale of Mortgaged Property

On the filing of a written application, a creditor holding a claim that is secured by a valid mortgage or other lien and that has been allowed and approved or established by suit may obtain from the court in which the guardianship is pending an order requiring that the property securing the lien, or as much of the property as is necessary to satisfy the creditor’s claim, be sold.

§ 1158.202. Citation

On the filing of an application under Section 1158.201, the clerk shall issue a citation requiring the guardian of the estate to appear and show cause why the application should not be granted.

§ 1158.203. Order

The court may order the lien securing the claim of a creditor who files an application under Section 1158.201 to be discharged out of general estate assets or refinanced if the discharge or refinance of the lien appears to the court to be advisable. Otherwise, the court shall grant the application and order that the property securing the lien be sold at public or private sale, as the court considers best, as in an ordinary sale of real estate.

Subchapter F. Sale of Real Property: Application and Order for Sale

§ 1158.251. Application for Order of Sale

An application may be made to the court for an order to sell real property of a ward’s estate if the sale appears necessary or advisable to:
(1) pay:
(A) expenses of administration, allowances, and claims against the ward or the ward’s estate; and
(B) if the guardianship is kept open after the death of the ward, the ward’s funeral expenses and expenses of the ward’s last illness;
(2) make up the deficiency if the income of a ward’s estate, the personal property of the estate, and the proceeds of previous sales are insufficient to pay for the education and maintenance of the ward or to pay debts against the estate;
(3) dispose of property of the ward’s estate that consists wholly or partly of an undivided interest in real estate if considered in the best interests of the estate to sell the interest;
(4) dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return on the value of the real estate, if:
   (A) the improvement of the real estate with a view to making the property productive is not considered advantageous or advisable; and
   (B) the sale of the real estate and the investment of the money derived from that sale appears to be in the estate’s best interests; or
(5) conserve the ward’s estate by selling mineral interest or royalties on minerals in place owned by the ward.

Derived from Probate Code § 820.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.252. Contents of Application
An application for the sale of real estate must:
(1) be in writing;
(2) describe:
   (A) the real estate sought to be sold; or
   (B) the interest in or part of the real estate sought to be sold; and
(3) be accompanied by an exhibit, verified by an affidavit, showing fully and in detail:
   (A) the estate’s condition;
   (B) the charges and claims that have been approved or established by suit or that have been rejected and may be established later;
   (C) the amount of each claim described by Paragraph (B);
   (D) the estate property remaining on hand that is liable for the payment of the claims described by Paragraph (B); and
   (E) any other facts showing the necessity for or advisability of the sale.

Derived from Probate Code § 821.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.253. Citation
On the filing of an application for the sale of real estate under Section 1158.251, accompanied by an exhibit described by Section 1158.252, the clerk shall issue a citation to all persons interested in the guardianship. The citation must:
(1) describe the real estate or the interest in or part of the real estate sought to be sold;
(2) inform the interested persons of the right under Section 1158.254 to file an opposition to the sale during the period prescribed by the court in the citation; and
(3) be served by posting.

Derived from Probate Code § 823.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.254. Opposition to Sale
During the period prescribed in a citation issued under Section 1158.253, a person interested in the guardianship may file:
(1) a written opposition to the sale; or
(2) an application for the sale of other estate property.

Derived from Probate Code § 824.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.255. Hearing on Application and Any Opposition
(a) The clerk of the court in which an application for an order of sale is filed shall immediately call to the judge’s attention any opposition to the sale that is filed during the period prescribed in the citation issued under Section 1158.253. The court shall hold a hearing on the application if an opposition to the sale is filed during the period prescribed in the citation.
(b) A hearing on an application for an order of sale is not required under this section if no opposition to the application is filed during the period prescribed in the citation. The court may determine that a hearing on the application is necessary even if no opposition is filed during that period.
(c) If the court orders a hearing under Subsection (a) or (b), the court shall designate in writing a date and time for the hearing on the application and any opposition, together with the evidence pertaining to the application and any opposition. The clerk shall issue a notice of the date and time of the hearing to the applicant and to each person who files an opposition to the sale, if applicable.
(d) The judge, by entries on the docket, may continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

Derived from Probate Code § 824A.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.256. Order
(a) The court shall order the sale of the property of the estate described in an application under Section 1158.251 if the court is satisfied that the sale is necessary or advisable. Otherwise, the court may deny the application and, if the court considers it best, may order the sale of other estate property the sale of which would be more advantageous to the estate.
(b) An order for the sale of real estate under this section must specify:
(1) the property to be sold, including a description that identifies that property;
(2) whether the property is to be sold at public auction or private sale and, if at public auction, the time and place of the sale;
(3) the necessity or advisability of, and the purpose of, the sale;
(4) except in a case in which a guardian of the estate was not required to give a general bond, that the

Electronic copy available at: https://ssrn.com/abstract=4537861
court, after examining the general bond given by the guardian, finds that:
(A) the bond is sufficient as required by law; or
(B) the bond is insufficient;
(5) if the court finds that the general bond is insufficient under Subdivision (4)(B), the amount of the necessary or increased bond, as applicable;
(6) that the sale is to be made and the report returned in accordance with law; and
(7) the terms of the sale.
Derived from Probate Code § 825.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.257. Sale for Payment of Debts
Real property of a ward selected to be sold for the payment of expenses or claims must be that property the sale of which the court considers most advantageous to the guardianship.
Derived from Probate Code § 819.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter G. Sale of Real Estate: Terms of Sale

§ 1158.301. Permissible Terms
Real estate of an estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to the indebtedness, or with an assumption of the indebtedness, at public or private sale, as appears to the court to be in the estate’s best interests.
Derived from Probate Code § 827(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.302. Sale on Credit
(a) The cash payment for real estate of an estate sold partly on credit may not be less than one-fifth of the purchase price. The purchaser shall execute a note for the deferred payments, payable in monthly, quarterly, semiannual, or annual installments, in amounts that appear to the court to be in the guardianship’s best interests. The note must bear interest from the date at a rate of not less than four percent per year, payable as provided in the note.
(b) A note executed by a purchaser under Subsection (a) must be secured by a vendor’s lien retained in the deed and in the note on the property sold, and be additionally secured by a deed of trust on the property sold, with the usual provisions for foreclosure and sale on failure to make the payments provided in the deed and the note.
(c) At the election of the holder of a note executed by a purchaser under Subsection (a), default in the payment of principal or interest or any part of the payment when due matures the entire debt.
Derived from Probate Code § 827(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter H. Reconveyance of Real Estate Following Foreclosure

§ 1158.351. Applicability of Subchapter
This subchapter applies only to real estate owned by an estate as a result of the foreclosure of a vendor’s lien or mortgage belonging to the estate:
(1) by a judicial sale;
(2) by a foreclosure suit;
(3) through a sale under a deed of trust; or
(4) by acceptance of a deed in cancellation of a lien or mortgage owned by the estate.
Derived from Probate Code § 827(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.352. Application and Order for Reconveyance
On proper application and proof, the court may dispense with the requirements for a credit sale prescribed by Section 1158.302 and order the reconveyance of foreclosed real estate to the former mortgage debtor or former owner if it appears to the court that:
(1) an application to redeem the real estate has been made by the former owner to a corporation or agency created by an act of the United States Congress or of this state in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate; and
(2) owning bonds of one of those federal or state corporations or agencies instead of the real estate would be in the estate’s best interests.
Derived from Probate Code § 827(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.353. Exchange for Bonds
(a) If a court orders the reconveyance of foreclosed real estate under Section 1158.352, vendor’s lien notes shall be reserved for the total amount of the indebtedness due or for the total amount of bonds that the corporation or agency to which the application to redeem the real estate was submitted as described by Section 1158.352(1) is allowed to advance under the corporation’s or agency’s rules or regulations.
(b) On obtaining the order for reconveyance, it shall be proper for the guardian to endorse and assign the reserved vendor’s lien notes over to any one of the corporations or agencies described by Section 1158.352(1) in exchange for bonds of that corporation or agency.
Derived from Probate Code § 827(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
Subchapter I. Sale of Real Estate: Public Auction

§ 1158.401. Required Notice

(a) A public sale of real estate of an estate shall be made at public auction. Except as otherwise provided by Section 1158.403(c), the guardian of the estate shall advertise a public auction 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 reference described by Subsection (a)(1) is not required to contain field notes, but if the real estate to be sold is rural property, the reference must include:
   (1) the name of the original survey of the real estate;
   (2) the number of acres the real estate consists of;
   (3) the location of the real estate in the county; and
   (4) the name by which the real estate is generally known.

Derived from Probate Code § 828(a).


§ 1158.402. Completion of Auction

A public auction of real estate of an estate shall be completed on the bid of the highest bidder.

Derived from Probate Code § 828(b).


§ 1158.403. Time and Place of Auction

(a) Except as provided by Subsection (c), a public auction of real estate of an estate shall be held at:
   (1) the courthouse door in the county in which the real estate is located, or if the real estate is located in more than one county, the courthouse door in any county in which the real estate is located; or
   (2) another place in a county described by Subdivision (1) at which auctions of real estate are specifically authorized to be held as designated by the commissioners court of the county under Section 51.002(a), Property Code.

(b) Except as otherwise provided by this subsection, the auction must occur between 10 a.m. and 4 p.m. on the first Tuesday of the month after publication of notice has been completed. If the first Tuesday of the month occurs on January 1 or July 4, the auction must occur between 10 a.m. and 4 p.m. on the first Wednesday of the month.

(c) If the court considers it advisable, the court may order the auction to be held in the county in which the proceedings are pending, in which event notice shall be published both in that county and in the county in which the real estate is located.

Derived from Probate Code § 828(c).


§ 1158.404. Continuance of Auction

(a) A public auction 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 auction each day.

(b) A continued auction must occur within the hours prescribed by Section 1158.403(b).

(c) The continuance of an auction under this section shall be shown in the report made to the court under Section 1158.551.

Derived from Probate Code § 828(d).


§ 1158.405. Failure of Bidder to Comply

(a) If a person who successfully bids on real estate of the guardianship estate offered at public auction fails to comply with the terms of the bid, the property shall be readvertised and auctioned without any further order.

(b) The person defaulting on a bid as described by Subsection (a) is liable for payment to the guardian of the estate, for the estate’s benefit, of:
   (1) 10 percent of the amount of the bid; and
   (2) the amount of any deficiency in price on the second auction.

(c) The guardian shall recover the amounts under Subsection (b) by suit in any court in the county in which the auction was held that has jurisdiction over the amount claimed.

Derived from Probate Code § 828(e).


Subchapter J. Sale of Real Estate: Contract for Private Sale

§ 1158.451. Terms of Sale

The guardian of the estate may enter into a contract for the private sale of real estate of the estate made in the manner the court directs in the order of sale. Unless the court directs otherwise, additional advertising, notice, or citation concerning the sale is not required.

Derived from Probate Code § 829.

Subchapter K. Sale of Easement or Right-of-Way

§ 1158.501. Authorization
The guardian may sell and convey easements and rights-of-way on, under, and over the land of a guardianship estate that is being administered under court order, regardless of whether the sale proceeds are required to pay charges or claims against the estate, or for other lawful purposes.

Derived from Probate Code § 830.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.502. Procedure
The procedure for the sale of an easement or right-of-way authorized under Section 1158.501 is the same as the procedure provided by law for a private sale of real property of a ward by contract.

Derived from Probate Code § 830.

Subchapter L. Approval of Sale of Real Property and Transfer of Title

§ 1158.551. Report
A successful bid or private contract for the sale of estate real property shall be reported to the court ordering the sale not later than the 30th day after the date the bid is made or the property is placed under contract. The report must:

(1) be in writing, sworn to, and filed with the clerk;
(2) include:
   (A) the date of the order of sale;
   (B) a description of the property being sold;
   (C) the time and place of the auction or date the property is placed under contract;
   (D) the purchaser’s name;
   (E) the amount of the successful bid or the purchase price for each parcel of property or interest in the parcel of property auctioned or placed under contract;
   (F) the terms of the sale;
   (G) whether the proposed sale of the property was made at public auction or by contract; and
   (H) whether the purchaser is ready to comply with the order of sale; and
(3) be noted on the guardianship docket.

Derived from Probate Code § 832.

§ 1158.552. Action of Court on Report
After the expiration of five days from the date a report is filed under Section 1158.551, the court shall:

(1) consider the manner in which the auction described in the report was held or the contract described in the report was entered into;
(2) consider evidence in support of or against the report; and
(3) determine the sufficiency or insufficiency of the guardian’s general bond, if any has been required and given.

Derived from Probate Code § 834.

§ 1158.553. Approval of Sale When Bond Not Required
If the guardian of the estate of a ward is not required by Subtitle D to give a general bond, the court may approve the sale of estate real property in the manner provided by Section 1158.556(a) if the court finds that the sale is satisfactory and made in accordance with law.

Derived from Probate Code § 833.

§ 1158.554. Sufficiency of Bond
(a) If the guardian of an estate is required by Subtitle D to give a general bond, before the court approves 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 approve the sale as provided by Section 1158.556(a).
(c) If the court finds that the general bond is insufficient, the court may not approve the sale until the general bond is increased to the amount required by the court, or an additional bond is given, and approved by the court.
(d) An increase in the amount of the general bond, or the additional bond, as applicable under Subsection (c), must be equal to the sum of:
   (1) the amount for which the real estate is sold; and
   (2) any additional amount the court finds necessary and sets for the estate’s protection.

Derived from Probate Code § 833.

§ 1158.555. Increased or Additional Bond Not Required
Notwithstanding Sections 1158.554(c) and (d), if the real estate sold is encumbered by a lien to secure a claim against the estate and is sold to the owner or holder of the
§ 1158.556. Approval or Disapproval Order
(a) If the court is satisfied that the proposed sale of real property reported under Section 1158.551 is 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) approving the sale;
(2) showing conformity with this chapter;
(3) detailing the terms of the sale; and
(4) authorizing the guardian of the estate to convey the property on the purchaser's compliance with the terms of the sale.
(b) If the court is not satisfied that the proposed sale of real property is for a fair price, properly made, and in conformity with law, the court shall enter an order setting aside the bid or contract and ordering a new sale to be made, if necessary.
(c) The court’s action in approving or disapproving a report under Section 1158.551 has the effect of a final judgment. Any person interested in the guardianship estate or in the sale is entitled to have an order entered under this section reviewed as in other final judgments in probate proceedings.
Derived from Probate Code § 834.

§ 1158.557. Deed
Real estate of an estate that is sold shall be conveyed by a proper deed that refers to and identifies the court order approving the sale. The deed:
(1) vests in the purchaser all right and title of the estate to, and all interest of the estate in, the property; and
(2) is prima facie evidence that the sale has met all applicable requirements of the law.
Derived from Probate Code § 835.

§ 1158.558. Delivery of Deed
(a) After the court has approved a sale and the purchaser has complied with the terms of the sale, the guardian 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 a purchase money note must be expressly retained in the deed and may not be waived; and
(2) before actual delivery of the deed to the purchaser, the purchaser shall execute and deliver to the guardian of the estate a vendor’s lien note, with or without personal sureties as ordered by the court, and a deed of trust or mortgage on the property as additional security for the payment of the note.
(c) On completion of the transaction, the guardian of the estate shall promptly file and record the deed of trust or mortgage in the appropriate records in the county in which the land is located.
Derived from Probate Code § 833.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.559. Damages; Removal
(a) If the guardian of the estate neglects to comply with Section 1158.558, including to file the deed of trust securing a lien in the proper county, the guardian and the sureties on the guardian’s bond shall, after complaint and citation, be held liable for the use of the estate and for all damages resulting from the guardian’s neglect, and the court may remove the guardian.
(b) Damages under this section may be recovered in a court of competent jurisdiction.
Derived from Probate Code § 837.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter M. Procedure on Failure to Apply for Sale

§ 1158.601. Failure to Apply for Sale
If the guardian of the estate of a ward neglects to apply for an order to sell sufficient property to pay charges and claims against the estate that have been allowed and approved or established by suit, an interested person, on written application, may have the guardian cited to appear and make a full exhibit of the estate’s condition and show cause why a sale of the property should not be ordered.
Derived from Probate Code § 826.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.602. Court Order
On hearing an application under Section 1158.601, if the court is satisfied that a sale of estate property is necessary or advisable to satisfy the charges and claims described by Section 1158.601, the court shall enter an order of sale as provided by Section 1158.256.
Derived from Probate Code § 826.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
Subchapter N. Purchase of Estate Property by Guardian

§ 1158.651. General Prohibition on Purchase

Except as otherwise provided by Section 1158.652 or 1158.653, the guardian of the estate of a ward may not purchase, directly or indirectly, any estate property sold by the guardian or any co-representative of the guardian.

Derived from Probate Code § 831(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.652. Exception: Executory Contract

The guardian of the estate of a ward may purchase estate property in compliance with the terms of a written executory contract signed by the ward before the ward became incapacitated, including:

(1) a contract for deed;
(2) an earnest money contract;
(3) a buy/sell agreement; and
(4) a stock purchase or redemption agreement.

Derived from Probate Code § 831(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.653. Exception: Best Interest of Estate

(a) The guardian of the estate may purchase estate property on the court’s determination that the sale is in the estate’s best interest.

(b) In the case of an application filed by the guardian of the estate of a ward, the court shall appoint an attorney ad litem to represent the ward with respect to the sale.

(c) The court may require notice for a sale made under this section.

Derived from Probate Code § 831(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.654. Purchase in Violation of Subchapter

(a) If the guardian of the estate of a ward purchases estate property in violation of this subchapter, a person interested in the estate may file a written complaint with the court in which the guardianship proceedings are pending.

(b) On service of citation on the guardian on a complaint filed under Subsection (a) and after hearing and proof, the court shall:

(1) declare the sale void;
(2) set aside the sale; and
(3) order the reconveyance of the property to the estate.

(c) The court shall adjudge against the guardian all costs of the sale, protest, and suit, if found necessary.

Derived from Probate Code § 831(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter O. Partition of Ward’s Interest in Real Estate

§ 1158.701. Partition by Agreement

(a) The guardian of the estate of a ward may agree to a partition of real estate in which the ward owns an interest in common with one or more other part owners if, in the opinion of the guardian, it is in the best interests of the ward’s estate to partition the real estate.

(b) An agreement under Subsection (a) is subject to the approval of the court in which the guardianship proceeding is pending.

Derived from Probate Code § 853(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.702. Application for Approval of Partition Agreement

(a) When a guardian has reached an agreement with the other part owners on how to partition real estate as described by Section 1158.701, the guardian shall file with the court in which the guardianship proceedings are pending an application to have the agreement approved by the court.

(b) The application must:

(1) describe the real estate to be divided;
(2) state why it is in the best interests of the ward’s estate to partition the real estate; and
(3) show that the proposed partition agreement is fair and just to the ward’s estate.

Derived from Probate Code § 853(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.703. Hearing

(a) The county clerk shall immediately call to the attention of the judge of the court in which the guardianship proceeding is pending the filing of an application required by Section 1158.702. The judge shall designate a day to hear the application.

(b) The application must remain on file at least 10 days before any orders are entered.

(c) The judge may continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

Derived from Probate Code § 853(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.704. Order

If the judge is satisfied that the proposed partition of the real estate is in the best interests of the ward’s estate, the court shall enter an order approving the partition and directing the guardian to execute the necessary agreement for the purpose of implementing the order and partition.

Derived from Probate Code § 853(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
§ 1158.705. Partition Without Court Approval; Ratification of Partition Agreement

(a) If a guardian, without court approval as provided by this subchapter, executes or intends to execute an agreement to partition any real estate in which the ward has an interest, the guardian shall file with the court in which the guardianship proceedings are pending an application for the approval and ratification of the partition agreement.

(b) The application must:
   (1) refer to the agreement in a manner in which the court can fully understand the nature of the partition and the real estate being divided; and
   (2) state that, in the opinion of the guardian, the agreement is fair and just to the ward’s estate and is in the best interests of the estate.

(c) On the filing of an application under Subsection (a), the court shall hold a hearing on the application as provided by Section 1158.703. The court shall enter an order ratifying and approving the partition agreement if the court is of the opinion that the partition is:
   (1) fairly made; and
   (2) in the best interests of the ward’s estate.

(d) On ratification and approval, the partition is effective and binding as if originally executed after a court order.

Derived from Probate Code § 853(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.706. Partition by Suit

(a) The guardian of the estate of a ward may bring a suit in the court in which the guardianship proceeding is pending for the partition of any real estate that the ward owns in common with one or more other part owners if the guardian is of the opinion that it is in the best interests of the ward’s estate that the real estate be partitioned.

(b) The court may enter an order partitioning the real estate to the owner of the real estate, if after hearing the suit, the court is satisfied that the partition of the real estate is necessary.

Derived from Probate Code § 853(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1159. Renting Estate Property

Subchapter A. Rental and Return of Estate Property

§ 1159.001. Renting Estate Property Without Court Order

§ 1159.002. Renting Estate Property With Court Order

§ 1159.003. Estate Property Rented on Credit

§ 1159.004. Condition of Returned Estate Property

§ 1159.005. Complaint for Failure to Rent

Subchapter B. Report on Rented Estate Property

§ 1159.051. Reports Concerning Rentals

§ 1159.052. Court Action on Report

Chapter 1159. Renting Estate Property

Subchapter A. Rental and Return of Estate Property

§ 1159.001. Renting Estate Property Without Court Order

(a) The guardian of an estate, without a court order, may rent any of the estate property for one year or less, at public auction or privately, as is considered to be in the best interests of the estate.

(b) On the sworn complaint of any person interested in the estate, the court shall require a guardian of the estate who, without a court order, rents estate property to account to the estate for the reasonable value of the rent of the property, to be ascertained by the court on satisfactory evidence.

Derived from Probate Code §§ 839, 840.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1159.002. Renting Estate Property With Court Order

(a) The guardian of an estate may file a written application with the court setting forth the property the guardian seeks to rent. If the proposed rental period is one year or more, the guardian of the estate shall file a written application with the court setting forth the property the guardian seeks to rent.

(b) If the court finds that granting an application filed under Subsection (a) is in the interests of the estate, the court shall grant the application and issue an order that:
   (1) describes the property to be rented; and
   (2) states whether the property will be rented at public auction or privately, whether for cash or on credit, and if on credit, the extent of the credit and the period for which the property may be rented.

(c) If, under Subsection (b), the court orders property to be rented at public auction, the court shall prescribe whether notice of the auction shall be published or posted.

Derived from Probate Code § 841.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1159.003. Estate Property Rented on Credit

(a) Possession of estate property rented on credit may not be delivered until the renter executes and delivers to the guardian of the estate a note with good personal security for the amount of the rent. If the property is delivered without the guardian receiving the required security, the guardian and the sureties on the guardian’s bond are liable for the full amount of the rent.
(b) Subsection (a) does not apply to a rental that is paid in installments in advance of the period to which the installments relate.

Derived from Probate Code § 843.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1159.004. Condition of Returned Estate Property

(a) Estate property that is rented must be returned to the estate’s possession in as good a condition, except for reasonable wear and tear, as when the property was rented.

(b) The guardian of the estate shall:

(1) ensure that rented estate property is returned in the condition required by Subsection (a);

(2) report to the court any damage to, or loss or destruction of, estate property rented under this chapter; and

(3) ask the court for the authority to take any necessary action.

(c) A guardian who fails to act as required by this section and the sureties on the guardian’s bond are liable to the estate for any loss or damage suffered as a result of the guardian’s failure.

Derived from Probate Code § 844.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1159.005. Complaint for Failure to Rent

(a) A person interested in a guardianship may:

(1) file a written and sworn complaint in the court in which the estate is pending; and

(2) have the guardian of the estate cited to appear and show cause why the guardian did not rent any estate property.

(b) The court, on hearing the complaint, shall issue an order that is in the best interests of the estate.

Derived from Probate Code § 842.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Report on Rented Estate Property

§ 1159.051. Reports Concerning Rentals

(a) A guardian of an estate who rents estate property with an appraised value of $3,000 or more, not later than the 30th day after the date of the rental, shall file with the court a sworn and written report stating:

(1) the property rented and the property’s appraised value;

(2) the date the property was rented and whether the rental occurred at public auction or privately;

(3) the name of the person renting the property;

(4) the rental amount;

(5) whether the rental was for cash or on credit; and

(6) if the rental was on credit, the length of time, the terms, and the security received for the credit.

(b) A guardian of an estate who rents estate property with an appraised value of less than $3,000 may report the rental in the next annual or final account that must be filed as required by law.

Derived from Probate Code § 845.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1159.052. Court Action on Report

(a) After the fifth day after the date the report of the rental is filed, the court shall:

(1) examine the report; and

(2) by order approve and confirm the rental if the court finds the rental just and reasonable.

(b) If the court disapproves the rental, the guardianship is not bound and the court may order another offering for rent of the property in the same manner and subject to the provisions of this chapter.

(c) If the court approves the rental and it later appears that, by reason of the fault of the guardian of the estate, the property was not rented for the property’s reasonable value, the court shall have the guardian and the sureties on the guardian’s bond appear and show cause why the reasonable value of the rental of the property should not be adjudged against the guardian or sureties.

Derived from Probate Code § 846.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1160. Matters Relating to Mineral Properties

Subchapter A. General Provisions

§ 1160.001. Definitions

Subchapter B. Mineral Leases After Public Notice

§ 1160.051. Authorization for Leasing of Minerals

§ 1160.052. Lease Application

§ 1160.053. Scheduling of Hearing on Application; Continuance

§ 1160.054. Notice of Hearing on Application

§ 1160.055. Requirements Regarding Order and Notice Mandatory

§ 1160.056. Hearing on Application; Order

§ 1160.057. Making of Lease on Granting of Application

§ 1160.058. Bond Requirements

§ 1160.059. Term of Lease Binding

§ 1160.060. Amendment of Lease Regarding Effect of Shut-In Gas Well

Subchapter C. Mineral Leases at Private Sale

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1160.101. Authorization for Leasing of Minerals at Private Sale
§ 1160.102. Action of Court if Public Advertising Not Required

Subchapter D. Pooling or Unitization of Royalties or Minerals
§ 1160.151. Authorization for Pooling or Unitization
§ 1160.152. Pooling or Unitization Application
§ 1160.153. Notice Not Required
§ 1160.154. Hearing on Application
§ 1160.155. Action of Court and Contents of Order

Subchapter E. Special Ancillary Instruments That May be Executed Without Court Order
§ 1160.201. Authorization for Execution of Certain Instruments

Subchapter F. Procedure if Guardian of Estate Neglects to Apply for Authority
§ 1160.251. Application to Show Cause
§ 1160.252. Hearing on Application
§ 1160.253. Order
§ 1160.254. Procedure to be Followed After Entry of Order

Chapter 1160. Matters Relating to Mineral Properties

Subchapter A. General Provisions
§ 1160.001. Definitions

In this chapter:
(1) “Gas” includes all liquid hydrocarbons in the gaseous phase in the reservoir.
(2) “Land” includes minerals or an interest in minerals in place.
(3) “Mineral development” includes exploration for, whether by geophysical or other means, drilling for, mining for, development of, operations in connection with, production of, and saving of oil, other liquid hydrocarbons, gas, gaseous elements, sulphur, metals, and all other minerals, whether solid or otherwise.
(4) “Property” includes land, minerals in place, whether solid, liquid, or gaseous, and an interest of any kind in the property, including a royalty interest, owned by an estate.

Derived from Probate Code § 847(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Mineral Leases After Public Notice

§ 1160.051. Authorization for Leasing of Minerals

(a) The court in which a guardianship proceeding is pending may authorize the guardian, acting solely under a court order, to make, execute, and deliver a lease, with or without a unitization clause or pooling provision, providing for the exploration for and development and production of oil, other liquid hydrocarbons, gas, metals and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(b) A lease authorized by Subsection (a) must be made and entered into under and in conformity with this subchapter.

Derived from Probate Code §§ 847(b), (c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.052. Lease Application

(a) The guardian of the estate shall file with the court a written application for authority to lease estate property for mineral exploration and development, with or without a pooling provision or unitization clause.

(b) The lease application must:
(1) describe the property fully enough by reference to the amount of acreage, the survey name or number, or the abstract number, or by another method that adequately identifies the property and the property’s location in the county in which the property is located;
(2) specify the interest thought to be owned by the estate, if less than the whole, but request authority to include all of the interest owned by the estate if that is the intention; and
(3) set out the reasons the estate property described in the application should be leased.

(c) The lease application is not required to set out or suggest:
(1) the name of any proposed lessee; or
(2) the terms, provisions, or form of any desired lease.

Derived from Probate Code § 847(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.053. Scheduling of Hearing on Application; Continuance

(a) Immediately after the filing of a lease application under Section 1160.052, the county clerk shall call the filing of the application to the court’s attention. The judge shall promptly make and enter a brief order designating the time and place for hearing the application.

(b) If the hearing is not held at the time originally designated by the court or by a timely continuance order entered, the hearing shall be continued automatically without further notice to the same time on the following day, other than Sundays and holidays on which the county
(1) hear a lease application filed under Section 1160.052; and
(2) require proof as to the necessity or advisability of leasing for mineral development the property described in the application and the notice.
(b) The judge shall enter an order authorizing one or more leases affecting and covering the property or portions of property described in the lease application, with or without pooling provisions or unitization clauses, and with or without cash consideration if considered by the court to be in the best interest of the estate, if the judge is satisfied that:
(1) the application is in proper form;
(2) notice has been given in the manner and for the time required by law;
(3) proof of necessity or advisability of leasing is sufficient; and
(4) the application should be granted.
(c) The order must contain:
(1) the name of the lessee;
(2) any actual cash consideration to be paid by the lessee;
(3) a finding that the requirements of Subsection (b) have been satisfied; and
(4) one of the following findings:
(A) a finding that the guardian of the estate is exempt by law from giving a bond; or
(B) if the guardian of the estate is required to give a bond, a finding as to whether the guardian’s general bond on file is sufficient to protect the personal property on hand, including any cash bonus to be paid.
(d) If the court finds the general bond insufficient to meet the requirements of Subsection (c)(4)(B), the order must show the amount of increased or additional bond required to cover the deficiency.
(e) A complete exhibit copy, either written or printed, of each authorized lease must be set out in, attached to, incorporated by reference in, or made part of the order. The exhibit copy must show:
(1) the name of the lessee;
(2) the date of the lease;
(3) an adequate description of the property being leased;
(4) any delay rental to be paid to defer commencement of operations; and
(5) all other authorized terms and provisions.
(f) If the date of a lease does not appear in the exhibit copy of the lease or in the order, the date of the order is considered for all purposes to be the date of the lease.
(g) If the name or address of a depository bank for receiving rental is not shown in the exhibit copy of a lease, the guardian of the estate may insert the name or address, or cause the name or address to be inserted, in the lease at the time of the lease’s execution or at any other time agreeable to the lessee or the lessee’s successors or assigns.

§ 1160.056. Hearing on Application; Order
(a) At the time and place designated for the hearing under Section 1160.053(a), or at the time to which the hearing is continued as provided by Section 1160.053(b), the judge shall:
§ 1160.057. Making of Lease on Granting of Application

(a) If on the hearing of a lease application filed under Section 1160.052 the court grants the application, the guardian of the estate may make the lease, as evidenced by the exhibit copies, in accordance with the order.

(b) The lease must be made not later than the 30th day after the date of the order unless an extension is granted by the court on a sworn application showing good cause.

(c) It is not necessary for the judge to make an order confirming the lease.

Derived from Probate Code § 847(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.058. Bond Requirements

(a) Unless the guardian of the estate is not required to give a general bond, a lease for which a cash consideration is required, although ordered, executed, and delivered, is not valid:

(1) unless the order authorizing the lease makes a finding with respect to the general bond; and

(2) if the general bond has been found insufficient, until:

(A) the bond has been increased or an additional bond given with the sureties required by law, as required by the order; and

(B) the increased or additional bond has been approved by the judge and filed with the clerk of the court in which the proceeding is pending.

(b) If two or more leases of different land are authorized by the same order, the general bond shall be increased or additional bonds given to cover all of the leases.

Derived from Probate Code § 847(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.059. Term of Lease Binding

A lease executed and delivered in compliance with this subchapter is valid and binding on the property or interest owned by the estate and covered by the lease for the full term provided by the lease, subject only to the lease’s terms and conditions, even if the primary term extends beyond the date the estate is closed in accordance with law. For the lease to be valid and binding under this subchapter, the authorized primary term of the lease may not exceed five years, subject to the lease terms and provisions extending the lease beyond the primary term by:

(1) paying production;

(2) bona fide drilling or reworking operations, whether in or on the same well or wells or an additional well or wells without a cessation of operations of more than 60 consecutive days before production has been restored or obtained; or

(3) a shut-in gas well.

Derived from Probate Code § 847(k).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.060. Amendment of Lease Regarding Effect of Shut-In Gas Well

(a) An oil, gas, and mineral lease executed by a guardian of an estate may be amended by an instrument that provides that a shut-in gas well on the land covered by the lease or on land pooled with all or part of the land covered by the lease continues the lease in effect after the lease’s five-year primary term.

(b) The guardian of the estate, with court approval, shall execute the instrument according to the terms and conditions prescribed in the instrument.

Derived from Probate Code § 847(m).


Subchapter C. Mineral Leases at Private Sale

§ 1160.101. Authorization for Leasing of Minerals at Private Sale

(a) Notwithstanding the mandatory requirements for setting a time and place for hearing a lease application under Subchapter B and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at a private sale without public notice or advertising if, in the court’s opinion, facts are set out in the application sufficient to show that it would be more advantageous to the estate that a lease be made privately and without compliance with those mandatory requirements.

(b) Leases authorized under this subchapter may include pooling provisions or unitization clauses as in other cases.

Derived from Probate Code § 848(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.102. Action of Court if Public Advertising Not Required

(a) At any time after the fifth day and before the 11th day after the filing date of an application to lease at a private sale and without an order setting the hearing time and place, the court shall:

(1) hear the application;

(2) inquire into the manner in which the proposed lease has been or will be made; and

(3) hear evidence for or against the application.

(b) If the court is satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms and has been or will be properly made in conformity with law, the court shall enter an order authorizing the execution of the lease without the necessity of advertising, notice, or citation. The order must comply in all other respects with the requirements essential to the validity of mineral leases set out in Subchapter B as if advertising or notice were required.
(c) An order that confirms a lease made at a private sale does not need to be issued. A lease made at a private sale is not valid until any increased or additional bond required by the court has been approved by the court and filed with the court clerk.

Derived from Probate Code § 848(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Pooling or Unitization of Royalties or Minerals

§ 1160.151. Authorization for Pooling or Unitization

(a) If an existing lease on property owned by an estate being administered does not adequately provide for pooling or unitization, the court in which the proceeding is pending may, in the manner provided by this subchapter, authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas, gaseous elements, and other minerals or any one or more of them owned by the estate to agreements that provide for the operation of areas as a pool or unit for the exploration for, development of, and production of all of those minerals, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement; and

(2) it is in the best interests of the estate to execute the agreement.

(b) An agreement authorized under Subsection (a) may provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit are considered for all purposes to be the conduct of operations on or production from each separately owned tract in the pool or unit;

(2) any lease covering any part of the area committed to a pool or unit continues in effect in its entirety as long as:

(A) oil, gas, or other minerals subject to the agreement are produced in paying quantities from any part of the pooled or unitized area;

(B) operations are conducted as provided in the lease on any part of the pooled or unitized area; or

(C) there is a shut-in gas well on any part of the pooled or unitized area, if the presence of the shut-in gas well is a ground for continuation of the lease under the terms of the lease;

(3) the production allocated to each tract included in a pool or unit shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled on the tract;

(4) the royalties provided for on production from any tract or portion of a tract within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement;

(5) the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any land or leases committed to the agreement, and that royalties are not required to be paid on the gas returned; and

(6) gas obtained from other sources or another tract of land may be injected into a formation underlying any land or lease committed to the agreement, and that royalties are not required to be paid on the gas injected when the gas is produced from the unit.

Derived from Probate Code §§ 849(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.152. Pooling or Unitization Application

(a) The guardian of the estate shall file with the county clerk of the county in which the guardianship proceeding is pending a written application for authority to:

(1) enter into a pooling or unitization agreement supplementing, amending, or otherwise relating to any existing lease covering property owned by the estate; or

(2) commit royalties or other interests in minerals, whether or not subject to a lease, to a pooling or unitization agreement.

(b) The pooling or unitization application must also:

(1) sufficiently describe the property as required in an original lease application;

(2) describe briefly the lease to which the interest of the estate is subject; and

(3) set out the reasons the proposed agreement concerning the property should be entered into.

(c) A copy of the proposed agreement must be attached to the pooling or unitization application and made a part of the application by reference.

(d) The agreement may not be recorded in the judge’s guardianship docket.

(e) Immediately after the pooling or unitization application is filed, the clerk shall call the application to the judge’s attention.

Derived from Probate Code § 849(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.153. Notice Not Required

Notice by advertising, citation, or otherwise of the filing of a pooling or unitization application under Section 1160.152 is not required.

Derived from Probate Code § 849(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.154. Hearing on Application

(a) The judge may hold a hearing on a pooling or unitization application filed under Section 1160.152 at
any time agreeable to the parties to the proposed agreement.

(b) The judge shall hear evidence and determine to the judge’s satisfaction whether it is in the best interests of the estate that the proposed agreement be authorized.

(c) The hearing may be continued from day to day and from time to time as the court finds necessary.

Derived from Probate Code § 849(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.155. Action of Court and Contents of Order

(a) The court shall enter an order setting out the court’s findings and authorizing execution of the proposed pooling or unitization agreement, with or without payment of cash consideration according to the agreement, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the pool or unit;

(2) it is in the best interests of the estate that the agreement be executed; and

(3) the agreement conforms substantially with the permissible provisions of Section 1160.151.

(b) If cash consideration is to be paid for the pooling or unitization agreement, the court shall make a finding as to the necessity of increased or additional bond as a finding is made in the making of leases on payment of the cash bonus for the lease. The agreement is not valid until any required increased or additional bond has been approved by the judge and filed with the clerk.

(c) If the effective date of the pooling or unitization agreement is not stipulated in the agreement, the effective date of the agreement is the date of the court’s order.

Derived from Probate Code § 850.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Special Ancillary Instruments That May be Executed Without Court Order

§ 1160.201. Authorization for Execution of Certain Instruments

As to any mineral lease or pooling or unitization agreement, executed on behalf of an estate before September 1, 1993, pursuant to provisions, or executed by a former owner of land, minerals, or royalty affected by the lease or agreement, the guardian of the estate being administered, without further court order and without consideration, may execute:

(1) division orders;

(2) transfer orders;

(3) instruments of correction;

(4) instruments designating depository banks for the receipt of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of the lease; or

(5) similar instruments relating to the lease or agreement and the property covered by the lease or agreement.

Derived from Probate Code § 851.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.251. Application to Show Cause

If a guardian of an estate neglects to apply for authority to subject estate property to a lease for mineral development, pooling, or unitization, or authority to commit royalty or another interest in minerals to pooling or unitization, any person interested in the estate may, on written application filed with the county clerk, have the guardian cited to show cause why it is not in the best interests of the estate to make the lease or enter into an agreement.

Derived from Probate Code § 851.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.252. Hearing on Application

(a) The county clerk shall immediately call the filing of an application under Section 1160.251 to the attention of the judge of the court in which the guardianship proceeding is pending.

(b) The judge shall set a time and place for a hearing on the application, and the guardian of the estate shall be cited to appear and show cause why the execution of a lease or agreement described by Section 1160.251 should not be ordered.

Derived from Probate Code § 851.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.253. Order

On a hearing conducted under Section 1160.252 and if satisfied from the evidence that it would be in the best interests of the estate, the court shall enter an order requiring the guardian of the estate to file an application to subject the estate property to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to pooling or unitization, as appropriate.

Derived from Probate Code § 851.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.254. Procedure to be Followed After Entry of Order

After entry of an order under Section 1160.253, the procedures prescribed with respect to an original lease

Electronic copy available at: https://ssrn.com/abstract=4537861
application, or with respect to an original application for authority to commit royalty or minerals to pooling or unitization, shall be followed.

Derived from Probate Code § 851.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1161. Investments and Loans of Estates of Wards

Subchapter A. General Provisions
§ 1161.001. Guardian’s Duty to Keep Estate Invested
(a) The guardian of the estate shall invest any funds and assets of a ward’s estate available for investment except:
(1) if the court orders otherwise under this chapter; or
(2) as provided by Subsection (b).
(b) The guardian of the estate is not required to invest funds that are immediately necessary for the education, support, and maintenance of the ward or any others the ward supports as provided by this title.

Derived from Probate Code § 854(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.002. Standard for Management and Investment of Estate
(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing a ward’s estate, a guardian of the estate shall exercise the judgment and care under the circumstances then prevailing that a person of ordinary prudence, discretion, and intelligence exercises in the management of the person’s own affairs, considering the probable income from, probable increase in value of, and safety of the person’s capital. The guardian shall also consider all other relevant factors, including:
(1) the anticipated costs of supporting the ward;
(2) the ward’s age, education, current income, ability to earn additional income, net worth, and liabilities;
(3) the nature of the ward’s estate; and
(4) any other resources reasonably available to the ward.

(b) In determining whether a guardian of the estate has exercised the standard of investment required by this section with respect to an investment decision, the court shall, absent fraud or gross negligence, consider the investment of all the estate assets over which the guardian has management or control, rather than considering the prudence of only a single investment made by the guardian.

Derived from Probate Code §§ 855(a), (a-1).

Subchapter B. Procedure for Making Investments or Loans or Retaining Estate Assets
§ 1161.051. Procedure in General
§ 1161.052. Court Action
§ 1161.053. Applicability of Procedure to Certain Assets
§ 1161.054. Inapplicability of Procedure to Certain Assets

Subchapter C. Investments in Certain Insurance or Annuities
§ 1161.101. Definition
§ 1161.102. Authority to Invest in Certain Insurance or Annuities
§ 1161.103. Investment Requirements
§ 1161.104. Procedure for Investing in Insurance or Annuities
§ 1161.105. Continuation of Preexisting Policies or Annuities
§ 1161.106. Control and Ownership of Policies or Annuities

Subchapter D. Investments in Real Estate
§ 1161.151. Authority to Invest in Real Estate; Procedure and Requirements
§ 1161.152. Court Authorization to Make Investments
§ 1161.153. Court Approval of Contracts Required

Subchapter E. Loans and Security for Loans
§ 1161.201. Inapplicability of Subchapter
§ 1161.202. Authority to Make Loans
§ 1161.203. Loan Requirements
§ 1161.204. Guardian’s Duty to Report Loan to Court
§ 1161.205. Guardian’s Liability

Chapter 1161. Investments and Loans of Estates of Wards

Subchapter A. General Provisions
§ 1161.001. Guardian’s Duty to Keep Estate Invested
(a) The guardian of the estate shall invest any funds and assets of a ward’s estate available for investment except:
(1) if the court orders otherwise under this chapter; or
(2) as provided by Subsection (b).
(b) The guardian of the estate is not required to invest funds that are immediately necessary for the education, support, and maintenance of the ward or any others the ward supports as provided by this title.

Derived from Probate Code § 854(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.002. Standard for Management and Investment of Estate
(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing a ward’s estate, a guardian of the estate shall exercise the judgment and care under the circumstances then prevailing that a person of ordinary prudence, discretion, and intelligence exercises in the management of the person’s own affairs, considering the probable income from, probable increase in value of, and safety of the person’s capital. The guardian shall also consider all other relevant factors, including:
(1) the anticipated costs of supporting the ward;
(2) the ward’s age, education, current income, ability to earn additional income, net worth, and liabilities;
(3) the nature of the ward’s estate; and
(4) any other resources reasonably available to the ward.

(b) In determining whether a guardian of the estate has exercised the standard of investment required by this section with respect to an investment decision, the court shall, absent fraud or gross negligence, consider the investment of all the estate assets over which the guardian has management or control, rather than considering the prudence of only a single investment made by the guardian.

Derived from Probate Code §§ 855(a), (a-1).
§ 1161.003. Investments That Meet Standard for Investment

A guardian of the estate is considered to have exercised the standard required by Section 1161.002(a) with respect to investing the ward’s estate if the guardian invests in the following:

1. Bonds or other obligations of the United States;
2. Tax-supported bonds of this state;
3. Except as limited by Sections 1161.004(b) and (c), tax-supported bonds of a county, district, political subdivision, or municipality in this state;
4. If the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation, shares or share accounts of:
   A. A state savings and loan association or savings bank that has its main office or a branch office in this state; or
   B. A federal savings and loan association or savings bank that has its main office or a branch office in this state;
5. Collateral bonds that:
   A. Are issued by a company incorporated under the laws of this state that has a paid-in capital of $1 million or more;
   B. Are a direct obligation of the company; and
   C. Are specifically secured by first mortgage real estate notes or other securities pledged with a trustee;
6. Interest-bearing time deposits that may be withdrawn on or before one year after demand in a bank that does business in this state, if the payment of the time deposits is insured by the Federal Deposit Insurance Corporation; or
7. An ABLE account established in accordance with the Texas Achieving a Better Life Experience (ABLE) Program under Subchapter J, Chapter 54, Education Code.

§ 1161.004. Restrictions on Investment in Certain Bonds

(a) In this section, “net funded debt” means the total funded debt less sinking funds on hand.

(b) A guardian of the estate may purchase the bonds of a county, district, or political subdivision other than a municipality only if the net funded debt of the county, district, or political subdivision that issues the bonds does not exceed 10 percent of the assessed value of taxable property in the county, district, or political subdivision.

(c) A guardian of the estate may purchase the bonds of a municipality only if the net funded debt of the municipality does not exceed 10 percent of the assessed value of taxable property in the municipality less that part of the debt incurred for acquisition or improvement of revenue-producing utilities, the revenue of which is not pledged to support other obligations of the municipality.

(d) Subsections (b) and (c) do not apply to bonds issued for road purposes in this state under Section 52, Article III, Texas Constitution, that are supported by a tax unlimited as to rate or amount.

§ 1161.005. Modification or Elimination of Duty or Standard

On a showing by clear and convincing evidence that the action is in the best interests of the ward and the ward’s estate, the court may modify or eliminate:

1. The duty of the guardian of the estate to keep the estate invested; or
2. The standard required by Section 1161.002(a) with regard to investments of estate assets.

§ 1161.006. Retention of Certain Assets

(a) Without court approval a guardian of the estate may retain until the first anniversary of the date of receipt any property received into the guardianship estate at the estate’s inception or added to the estate by gift, devise, inheritance, mutation, or increase, without regard to diversification of investments and without liability for any depreciation or loss resulting from the retention.

(b) The guardian shall care for and manage the retained assets as a person of ordinary prudence, discretion, and intelligence would in caring for and managing the person’s own affairs.

(c) On application and a hearing, the court may issue an order authorizing the guardian to continue retaining the property after the period prescribed by Subsection (a) if the retention is an element of the guardian’s investment plan as provided by Subchapter B.

§ 1161.007. Hearing to Protect Estate

(a) The court may, on the court’s own motion or on written request of a person interested in the guardianship, cite the guardian of the estate to appear and show cause why the estate is not invested or not properly invested.

(b) Except as provided by Subsection (d), at any time after giving notice to all parties, the court may conduct a hearing to protect the estate.

(c) On the hearing of the court’s motion or a request made under this section, the court shall issue an order the court considers to be in the ward’s best interests.

(d) The court may not hold a final hearing on whether the estate is properly invested until the 31st day after the...
date the guardian is originally cited to appear under Subsection (a).

(c) The court may appoint a guardian ad litem for the limited purpose of representing the ward’s best interests with respect to the investment of the ward’s property at a hearing under this section.

Derived from Probate Code §§ 854(b), (c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.008. Liability of Guardian and Guardian’s Surety

(a) In addition to any other remedy authorized by law, if the guardian of the estate fails to invest or lend estate assets in the manner provided by this chapter, the guardian and the guardian’s surety are liable for the principal and the greater of:

(1) the highest legal rate of interest on the principal during the period the guardian failed to invest or lend the assets; or

(2) the overall return that would have been made on the principal if the principal were invested in the manner provided by this chapter.

(b) In addition to the liability under Subsection (a), the guardian and the guardian’s surety are liable for attorney’s fees, litigation expenses, and costs related to a proceeding brought to enforce this section.

Derived from Probate Code § 863.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Procedure for Making Investments or Loans or Retaining Estate Assets

§ 1161.051. Procedure in General

(a) Not later than the 180th day after the date the guardian of the estate qualifies as guardian or another date specified by the court, the guardian shall:

(1) invest estate assets according to Section 1161.003; or

(2) file a written application with the court for an order:

(A) authorizing the guardian to:

(i) develop and implement an investment plan for estate assets;

(ii) invest in or sell securities under an investment plan developed under Subparagraph (i);

(iii) declare that one or more estate assets must be retained, despite being underproductive with respect to income or overall return; or

(iv) loan estate funds, invest in real estate or make other investments, or purchase a life, term, or endowment insurance policy or an annuity contract; or

(B) modifying or eliminating the guardian’s duty to invest the estate.

(b) The court may approve an investment plan under Subsection (a)(2) without a hearing.

Derived from Probate Code §§ 855B(a), (a-1).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.052. Court Action

(a) If the court determines that the action requested in the application is in the best interests of the ward and the ward’s estate, the court shall issue an order:

(1) granting the authority requested in the application; or

(2) modifying or eliminating the guardian’s duty to keep the estate invested.

(b) An order under Subsection (a) must state in reasonably specific terms:

(1) the nature of the investment, investment plan, or other action requested in the application and authorized by the court, including any authority to invest in and sell securities in accordance with the investment plan’s objectives;

(2) when an investment must be reviewed and reconsidered by the guardian; and

(3) whether the guardian must report the guardian’s review and recommendations to the court.

(c) A citation or notice is not necessary to invest in or sell securities under an investment plan authorized by the court under this section.

Derived from Probate Code §§ 855B(b), (e).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.053. Applicability of Procedure to Certain Assets

The fact that an account or other asset is the subject of a specific or general gift under a ward’s will, if any, or that a ward has funds, securities, or other property held with a right of survivorship does not prevent:

(1) the guardian of the estate from taking possession and control of the asset or closing the account; or

(2) the court from authorizing an action or modifying or eliminating a duty with respect to the possession, control, or investment of the account or other asset.

Derived from Probate Code § 855B(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.054. Inapplicability of Procedure to Certain Assets

(a) The procedure prescribed by this subchapter does not apply if a different procedure is prescribed for an investment or sale by a guardian.

(b) A guardian of the estate is not required to follow the procedure prescribed by this subchapter with respect
to an investment or sale that is specifically authorized by other law.

Derived from Probate Code § 855B(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Investments in Certain Insurance or Annuities

§ 1161.101. Definition

In this subchapter, “authorized life insurance company” means a stock or mutual legal reserve life insurance company that:

(1) is licensed by the Texas Department of Insurance to transact the business of life insurance in this state; and
(2) maintains the legal reserve required by the laws of this state.

Derived from Probate Code § 857(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.102. Authority to Invest in Certain Insurance or Annuities

Subject to this subchapter, the guardian of the estate may invest in life, term, or endowment insurance policies, in annuity contracts, or in both, issued by an authorized life insurance company or administered by the Department of Veterans Affairs.

Derived from Probate Code § 857(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.103. Investment Requirements

(a) An insurance policy in which the guardian of the estate invests must be issued on the life of:

(1) the ward;
(2) the ward’s parent, spouse, child, sibling, or grandparent; or
(3) another person in whose life the ward may have an insurable interest.

(b) The ward must be the annuitant in the annuity contract in which the guardian of the estate invests.

(c) Only the ward, the ward’s estate, or the ward’s parent, spouse, child, sibling, or grandparent may be a beneficiary of the insurance policy or of the death benefit of the annuity contract.

(d) The insurance policy or annuity contract may not be amended or changed during the ward’s life and disability, except on application to and order of the court.

Derived from Probate Code §§ 857(c), (l).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.104. Procedure for Investing in Insurance or Annuities

(a) Before the guardian of the estate may invest in life, term, or endowment insurance policies, in annuity contracts, or in both, the guardian must first apply to the court for an order that authorizes the investment.

(b) The application must include a report that shows:

(1) in detail the estate’s financial condition on the date the application is filed;
(2) the name and address of the authorized life insurance company from which the insurance policy or annuity contract is to be purchased and that:
   (A) the company is licensed by the Texas Department of Insurance to transact that business in this state on the date the application is filed; or
   (B) the policy or contract is administered by the Department of Veterans Affairs;
(3) a statement of:
   (A) the face amount and plan of the insurance policy sought to be purchased; and
   (B) the amount, frequency, and duration of the annuity payments to be provided by the annuity contract sought to be purchased;
(4) a statement of the amount, frequency, and duration of the premiums required by the insurance policy or annuity contract; and
(5) a statement of the cash value of the insurance policy or annuity contract at the policy’s or contract’s anniversary nearest the ward’s 21st birthday, assuming that all premiums to the anniversary are paid and that there is no indebtedness against the policy or contract incurred in accordance with its terms.

(c) If satisfied by the application and the evidence presented at the hearing that it is in the ward’s interests to grant the application, the court shall enter an order granting the application.

Derived from Probate Code §§ 857(c), (l).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.105. Continuation of Preexisting Policies or Annuities

(a) A life, term, or endowment insurance policy or an annuity contract owned by the ward when a proceeding for the appointment of a guardian of the estate is commenced may be continued in full effect if it is shown that:

(1) the company issuing the policy or contract is an authorized life insurance company; or
(2) the policy or contract is administered by the Department of Veterans Affairs.

(b) All future premiums for an insurance policy or annuity contract described by Subsection (a) may be paid out of surplus funds of the ward’s estate.

(c) The guardian of the estate must apply to the court for an order to:

(1) continue the policy, the contract, or both according to the existing terms of the policy or contract; or
§ 1161.106. Control and Ownership of Policies or Annuities

(a) Control of an insurance policy or an annuity contract and of the incidents of ownership in the policy or contract is vested in the guardian of the estate during the ward’s life and disability.

(b) A right, benefit, or interest that accrues under an insurance policy or annuity contract subject to this subchapter becomes the ward’s exclusive property when the ward’s disability is terminated.

Derived from Probate Code §§ 857(f), (j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Investments in Real Estate

§ 1161.151. Authority to Invest in Real Estate; Procedure and Requirements

(a) The guardian of the estate may invest estate assets in real estate if:

(1) the guardian believes that the investment is in the ward’s best interests;

(2) there are on hand sufficient additional assets to provide a return sufficient to provide for:

(A) the education, support, and maintenance of the ward and others the ward supports, if applicable; and

(B) the maintenance, insurance, and taxes on the real estate in which the guardian wishes to invest;

(3) the guardian files a written application with the court requesting a court order authorizing the guardian to make the desired investment and stating the reasons why, in the guardian’s opinion, the investment would be for the ward’s benefit; and

(4) the court issues an order authorizing the investment as provided by this subchapter.

(b) If the ward’s money is invested in real estate, the title to the real estate shall be made to the ward. The guardian shall inventory, appraise, manage, and account for the real estate as the guardian does with other real estate of the ward.

Derived from Probate Code §§ 860(a), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.152. Court Authorization to Make Investments

(a) If the guardian of the estate files an application under this subchapter, the judge shall investigate as necessary to obtain all the facts concerning the investment.

(b) Subject to Subsection (c), on the hearing of the application, the court shall issue an order that authorizes the guardian to make the investment if the court is satisfied that the investment benefits the ward. The order must specify the investment to be made and contain other directions the court considers advisable.

(c) The judge may not issue an opinion or order on the application until after the 10th day after the date the application is filed.

Derived from Probate Code § 860(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.153. Court Approval of Contracts Required

(a) If a contract is made for the investment of money in real estate under a court order, the guardian of the estate shall report the contract in writing to the court.

(b) The court shall inquire fully into the contract. If satisfied that the investment will benefit the ward’s estate and that the title of the real estate is valid and unencumbered, the court may approve the contract and authorize the guardian to pay money in performance of the contract.

(c) The guardian may not pay any money on the contract until the contract is approved by a court order to that effect.

Derived from Probate Code § 860(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Loans and Security for Loans

§ 1161.201. Inapplicability of Subchapter

This subchapter does not apply to an investment in a debenture, bond, or other publicly traded debt security.

Derived from Probate Code § 858(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.202. Authority to Make Loans

(a) If, at any time, the guardian of the estate has on hand money belonging to the ward in an amount that provides a return that is more than is necessary for the education, support, and maintenance of the ward and others the ward supports, if applicable, the guardian may lend the money for a reasonable interest rate.

(b) The guardian of the estate is considered to have obtained a reasonable interest rate for a loan for purposes of Subsection (a) if the interest rate is at least equal to 120 percent of the applicable short-term, midterm, or long-term interest rate under Section 7520, Internal Revenue
§ 1161.203. Loan Requirements

(a) Except as provided by Subsection (b), the guardian of the estate shall take as collateral the borrower’s note for the money that is loaned, secured by:

(1) a mortgage with a power of sale on unencumbered real estate located in this state worth at least twice the amount of the note; or

(2) collateral notes secured by vendor’s lien notes.

(b) The guardian may purchase vendor’s lien notes if at least one-half has been paid in cash or its equivalent on the land for which the notes were given.

(c) Except as provided by Subsection (d), a guardian of the estate who lends estate money may not pay or transfer any money to consummate the loan until the guardian:

(1) submits to a reputable attorney for examination all bonds, notes, mortgages, abstracts, and other documents relating to the loan; and

(2) receives a written opinion from the attorney stating that the documents under Subdivision (1) are regular and that the title to relevant bonds, notes, or real estate is clear.

(d) A guardian of the estate may obtain a mortgagee’s title insurance policy on any real estate loan instead of an abstract and attorney’s opinion under Subsection (c).

(e) The borrower shall pay attorney’s fees for any legal services required by Subsection (c).

Derived from Probate Code §§ 858(a) (part), (d), (e), (f), 861.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.204. Guardian’s Duty to Report Loan to Court

(a) Not later than the 30th day after the date the guardian of the estate loans money from the estate, the guardian shall file with the court a written report, accompanied and verified by an affidavit, stating fully the facts related to the loan.

(b) This section does not apply to a loan made in accordance with a court order.

Derived from Probate Code §§ 858(g), 862.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.205. Guardian’s Liability

(a) Except as provided by Subsection (b), a guardian of the estate who loans estate money with the court’s approval on security approved by the court is not personally liable if the borrower is unable to repay the money and the security fails.

(b) If the guardian committed fraud or was negligent in making or managing the loan, including in collecting the loan, the guardian and the guardian’s surety are liable for the loss sustained by the guardianship estate as a result of the fraud or negligence.

Derived from Probate Code § 858(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1162. Tax-Motivated, Charitable, Nonprofit, and Other Gifts

Subchapter A. Certain Gifts and Transfers

§ 1162.001. Authority to Establish Estate or Other Transfer Plan

§ 1162.002. Estate or Other Transfer Plan: Contents and Modification

§ 1162.003. Notice of Application for Establishment of Estate or Other Transfer Plan

§ 1162.004. Authority to Make Periodic Gifts

§ 1162.005. Application for Inspection of Certain Documents

§ 1162.006. Notice of Application for Inspection

§ 1162.007. Hearing on Application for Inspection; Inspection

§ 1162.008. Guardian Ad Litem

Subchapter B. Charitable and Nonprofit Gifts

§ 1162.051. Application to Make Gift

§ 1162.052. Hearing on Application to Make Gift

§ 1162.053. Order Authorizing Gift

Chapter 1162. Tax-Motivated, Charitable, Nonprofit, and Other Gifts

Subchapter A. Certain Gifts and Transfers

§ 1162.001. Authority To Establish Estate or Other Transfer Plan

On application of the guardian of the estate or any interested person, after the posting of notice and hearing, and on a showing that the ward will probably remain incapacitated during the ward’s lifetime, the court may enter an order that authorizes the guardian to apply the principal or income of the ward’s estate that is not required for the support of the ward or the ward’s family during the ward’s lifetime toward the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward’s estate, or to transfer a portion of the ward’s estate as necessary to qualify the ward for government benefits and only to the extent allowed by applicable state or federal laws, including rules, regarding those benefits. On the ward’s behalf, the court may authorize the guardian to...
Texas Estates Code

make gifts or transfers described by this section, outright or in trust, of the ward’s property to or for the benefit of:

(1) an organization to which charitable contributions may be made under the Internal Revenue Code of 1986 and in which it is shown the ward would reasonably have an interest;

(2) the ward’s spouse, descendant, or other person related to the ward by blood or marriage who is identifiable at the time of the order;

(3) a devisee under the ward’s last validly executed will, trust, or other beneficial instrument, if the instrument exists; and

(4) a person serving as guardian of the ward, if the person is eligible under Subdivision (2) or (3).

Derived from Probate Code § 865(a).

Amended by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Section 1162.002. Estate or Other Transfer Plan: Contents and Modification

(a) The person making an application to the court under Section 1162.001 shall:

(1) outline the proposed estate or other transfer plan; and

(2) state all the benefits that are to be derived from the plan.

(b) The application must indicate that the planned disposition is consistent with the ward’s intentions, if the ward’s intentions can be ascertained. If the ward’s intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation, the qualification for government benefits, and the partial distribution of the ward’s estate as provided by Sections 1162.001 and 1162.004.

(c) A subsequent modification of an approved plan may be made by similar application to the court.

Derived from Probate Code §§ 865(b) & (d).


Section 1162.003. Notice of Application for Establishment of Estate or Other Transfer Plan

A person who makes an application to the court under Section 1162.001 shall send [mail] notice of the application by a qualified delivery method [certified mail] to:

(1) all devisees under a will, trust, or other beneficial instrument relating to the ward’s estate;

(2) the ward’s spouse;

(3) the ward’s dependents; and

(4) any other person as directed by the court.

Derived from Probate Code § 865(e).


§ 1162.004. Authority to Make Periodic Gifts

(a) In an order entered under Section 1162.001, the court may authorize the guardian to make, without subsequent application to or order of the court, gifts as provided by that section on an annual or other periodic basis if the court finds it to be in the best interest of the ward and the ward’s estate.

(b) The court, on the court’s own motion or on the motion of a person interested in the welfare of the ward, may modify or set aside an order entered under Subsection (a) if the court finds that the ward’s financial condition has changed in such a manner that authorizing the guardian to make gifts of the estate on a continuing basis is no longer in the best interest of the ward and the ward’s estate.

Derived from Probate Code § 865(f).

Amended by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.005. Application for Inspection of Certain Documents

(a) On the filing of an application under Section 1162.001 and for the purpose of establishing an estate plan under that section, the guardian of the ward’s estate may apply to the court for an order to seek an in camera inspection of a copy of a will, codicil, trust, or other estate planning instrument of the ward as a means of obtaining access to the instrument.

(b) An application filed under this section must:

(1) be sworn to by the guardian;

(2) list each instrument requested for inspection; and

(3) state one or more reasons supporting the necessity to inspect each requested instrument for the purpose described by Subsection (a).

Derived from Probate Code §§ 865A(a), (b).

Amended by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.006. Notice of Application for Inspection

(a) A person who files an application under Section 1162.005 shall send a copy of the application to:

(1) each person who has custody of an instrument listed in the application;

(2) the ward’s spouse;

(3) the ward’s dependents;

(4) all devisees under a will, trust, or other beneficial instrument relating to the ward’s estate; and

(5) any other person as directed by the court.

(b) Notice required by Subsection (a) must be sent [delivered] by a qualified delivery method.

(1) registered or certified mail to a person described by Subsection (a)(1), and

(2) certified mail to a person described by Subsection (a)(2), (3), (4), or (5).

Derived from Probate Code §§ 865A(c), (d).

Amended by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
§ 1162.007. Hearing on Application for Inspection; Inspection

(a) After the 10th day after the date on which the applicant complies with the notice requirement under Section 1162.006, the applicant may request that a hearing be held on the application. Notice of the date, time, and place of the hearing must be given by the applicant to each person described by Section 1162.006(a)(1) when the court sets a date for a hearing on the application.

(b) After the conclusion of a hearing on the application for inspection and on a finding that good cause exists for an in camera inspection of a requested instrument, the court shall direct the person that has custody of the requested will, codicil, trust, or other estate planning instrument to deliver a copy of the instrument to the court for in camera inspection only. After conducting an in camera inspection of the instrument, the court, if good cause exists, shall release all or part of the instrument to the applicant only for the purpose described by the purpose described by Section 1162.005(a).

(c) An attorney does not violate the attorney-client privilege solely by complying with a court order to release an instrument subject to this section and Sections 1162.005 and 1162.006. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subsection.

Derived from Probate Code §§ 865A(d), (e), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.008. Guardian Ad Litem

The court may appoint a guardian ad litem for the ward or an interested party at any stage of proceedings under this subchapter if it is considered advisable for the protection of the ward or the interested party.

Derived from Probate Code §§ 865(c), 865A(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Charitable and Nonprofit Gifts

§ 1162.051. Application to Make Gift

The guardian of the estate may at any time file with the county clerk the guardian’s sworn, written application requesting from the court in which the guardianship is pending an order authorizing the guardian to contribute from the income of the ward’s estate the specific amount of money stated in the application to one or more designated:

(1) corporations, trusts, or community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; or

(2) nonprofit federal, state, county, or municipal projects operated exclusively for public health or welfare.

Derived from Probate Code § 866(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.052. Hearing on Application to Make Gift

(a) The county clerk shall immediately call the filing of an application under Section 1162.051 to the attention of the judge of the court.

(b) The judge shall designate, by written order filed with the clerk, a day to hear the application. The application must remain on file for at least 10 days before the hearing is held.

(c) The judge may postpone or continue the hearing from time to time until the judge is satisfied concerning the application.

Derived from Probate Code § 866(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.053. Order Authorizing Gift

On the conclusion of a hearing under Section 1162.052, the court may enter an order authorizing the guardian to make a contribution from the income of the ward’s estate to a particular donee designated in the application and order if the court is satisfied and finds from the evidence that:

(1) the amount of the proposed contribution stated in the application will probably not exceed 20 percent of the net income of the ward’s estate for the current calendar year;

(2) the net income of the ward’s estate for the current calendar year exceeds, or probably will exceed, $25,000;

(3) the full amount of the contribution, if made, will probably be deductible from the ward’s gross income in determining the net income of the ward under applicable federal income tax laws and rules;

(4) the condition of the ward’s estate justifies a contribution in the proposed amount; and

(5) the proposed contribution is reasonable in amount and is for a worthy cause.

Derived from Probate Code § 866(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1163. Annual Account and Other Exhibits and Reports

Subchapter A. Annual Account and Other Exhibits by Guardian of the Estate

§ 1163.001. Initial Annual Account of Estate

§ 1163.002. Annual Account Required Until Estate Closed
§ 1163.001. Initial Annual Account of Estate

(a) Not later than the 60th day after the first anniversary of the date the guardian of the estate of a ward qualifies, unless the court extends that period, the guardian shall file with the court an account consisting of a written exhibit made under oath that:

(1) lists all claims against the estate presented to the guardian during the period covered by the account; and

(2) specifies:

(A) which claims have been:

(i) allowed by the guardian;

(ii) paid by the guardian; or

(iii) rejected by the guardian and the date the claims were rejected; and

(B) which claims have been the subject of a lawsuit and the status of that lawsuit.

(b) The account must:

(1) show all property that has come to the guardian’s knowledge or into the guardian’s possession that was not previously listed or inventoried as the ward’s property;

(2) show any change in the ward’s property that was not previously reported;

(3) provide a complete account of receipts and disbursements for the period covered by the account, including the source and nature of the receipts and disbursements, with separate listings for principal and income receipts;

(4) provide a complete, accurate, and detailed description of:

(A) the property being administered;

(B) the condition of the property and the use being made of the property; and

(C) if rented, the terms on which and the price for which the property was rented;

(5) show the cash balance on hand and the name and location of the depository where the balance is kept;

(6) show any other cash held in a savings account or other manner that was deposited subject to court order and the name and location of the depository for that cash; and

(7) provide a detailed description of the personal property of the estate that shows how and where the property is held for safekeeping.

(c) For bonds, notes, and other securities, the description required by Subsection (b)(7) must include:

(1) the names of the obligor and obligee or, if payable to bearer, a statement that the bond, note, or other security is payable to bearer;

(2) the date of issue and maturity;

(3) the interest rate;

(4) the serial number or other identifying numbers;

(5) the manner in which the property is secured; and

(6) other information necessary to fully identify the bond, note, or other security.

Derived from Probate Code § 741(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
(c) The description of property sufficiently described in an inventory or previous account may be made in the annual account by reference to the property.

Derived from Probate Code § 741(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.003. Supporting Vouchers and Other Documents Attached to Account

(a) The guardian of the estate shall attach to each annual account:

(1) a voucher for each item of credit claimed in the account or, to support the item in the absence of the voucher, other evidence satisfactory to the court;

(2) an official letter from the bank or other depository where the money on hand of the estate or ward is deposited that shows the amounts in general or special deposits; and

(3) proof of the existence and possession of:
   (A) securities owned by the estate or shown by the account; and
   (B) other assets held by a depository subject to court order.

(b) An original voucher submitted to the court may on application be returned to the guardian after approval of the annual account.

Derived from Probate Code § 741(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.004. Method of Proof for Securities and Other Assets

(a) The proof required by Section 1163.003(a)(3) must be by:

(1) an official letter from the bank or other depository where the securities or other assets are held for safekeeping, and if the depository is the guardian, the official letter must be signed by a representative of the depository other than the depository verifying the annual account;

(2) a certificate of an authorized representative of a corporation that is surety on the guardian’s bonds;

(3) a certificate of the clerk or a deputy clerk of a court of record in this state; or

(4) an affidavit of any other reputable person designated by the court on request of the guardian or other interested party.

(b) A certificate or affidavit described by Subsection (a) must:

(1) state that the affiant has examined the assets that the guardian exhibited to the affiant as assets of the estate for which the annual account is made;

(2) describe the assets by reference to the account or in another manner that sufficiently identifies the assets exhibited; and

(3) state the time and the place the assets were exhibited.

(c) Instead of attaching a certificate or an affidavit, the guardian may exhibit the securities to the judge of the court, who shall endorse on the annual account, or include in the judge’s order with respect to the account, a statement that the securities shown to the judge as on hand were exhibited to the judge and that the securities were the same as those shown in the account, or note any variance. If the securities are exhibited at a location other than where the securities are deposited for safekeeping, that exhibit is at the guardian’s own expense and risk.

(d) The judge of the court may require:

(1) additional evidence of the existence and custody of the securities and other personal property as the judge considers proper; and

(2) the guardian at any time to exhibit the securities to the judge or another person designated by the judge at the place where the securities are held for safekeeping.

Derived from Probate Code §§ 741(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.005. Verification of Account and Statement Regarding Taxes and Status as Guardian

(a) The guardian of the estate shall attach to an account the guardian’s affidavit stating:

(1) that the account contains a correct and complete statement of the matters to which the account relates;

(2) that the guardian has paid the bond premium for the next accounting period;

(3) that the guardian has filed all tax returns of the ward due during the accounting period;

(4) that the guardian has paid all taxes the ward owed during the accounting period, the amount of the taxes, the date the guardian paid the taxes, and the name of the governmental entity to which the guardian paid the taxes; and

(5) if the guardian is a private professional guardian, a guardianship program, or the Health and Human Services Commission, whether the guardian or an individual certified under Subchapter C, Chapter 155, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian’s behalf, is or has been the subject of an investigation conducted by the Judicial Branch Certification Commission during the accounting period.

(b) If on the filing of the account the guardian of the estate has failed on the ward’s behalf to file a tax return or pay taxes due, the guardian shall attach to the account a description of the taxes and the reasons for the guardian’s failure to file the return or pay the taxes.

Derived from Probate Code § 741(e) & (f).

§ 1163.006. Waiver of Account Filing
If the ward’s estate produces negligible or fixed income, the court may waive the filing of annual accounts and may permit the guardian to:
(1) receive all estate income and apply the income to the support, maintenance, and education of the ward; and
(2) account to the court for the estate income and corpus when the estate must be closed.
Derived from Probate Code § 741(g).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Action on Annual Account

§ 1163.051. Filing and Consideration of Annual Account
(a) The guardian of the estate shall file an annual account with the county clerk. The county clerk shall note the filing on the judge’s docket.
(b) An annual account must remain on file for 10 days after the date the account is filed before being considered by the judge. After the expiration of that period, the judge shall consider the account and may continue the hearing on the account until fully advised on all account items.
(c) The court may not approve the annual account unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under court order has been proven as required by law.
Derived from Probate Code §§ 742(a), (b), (c), (d), (e).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.052. Correction and Approval of Annual Account
(a) If an annual account is found to be incorrect, the account shall be corrected.
(b) The court by order shall approve an annual account that is corrected to the satisfaction of the court and shall act with respect to unpaid claims in accordance with Sections 1163.053 and 1163.054.
(c) The guardian of the person shall file a sworn affidavit that contains:
(1) the guardian’s current name, address, and telephone number;
(2) the ward’s date of birth and current name, address, telephone number, and age;
(3) a description of the type of home in which the ward resides, which shall be described as:
(A) the ward’s own home;
(B) a nursing home;
(C) a guardian’s home;
(D) a foster home;
(E) a boarding home;
(F) a relative’s home, in which case the description must specify the relative’s relationship to the ward;
(G) a hospital or medical facility; or
(H) another type of residence;
(4) statements indicating:
(A) the length of time the ward has resided in the present home;
Derived from Probate Code § 742(f).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.053. Order for Payment of Claims in Full
After approval of an annual account as provided by Section 1163.052, if it appears to the court from the exhibit or other evidence that the estate is wholly solvent and that the guardian has sufficient funds to pay every claim against the estate, the court shall order immediate payment of all claims allowed and approved or established by judgment.
Derived from Probate Code § 742(f).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.054. Order for Pro Rata Payment of Claims
After approval of an annual account as provided by Section 1163.052, if it appears to the court from the account or other evidence that the funds on hand are not sufficient to pay all claims against the estate or if the estate is insolvent and the guardian has any funds on hand, the court shall order the funds to be applied:
(1) first to the payment of any unpaid claims having a preference in the order of their priority; and
(2) then to the pro rata payment of the other claims allowed and approved or established by final judgment, considering also:
(A) claims that were presented not later than the first anniversary of the date letters of guardianship were granted; and
(B) claims that are in litigation or on which a lawsuit may be filed.
Derived from Probate Code § 742(f).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Annual Report by Guardian of the Person

§ 1163.101. Annual Report Required
(a) Once each year for the duration of the guardianship, a guardian of the person shall file with the court a report that contains the information required by this section.
(b) The guardian of the person shall file a sworn, written report that shows each receipt and disbursement for:
(1) the support and maintenance of the ward;
(2) when necessary, the education of the ward; and
(3) when authorized by court order, the support and maintenance of the ward’s dependents.
(c) The guardian of the person shall file a sworn affidavit that contains:
(1) the guardian’s current name, address, and telephone number;
(2) the ward’s date of birth and current name, address, telephone number, and age;
(3) a description of the type of home in which the ward resides, which shall be described as:
(A) the ward’s own home;
(B) a nursing home;
(C) a guardian’s home;
(D) a foster home;
(E) a boarding home;
(F) a relative’s home, in which case the description must specify the relative’s relationship to the ward;
(G) a hospital or medical facility; or
(H) another type of residence;
(4) statements indicating:
(A) the length of time the ward has resided in the present home;
(B) the reason for a change in the ward’s residence, if a change in the ward’s residence has occurred in the past year;
(C) the date the guardian most recently saw the ward;
(D) how frequently the guardian has seen the ward in the past year;
(E) whether the guardian has possession or control of the ward’s estate;
(F) whether the ward’s mental health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;
(G) whether the ward’s physical health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;
(H) whether the ward has regular medical care; and
(I) the ward’s treatment or evaluation by any of the following persons during the past year, including the person’s name and a description of the treatment:
(i) a physician;
(ii) a psychiatrist, psychologist, or other mental health care provider;
(iii) a dentist;
(iv) a social or other caseworker; or
(v) any other individual who provided treatment; and
(J) supports and services the ward has received or is currently receiving, as described by Subsection (d);
(5) a description of the ward’s activities during the past year, including recreational, educational, social, and occupational activities, or a statement that no activities were available or that the ward was unable or refused to participate in activities;
(6) the guardian’s evaluation of:
(A) the ward’s living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;
(B) whether the ward is content or unhappy with the ward’s living arrangements; and
(C) unmet needs of the ward;
(7) a statement indicating whether the guardian’s power should be increased, decreased, or unaltered, including an explanation if a change is recommended;
(8) a statement indicating that the guardian has paid the bond premium for the next reporting period;
(9) if the guardian is a private professional guardian, a guardianship program, or the Health and Human Services Commission, whether the guardian or an individual certified under Subchapter C, Chapter 155, Government Code, who is providing guardianship services to the ward and who is filing the affidavit on the guardian’s behalf, is or has been the subject of an investigation conducted by the Judicial Branch Certification Commission during the preceding year; and
(10) any additional information the guardian desires to share with the court regarding the ward, including:
(A) whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code; and
(B) if applicable, the number of times the guardian has filed for emergency detention and the dates of the applications for emergency detention.
(d) The statements in the sworn affidavit regarding the ward’s supports and services under Subsection (c)(4)(J) must include:
(1) information regarding actions the guardian is taking to encourage the development of the ward’s maximum self-reliance and independence;
(2) a list of all the supports and services the ward is currently receiving, including whether the ward:
(A) has a representative payee;
(B) receives services from a local mental health authority or local intellectual and developmental disability authority;
(C) receives any supports and services under Medicaid, including under a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n); and
(D) receives any supports and services informally;
(3) where the ward receives the supports and services described by Subdivision (2);
(4) who provides the supports and services described by Subdivision (2);
(5) a list of the supports and services the ward previously received or attempted to receive and why the support or service was discontinued or not received; and
(6) the guardian’s opinion on whether the ward has the capacity or sufficient capacity with supports and services for complete restoration of the ward’s capacity or modification of the guardianship under Chapter 1202 or the reasons why the ward does not have the capacity or sufficient capacity with supports and services for complete restoration of the ward’s capacity or modification of the guardianship under Chapter 1202.
Derived from Probate Code § 743(a), (b), (g).
§ 1163.1011. Use of Unsworn Declaration in Lieu of Sworn Declaration or Affidavit for Filing Annual Report

(a) A guardian of the person who is required to file an annual report under Section 1163.101 with the court, including a guardian filing the annual report electronically, may use an unsworn declaration made as provided by this section instead of the sworn declaration or affidavit required by Section 1163.101.

(b) An unsworn declaration authorized by this section must be:

(1) in writing; and
(2) subscribed by the person making the declaration as true under penalty of perjury.

(c) The form of an unsworn declaration authorized by this section must be substantially as follows:

I, (insert name of guardian of the person), the guardian of the person for (insert name of ward) in ____ County, Texas, declare under penalty of perjury that the foregoing is true and correct.

Executed on (insert date)

___________________________________________
(signature)

(d) An unsworn declaration authorized by Section 132.001, Civil Practice and Remedies Code, may not be used instead of a written sworn declaration or affidavit required by Section 1163.101.

New.


§ 1163.102. Reporting Period

(a) Except as provided under Subsection (b), an annual report required by Section 1163.101 must cover a 12-month reporting period that begins on the date or the anniversary of the date the guardian of the person qualifies to serve.

(b) The court may change a reporting period for purposes of this subchapter but may not extend a reporting period so that it covers more than 12 months.

(c) Each report is due not later than the 60th day after the date the reporting period ends.

Derived from Probate Code §§ 734(g), (h), (i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.103. Report in Case of Deceased Ward

If the ward is deceased, the guardian of the person shall provide the court with the date and place of death, if known, instead of the information about the ward otherwise required to be provided in the annual report.

Derived from Probate Code § 743(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.104. Approval of Report

(a) If the judge is satisfied that the facts stated in the report are true, the court shall approve the report.

(b) Unless the judge is satisfied that the facts stated in the report are true, the judge shall issue orders necessary for the ward’s best interests.

(c) The court on the court’s own motion may waive the costs and fees related to the filing of a report approved under Subsection (a).

Derived from Probate Code § 743(d), (e), & (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.105. Attorney Not Required

A guardian of the person may complete and file the report required under this subchapter without the assistance of an attorney.

Derived from Probate Code § 743(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Penalties

§ 1163.151. Penalty for Failure to File Required Account, Exhibit, or Report

(a) If a guardian does not file an account, an exhibit, a report of the guardian of the person, or another report required by this title, any person interested in the estate, on written complaint filed with the court clerk, or the court on the court’s own motion, may have the guardian cited to appear and show cause why the guardian should not file the account, exhibit, or report.

(b) On hearing, the court may:

(1) order the guardian to file the account, exhibit, or report; and
(2) unless good cause is shown for the failure to file:

(A) revoke the guardian’s letters of guardianship;
(B) fine the guardian in an amount not to exceed $1,000; or
(C) revoke the guardian’s letters of guardianship and fine the guardian in an amount not to exceed $1,000.

Derived from Probate Code § 744.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1164. Liability of Guardian or Guardianship Program

§ 1164.001. Liability of Guardian

§ 1164.002. Immunity of Guardianship Program

Chapter 1164. Liability of Guardian or Guardianship Program
§ 1164.001. Liability of Guardian

A person is not liable to a third person solely because the person has been appointed guardian of a ward under this title.

Derived from Probate Code § 673.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1164.002. Immunity of Guardianship Program

A guardianship program is not liable for civil damages arising from an action taken or omission made by a person while providing guardianship services to a ward on behalf of the guardianship program, unless the action or omission was:

(1) willfully wrongful;
(2) taken or made:
   (A) with conscious indifference to or reckless disregard for the safety of the ward or another;
   (B) in bad faith; or
   (C) with malice; or
(3) grossly negligent.

Derived from Probate Code § 674.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF GUARDIANSHIP

Chapter 1201. Evaluation of Guardianship

Subchapter A. Review of Guardianship

§ 1201.001. Determining Guardian’s Performance of Duties

The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that relate to the guardian’s ward.

Derived from Probate Code § 671(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1201.002. Annual Examination of Guardianship; Bond of Guardian

(a) At least annually, the judge shall examine the well-being of each ward of the court and the solvency of the bond of the guardian of the ward’s estate.

(b) If after examining the solvency of a guardian’s bond as provided by Subsection (a) the judge determines that the guardian’s bond is not sufficient to protect the ward or the ward’s estate, the judge shall require the guardian to execute a new bond.

(c) The judge shall notify the guardian and the sureties on the guardian’s bond as provided by law.

Derived from Probate Code § 671(b), (c), & (d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1201.003. Judge’s Liability

A judge is liable on the judge’s bond to those damaged if damage or loss results to a guardianship or ward because of the gross neglect of the judge to use reasonable diligence in the performance of the judge’s duty under this subchapter.

Derived from Probate Code § 671(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1201.004. Identifying Information

(a) The court may request an applicant or court-appointed fiduciary to produce other information identifying an applicant, ward, or guardian, including a social security number, in addition to identifying information the applicant or fiduciary is required to produce under this title.

(b) The court shall maintain any information required under this section, and the information may not be filed with the clerk.

Derived from Probate Code § 671(e).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Annual Determination to Continue, Modify, or Terminate Guardianship

§ 1201.051. Applicability

This subchapter does not apply to a guardianship that is created only because it is necessary for a person to have a guardian appointed to receive funds from a governmental source.
§ 1201.052. Annual Determination; Hearing

(a) To determine whether a guardianship should be continued, modified, or terminated, the court in which the guardianship proceeding is pending:

(1) shall review annually each guardianship in which the application to create the guardianship was filed after September 1, 1993; and

(2) may review annually any other guardianship.

(b) A court in which the guardianship proceeding is pending may conduct a hearing under this section.

§ 1201.053. Method of Determination

(a) In reviewing a guardianship under Section 1201.052, a statutory probate court shall review any [may]:

(1) any report prepared by:

(A) a court investigator under Section 1054.153 or 1202.054;

(B) a guardian ad litem under Section 1202.054; or

(C) a court visitor under Section 1054.104;

(2) conduct a hearing; or

(3) review an annual account prepared under Subchapter A, Chapter 1163; and

(b) A court that is not a statutory probate court:

(1) shall review:

(A) any account prepared under Subchapter A, Chapter 1163; and

(B) any report prepared under Subchapter C, Chapter 1163 or Subsection (a-1); and

(2) may use any other method to review a guardianship under Section 1201.052 that is determined appropriate by the court according to the court’s caseload and available resources.

§ 1201.054. Form of Determination

A determination under this subchapter must be in writing and filed with the clerk.
§ 1202.054. Informal Request for Order by Ward; Investigation and Report
§ 1202.055. Restriction on Subsequent Application Regarding Capacity or Modification

**Subchapter C. Representation of Ward in Proceeding for Complete Restoration of Ward’s Capacity or Modification of Guardianship**

§ 1202.101. Appointment of Attorney Ad Litem
§ 1202.102. Compensation for Attorney Ad Litem and Guardian Ad Litem
§ 1202.103. Retention and Compensation of Attorney for Ward

**Subchapter D. Hearing, Evidence, and Orders in Proceeding for Complete Restoration of Ward’s Capacity or Modification of Guardianship**

§ 1202.151. Evidence and Burden of Proof at Hearing
§ 1202.152. Health Care Provider’s (Physician’s) Letter or Certificate Required
§ 1202.1521. Physician’s Letter or Certificate: Requirement if Alleged Incapacity Based on Intellectual Disability
§ 1202.1521. Letter or Certificate: Requirements if Alleged Incapacity Based on Intellectual Disability
§ 1202.153. Findings Required
§ 1202.154. General Requirements for Order
§ 1202.155. Additional Requirements for Order Restoring Ward’s Capacity
§ 1202.156. Additional Requirements for Order Modifying Guardianship
§ 1202.157. Additional Requirements for Order Dismissing Application

**Subchapter E. Restoration of Rights on Termination of Guardianship**

§ 1202.201. Removal of Firearm Disability on Complete Restoration of Ward’s Capacity

**Chapter 1202. Modification or Termination of Guardianship**

**Subchapter A. Termination and Settlement of Guardianship**

§ 1202.001. Term of Guardian or Guardianship
   (a) Unless otherwise discharged as provided by law, a guardian remains in office until the estate is closed.
   (b) A guardianship shall be settled and closed when the ward:
   (1) dies and, if the ward was married, the ward’s spouse qualifies as survivor in community;
   (2) is found by the court to have full capacity, or sufficient capacity with supports and services, to care for himself or herself and to manage the ward’s property;
   (3) is no longer a minor; or
   (4) no longer must have a guardian appointed to receive funds due the ward from any governmental source.

   (c) Except for an order issued under Section 1101.153(a-1), an order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

   (d) A request for an order under this section may be made by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

   (e) If a nonresident guardian of a nonresident ward qualifies as guardian under this title, any resident guardian’s guardianship may be terminated.

Derived from Probate Code § 694.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (b) & (c) amended by Acts 2015, 84th Leg., ch. 214, § 15, eff. Sept. 1, 2015.

§ 1202.002. Termination of Guardianship if Parent Is No Longer Incapacitated

   (a) The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of a minor child solely because of the incapacity of the minor’s surviving parent and in accordance with Section 1104.053 and Subchapter D, Chapter 1104, terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person.

   (b) The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of an adult individual solely because of the incapacity of the individual’s surviving parent and in accordance with Section 1104.103 and Subchapter D, Chapter 1104, terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person and reappointing the surviving parent as the individual’s guardian.

Derived from Probate Code §§ 676(g), 677(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.003. Termination of Guardianship of Estate on Establishment of ABLE Account by Certain Persons

On application by the guardian of the estate of a ward or another person interested in the ward’s welfare, the court may order that the guardianship of the estate of the ward terminate and be settled and closed if the court finds that the ward no longer needs a guardian of the estate because all of the ward’s assets have been placed in an
ABLE account established in accordance with the Texas Achieving a Better Life Experience (ABLE) Program under Subchapter J, Chapter 54, Education Code, and the ward is the designated beneficiary of the account.

New.

**Subchapter B. Application for Complete Restoration of Ward's Capacity or Modification of Guardianship**

**§ 1202.051. Application Authorized**

(a) Notwithstanding Section 1055.003, a ward or any person interested in the ward’s welfare may file a written application with the court for an order:

(1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2) finding that the ward lacks the capacity, or lacks sufficient capacity with supports and services, to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward’s own physical health, or to manage the ward’s own financial affairs and granting additional powers or duties to the guardian; or

(3) finding that the ward has the capacity, or sufficient capacity with supports and services, to do some, but not all, of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward’s own physical health, or to manage the ward’s own financial affairs and:

(A) limiting the guardian’s powers or duties; and

(B) permitting the ward to care for himself or herself, make personal decisions regarding residence, or manage the ward’s own financial affairs commensurate with the ward’s ability, with or without supports and services.

(b) If the guardian of a ward who is the subject of an application filed under Subsection (a) has resigned, was removed, or has died, the court may not require the appointment of a successor guardian before considering the application.

Derived from Probate Code § 694A(A).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

**§ 1202.052. Contents of Application**

An application filed under Section 1202.051 must be sworn to by the applicant and must state:

(1) the ward’s name, sex, date of birth, and address;

(2) the name and address of any person serving as guardian of the person of the ward on the date the application is filed;

(3) the name and address of any person serving as guardian of the estate of the ward on the date the application is filed;

(4) the nature and description of the ward’s guardianship;

(5) the specific areas of protection and assistance and any limitation of rights that exist;

(6) whether the relief being sought is:

(A) a restoration of the ward’s capacity because the ward is no longer an incapacitated person;

(B) the granting of additional powers or duties to the guardian; or

(C) the limitation of powers granted to or duties performed by the guardian;

(7) if the relief being sought under the application is described by Subdivision (6)(B) or (C):

(A) the nature and degree of the ward’s incapacity;

(B) the specific areas of protection and assistance to be provided to the ward and requested to be included in the court’s order; and

(C) any limitation of the ward’s rights requested to be included in the court’s order;

(8) the approximate value and description of the ward’s property, including any compensation, pension, insurance, or allowance to which the ward is or may be entitled; and

(9) if the ward is 60 years of age or older, the names and addresses, to the best of the applicant’s knowledge, of the ward’s spouse, siblings, and children or, if there is no known spouse, sibling, or child, the names and addresses of the ward’s next of kin.

Derived from Probate Code § 694B.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

**§ 1202.053. Citation Required**

When an application is filed under Section 1202.051, citation shall be served on:

(1) the ward’s guardian; and

(2) the ward if the ward is not the applicant.

Derived from Probate Code § 694A(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

**§ 1202.054. Informal Request for Order by Ward; Investigation and Report**

(a) A ward may request an order under Section 1202.051 by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

(b) On receipt of an informal letter under Subsection (a), the court shall appoint the court investigator or a guardian ad litem to investigate the ward’s circumstances, including any circumstances alleged in the letter, to determine whether:
(1) the ward is no longer an incapacitated person; or
(2) a modification of the guardianship is necessary.
Subsec. (b-1) as amended by amended by Acts 2023, 88th Leg., ch. 1012, § 5, eff. Sept. 1, 2023.

(b-1) A written letter or certificate from a physician or advanced practice registered nurse as described by Section 1202.152 is not required before the appointment of the court investigator or a guardian ad litem under Subsection (b).
Subsec (b-1) as repealed by Acts 2023, 88th Leg., ch. 939, § 19, eff. Sept. 1, 2023.

(b-2) A written letter or certificate from a physician as described by Section 1202.152 is not required before the appointment of the court investigator or a guardian ad litem under Subsection (b).

(b-2) Not later than the 30th day after the date the court receives an informal letter from a ward under Subsection (a), the court shall send the ward a letter by a qualified delivery method [certified mail]:

(1) acknowledging receipt of the informal letter; and
(2) advising the ward of the date on which the court appointed the court investigator or guardian ad litem as required under Subsection (b) and the contact information for the court investigator or guardian ad litem.
(c) The court investigator or guardian ad litem shall file with the court and provide to the ward a report of the investigation’s findings and conclusions. If the court investigator or guardian ad litem determines that it is in the best interest of the ward to terminate or modify the guardianship, the court investigator or guardian ad litem shall file an application under Section 1202.051 on the ward’s behalf.
(d) A guardian ad litem appointed under this section may also be appointed by the court to serve as attorney ad litem under Section 1202.101.
Derived from Probate Code § 694A(b), (c).

§ 1202.055. Restriction on Subsequent Application Regarding Capacity or Modification

A person may not reapply for complete restoration of a ward’s capacity or modification of a ward’s guardianship before the first anniversary of the date of the hearing on the last preceding application, except as otherwise provided by the court on good cause shown by the applicant.
Derived from Probate Code § 694A(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Representation of Ward in Proceeding for Complete Restoration of Ward’s Capacity or Modification of Guardianship

§ 1202.101. Appointment of Attorney Ad Litem

(a) Unless the ward retains an attorney under Section 1202.103, the [The] court shall appoint an attorney ad litem to represent a ward in a proceeding for the complete restoration of the ward’s capacity or for the modification of the ward’s guardianship. Unless otherwise provided by the court, the attorney ad litem shall represent the ward only for purposes of the restoration or modification proceeding. The attorney ad litem shall represent the ward’s interests, including the ward’s expressed wishes.
(b) The attorney ad litem has an attorney-client relationship with the ward. The attorney ad litem is appointed to represent under this section.
Derived from Probate Code § 694C(a), (b).

§ 1202.102. Compensation for Attorney Ad Litem and Guardian Ad Litem

(a) An attorney ad litem appointed under Section 1202.101 is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding, regardless of whether the proceeding results in the restoration of the ward’s capacity or a modification of the ward’s guardianship.
(b) A guardian ad litem appointed in a proceeding involving the complete restoration of a ward’s capacity or modification of a ward’s guardianship is entitled to reasonable compensation, as provided by Section 1054.055(a), regardless of whether the proceeding results in the restoration of the ward’s capacity or a modification of the ward’s guardianship.
Derived from Probate Code §§ 694C(c), 694L.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.103. Retention and Compensation of Attorney for Ward

(a) A ward may retain an attorney for a proceeding involving the complete restoration of the ward’s capacity or modification of the ward’s guardianship.
(b) The court may order that compensation for services provided by an attorney retained under this section be paid from funds in the ward’s estate only if the court finds that the attorney had a good faith belief that the ward had the capacity necessary to retain the attorney’s services.
Derived from Probate Code § 694K.
Subchapter D. Hearing, Evidence, and Orders in Proceeding for Complete Restoration of Ward’s Capacity or Modification of Guardianship

§ 1202.151. Evidence and Burden of Proof at Hearing

(a) Except as provided by Section 1202.201, at a hearing on an application filed under Section 1202.051, the court shall consider only evidence regarding the ward’s mental or physical capacity at the time of the hearing that is relevant to the complete restoration of the ward’s capacity or modification of the ward’s guardianship, including whether:

(1) the guardianship is necessary; and
(2) specific powers or duties of the guardian should be limited if the ward receives supports and services.

(b) The party who filed the application has the burden of proof at the hearing.


Derived from Probate Code § 694D.

§ 1202.152. Health Care Provider’s [Physician’s] Letter or Certificate Required


(a) In this section:

(1) “Advanced practice registered nurse” has the meaning assigned by Section 301.152, Occupations Code.
(2) “Physician” has the meaning assigned by Section 1101.100.

(b) An advanced practice registered nurse may act under this section only if the advanced practice registered nurse is acting under a physician’s delegation authority and supervision in accordance with Chapter 157, Occupations Code.

(c) The court may not grant an order completely restoring a ward’s capacity or modifying a ward’s guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician or advanced practice registered nurse that is based on an examination of a ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician.


§ 1202.152. [Physician’s] Letter or Certificate Required

(a) Subject to Section 1202.1521, the applicant must present to the court and the [Texas] court shall consider a written letter or certificate as evidence of capacity, or sufficient capacity with supports and services, at a hearing under Section 1202.151 from:

(1) a physician licensed in this state, if the ward’s incapacity resulted from a physical condition or mental condition; or
(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind, if...
the ward’s incapacity resulted from a mental condition.

(a-1) The physician or psychologist who provides the letter or certificate under Subsection (a) must:

1. have experience examining individuals with the physical or mental condition resulting in the ward’s incapacity; or
2. have an established patient-provider relationship with the ward.

(a-2) The letter or certificate required by Subsection (a) must be:

1. signed by the physician or psychologist; and
2. dated:
   (A) not earlier than the 120th day before the date the application was filed; or
   (B) after the date the application was filed but before the date of the hearing.

(a-3) The court may consider the following evidence of capacity, or sufficient capacity with supports and services, at a hearing under Section 1202.151:

1. a statement from a representative of the local mental health authority or the local intellectual and developmental disability authority listing services received by the ward and the effectiveness of those services;
2. medical records;
3. affidavits of treating professionals regarding the effectiveness of supports and services the ward is receiving;
4. documentation from a health care provider providing supports or services to the ward under Medicaid, including a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n);
5. an affidavit of the ward’s employer or day habilitation program manager regarding the ward’s ability to perform the necessary tasks;
6. documentation from the United States Social Security Administration identifying the ward’s representative payee; or
7. any other evidence demonstrating the ward’s capacity.

(b) A letter or certificate presented under Subsection (a) must:

1. describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician’s opinion, the ward has the capacity, or sufficient capacity with supports and services, to:
   (A) provide food, clothing, and shelter for himself or herself;
   (B) care for the ward’s own physical health;
   (C) manage the ward’s financial affairs;

2. provide a medical prognosis specifying the estimated severity of any incapacity;
3. state how or in what manner the ward’s ability to make or communicate responsible decisions concerning himself or herself is affected by the ward’s physical or mental health;
4. state whether any current medication affects the ward’s demeanor or the ward’s ability to participate fully in a court proceeding;
5. describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and
6. include any other information required by the court.

(c) If the court determines it is necessary, the court shall appoint a physician or psychologist to complete an examination of the ward. The physician or psychologist must be chosen by the ward, provided, however, that if the ward makes no choice, the ward’s physician or psychologist of choice is not available, or additional information is needed or required after an examination by the ward’s physician or psychologist of choice, the court may appoint the necessary physicians or psychologists to examine the ward. A physician appointed by the court must examine the ward in the same manner and to the same extent as a ward is examined by a physician under Section 1101.103 or 1101.104.

Version of subsec (a) as amended by Acts 2023, 88th Leg., ch. 938, § 2, eff. Sept. 1, 2023.

(a) Except as provided by Section 1202.1521, the court may not grant an order completely restoring a ward’s capacity or modifying a ward’s guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

1. not earlier than the 120th day before the date the application was filed; or
2. after the date the application was filed but before the date of the hearing.

Derived from Probate Code § 694F.


§ 1202.1521. Physician’s Letter or Certificate: Requirement if Alleged Incapacity Based on Intellectual Disability

If an intellectual disability is the basis of a ward’s alleged incapacity, the written letter or certificate presented under Section 1202.152(a), instead of containing the information required by Section 1202.152(b), must:

1. state, in the physician’s or psychologist’s opinion, whether the ward has the capacity, or
sufficient capacity with supports and services, to do any of the activities listed in Section 1202.152(b)(1); (2) state how or in what manner the ward’s ability to make or communicate reasonable decisions concerning himself or herself is affected by the ward’s mental capacity; and (3) include any other information required by the court.

New.


§ 1202.1521. Letter or Certificate: Requirements if Alleged Incapacity Based on Intellectual Disability

(a) If an intellectual disability is the basis of a ward’s alleged incapacity, instead of the letter or certificate required under Section 1202.152(a), the court shall, subject to Subsection (c), consider a written letter or certificate the applicant presents from:

(1) a physician licensed in this state; or
(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind.

(b) The letter or certificate must:

(1) state, in the physician’s or psychologist’s opinion, whether the ward has the capacity, or sufficient capacity with supports and services, to do any of the activities listed in Section 1202.152(b)(1); (2) state how or in what manner the ward’s ability to make or communicate reasonable decisions concerning himself or herself is affected by the ward’s mental capacity;
(3) include any other information required by the court; and
(4) be dated within the period prescribed by Section 1202.152(a)(1) or (2).

(c) The physician or psychologist who provides a letter or certificate under this section must preferably have experience examining individuals with an intellectual disability. For purposes of this subsection, a physician or psychologist is considered to have experience examining individuals with an intellectual disability if the physician or psychologist has an established patient-provider relationship with the ward.

New.

Added by Acts 2023, 88th Leg., ch. 938, § 2, eff. Sept. 1, 2023.

§ 1202.153. Findings Required

(a) Before ordering the settlement and closing of a guardianship under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the current nature and degree of the ward’s incapacity warrants a modification of the guardianship and that some or all of the ward’s rights need to be further restricted.

(b) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the current nature and degree of the ward’s incapacity, with or without supports and services, warrants a modification of the guardianship and that some of the ward’s rights need to be restored, with or without supports and services.

Derived from Probate Code § 694E.

§ 1202.154. General Requirements for Order

(a) A court order entered with respect to an application filed under Section 1202.051 to completely restore a ward’s capacity or modify a ward’s guardianship must state:

(1) the guardian’s name;
(2) the ward’s name;
(3) whether the type of guardianship being addressed at the proceeding is a:
   (A) guardianship of the person; 
   (B) guardianship of the estate; or 
   (C) guardianship of both the person and the estate; and
(4) if applicable, any necessary supports and services for the restoration of the ward’s capacity or modification of the guardianship.

(b) In an order described by this section, the court may not grant a power to a guardian or require the guardian to perform a duty that is a power granted to or a duty required to be performed by another guardian.

Derived from Probate Code § 694J.

§ 1202.155. Additional Requirements for Order Restoring Ward’s Capacity

If the court finds that a ward is no longer an incapacitated person, the order completely restoring the ward’s capacity must contain findings of fact and specify, in addition to the information required by Section 1202.154:

(1) that the ward is no longer an incapacitated person;
(2) that there is no further need for a guardianship of the person or estate of the ward;
(3) if the ward’s incapacity resulted from a mental condition, that the ward’s mental capacity is completely restored; and (4) that the guardian is required to:
(A) immediately settle the guardianship in accordance with this title; and
(B) deliver all of the remaining guardianship estate to the ward; and
(4) that the clerk shall revoke letters of guardianship when the guardianship is finally settled and closed.

Derived from Probate Code § 694G.

§ 1202.156. Additional Requirements for Order Modifying Guardianship

If the court finds that a guardian’s powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify, in addition to the information required by Section 1202.154:
(1) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the ward’s property, as appropriate;
(2) the specific areas of protection and assistance to be provided to the ward;
(3) any limitation of the ward’s rights;
(4) if the ward’s incapacity resulted from a mental condition, whether the ward retains the right to vote and make personal decisions regarding residence; and
(5) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

Derived from Probate Code § 694H.

§ 1202.157. Additional Requirements for Order Dismissing Application

If the court finds that a modification of the ward’s guardianship is not necessary or that the ward’s capacity has not been restored, the court shall dismiss the application and enter an order that contains findings of fact and specifies, in addition to the information required by Section 1202.154, that the guardian’s powers, limitations, or duties with respect to the ward’s care or the management of the ward’s property remain unchanged.

Derived from Probate Code § 694I.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Restoration of Rights on Termination of Guardianship

§ 1202.201. Removal of Firearm Disability on Complete Restoration of Ward’s Capacity

(a) A person whose guardianship was terminated because the person’s capacity was completely restored may file an application with the court that created the guardianship for an order requesting the removal of the person’s disability to purchase a firearm imposed under 18 U.S.C. Section 922(g)(4).

(b) At a proceeding involving the complete restoration of the ward’s capacity under Subchapter B, the ward or a person interested in the ward’s welfare may request an order seeking relief from a firearms disability described by Subsection (a).

(c) In determining whether to grant the relief sought under Subsection (a) or (b), the court must hear and consider evidence about:
(1) the circumstances that led to imposition of the firearms disability;
(2) the person’s mental history;
(3) the person’s criminal history; and
(4) the person’s reputation.

(d) A court may not grant relief under this section unless the court makes and enters in the record the following affirmative findings:
(1) the person or ward is no longer likely to act in a manner dangerous to public safety; and
(2) removing the person’s or ward’s disability to purchase a firearm is in the public interest.

New.
Added by Acts 2013, 83rd Leg., ch. 684, § 1, eff. Jan. 1, 2014.

Chapter 1203. Resignation, Removal, or Death of Guardian; Appointment of Successor

Subchapter A. Resignation of Guardian

§ 1203.001. Resignation Application

§ 1203.002. Immediate Acceptance of Resignation; Discharge and Release

§ 1203.003. Delivery of Estate Property to Successor Guardian Following Resignation

§ 1203.004. Hearing Date; Citation

§ 1203.005. Hearing

§ 1203.006. Requirements for Discharge

Subchapter B. Removal and Reinstatement of Guardian

§ 1203.051. Removal Without Notice; Appointment of Guardian ad Litem and Attorney ad Litem

§ 1203.052. Removal With Notice

§ 1203.053. Removal Order

§ 1203.0531. Notice of Removal Order

§ 1203.054. Discharge and Release Following Removal

§ 1203.055. Delivery of Estate Property to Successor Guardian Following Removal

§ 1203.056. Removal and Reinstatement of Guardian Under Certain Circumstances

§ 1203.057. Removal of Joint Guardian
Subchapter C. Appointment of Successor Guardian; Revocation of Letters
§ 1203.101. Requirements for Revocation of Letters
§ 1203.102. Appointment Because of Resignation, Removal, or Death; Hearing to Set Aside Immediate Appointment
§ 1203.103. Appointment Because of Existence of Prior Right
§ 1203.104. Appointment When Guardian Named in Will Becomes an Adult
§ 1203.105. Appointment of Formerly Ill or Absent Guardian Named in Will
§ 1203.106. Appointment When Will Discovered After Grant of Letters
§ 1203.107. Appointment on Removal of Litigation Conflict
§ 1203.108. Appointment of Department of Aging and Disability Services as Successor Guardian

Subchapter D. Successor Guardians for Wards of Guardianship Programs or Governmental Entities
§ 1203.151. Notice of Availability of Successor Guardian
§ 1203.152. Determination of Proposed Successor Guardian’s Qualification to Serve
§ 1203.153. Application to Appoint Successor Guardian

Subchapter E. Procedures After Resignation, Removal, or Death of Guardian
§ 1203.201. Payment to Ward While Office of Guardian Is Vacant
§ 1203.202. Rights, Powers, and Duties of Successor Guardian
§ 1203.203. Successor Guardian to Return Inventory, Appraisal, and List of Claims

Chapter 1203. Resignation, Removal, or Death of Guardian; Appointment of Successor Guardian

Subchapter A. Resignation of Guardian
§ 1203.001. Resignation Application
A guardian of the estate or guardian of the person who wishes to resign the guardian’s trust shall file a written application with the court clerk, accompanied by:
(1) in the case of a guardian of the estate, a complete and verified exhibit and final account showing the true condition of the guardianship estate entrusted to the guardian’s care; or
(2) in the case of a guardian of the person, a verified report containing the information required in the annual report required under Subchapter C, Chapter 1163, showing the condition of the ward entrusted to the guardian’s care.
Derived from Probate Code § 760(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.002. Immediate Acceptance of Resignation; Discharge and Release
(a) If the necessity exists, the court may immediately accept the resignation of a guardian and appoint a successor guardian as provided by Section 1203.102(b).
(b) The court may not discharge a person resigning as guardian of the estate whose resignation is accepted under Subsection (a), or release the person or the sureties on the person’s bond, until a final order has been issued, or a final judgment has been rendered, on the final account required under Section 1203.001.
Derived from Probate Code § 760(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.003. Delivery of Estate Property to Successor Guardian Following Resignation
The court at any time may order a resigning guardian who has any part of a ward’s estate to deliver any part of the estate to a person who has been appointed and has qualified as successor guardian.
Derived from Probate Code § 760(g).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.004. Hearing Date; Citation
(a) When an application to resign as guardian is filed under Section 1203.001, supported by the exhibit and final account or report required under that section, the court clerk shall bring the application to the judge’s attention and the judge shall set a date for a hearing on the matter.
(b) After a hearing is set under Subsection (a), the clerk shall issue a citation to all interested persons, showing:
(1) that an application that complies with Section 1203.001 has been filed; and
(2) the time and place set for the hearing at which the interested persons may appear and contest the exhibit and final account or report supporting the application.
(c) Unless the court directs that the citation under Subsection (b) be published, the citation must be posted.
Derived from Probate Code § 760(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.005. Hearing
(a) At the time set for the hearing under Section 1203.004, unless the court continues the hearing, and if the court finds that the citation required under that section has been properly issued and served, the court shall:
TEXAS ESTATES CODE

(1) examine the exhibit and final account or report required by Section 1203.001;
(2) hear all evidence for and against the exhibit, final account, or report; and
(3) if necessary, restate and audit and settle the exhibit, final account, or report.
(b) If the court is satisfied that the matters entrusted to the guardian applying to resign have been handled and accounted for in accordance with the law, the court shall:
(1) enter an order approving the exhibit and final account or report; and
(2) require that any estate property remaining in the applicant’s possession be delivered to the person entitled by law to receive the property.
(c) A guardian of the person shall comply with all court orders concerning the guardian’s ward.
Derived from Probate Code § 760(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.006. Requirements for Discharge
(a) A guardian applying to resign may not be discharged until:
(1) the resignation application has been heard;
(2) the exhibit and final account or report required under Section 1203.001 has been examined, settled, and approved; and
(3) the applicant has satisfied the court that the applicant has:
(A) delivered any estate property remaining in the applicant’s possession; or
(B) complied with all court orders relating to the applicant’s trust as guardian.
(b) When a guardian applying to resign has fully complied with the court orders, the court shall enter an order:
(1) accepting the resignation; and
(2) discharging the applicant and, if the applicant is under bond, the applicant’s sureties.
Derived from Probate Code § 760(e) & (f).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Removal and Reinstatement of Guardian
§ 1203.051. Removal Without Notice; Appointment of Guardian ad Litem and Attorney ad Litem
(a) The court, on the court’s own motion or on the motion of an interested person, including the ward, and without notice, may remove a guardian appointed under this title who:
(1) neglects to qualify in the manner and time required by law;
(2) fails to return, not later than the 30th day after the date the guardian qualifies, an inventory of the guardianship estate property and a list of claims that have come to the guardian’s knowledge, unless that deadline is extended by court order;
(3) if required, fails to give a new bond within the period prescribed;
(4) is absent from the state for a consecutive period of three or more months without the court’s permission, or removes from the state;
(5) cannot be served with notices or other processes because:
(A) the guardian’s whereabouts are unknown;
(B) the guardian is eluding service; or
(C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship;
(6) subject to Section 1203.056(a):
(A) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian’s care; or
(B) has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section; or
(7) has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward’s estate permit.
(b) In a proceeding to remove a guardian under Subsection (a)(6) or (7), the court shall appoint a guardian ad litem as provided by Subchapter B, Chapter 1054, and an attorney ad litem. The attorney ad litem has the duties prescribed by Section 1054.004. In the interest of judicial economy, the court may appoint the same person as guardian ad litem and attorney ad litem unless a conflict exists between the interests to be represented by the guardian ad litem and attorney ad litem.
Derived from Probate Code § 761(a).

§ 1203.052. Removal With Notice
(a) Subject to Subsection (c), the court may remove a guardian as provided by Subsection (a-1) if:
(1) sufficient grounds appear to support a belief that the guardian has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian’s care;
(2) the guardian fails to return any account or report that is required by law to be made;
(3) the guardian fails to obey a proper order of the court that has jurisdiction with respect to the performance of the guardian’s duties;
(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the guardian’s duties;
(5) the guardian:
Texas Estates Code

(A) becomes incapacitated;
(B) is sentenced to the penitentiary; or
(C) from any other cause, becomes incapable of properly performing the duties of the guardian’s trust;
(6) the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly person or person with a disability, as defined by that section;
(7) the guardian neglects to educate or maintain the ward as liberally as the means of the ward’s estate and the ward’s ability or condition permit;
(8) the guardian interferes with the ward’s progress or participation in programs in the community;
(9) the guardian fails to comply with the requirements of Subchapter G, Chapter 1104;
(10) the court determines that, because of the dissolution of the joint guardians’ marriage, the termination of the guardians’ joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward; or
(11) the guardian would be ineligible for appointment as a guardian under Subchapter H, Chapter 1104.

(a-1) The court may remove a guardian for a reason listed in Subsection (a) on the:
(1) court’s own motion, after the guardian has been notified, by a qualified delivery method [certified mail, return receipt requested], to answer at a time and place set in the notice; or
(2) complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice.

(b) In addition to the authority granted to the court under Subsection (a), the court may, on the complaint of the guardianship certification program of the Judicial Branch Certification Commission, remove a guardian who would be ineligible for appointment under Subchapter H, Chapter 1104, because of the guardian’s failure to maintain the certification required under Subchapter F, Chapter 1104. The guardian shall be given notice[s] by a qualified delivery method [certified mail, return receipt requested] to appear and contest the request for removal under this subsection at a time and place set in the notice.

(c) If there is probable cause to believe that a guardian is an incapacitated person, a court may, on the court’s own motion or on complaint of an interested person, appoint an attorney ad litem to represent the ward’s interests as provided by Section 1054.007 and a court investigator or guardian ad litem to investigate whether the guardian should be removed under Subsection (a)(5)(A). If the court determines it is necessary, the court may appoint the necessary physicians to examine the guardian to determine whether the guardian is an incapacitated person for purposes of Subsection (a)(5)(A).

§ 1203.053. Removal Order

An order removing a guardian shall:

(1) state the cause of the removal;
(2) require that, if the removed guardian has been personally served with citation, any letters of guardianship issued to the removed guardian be surrendered and that, regardless of whether the letters have been delivered, all the letters be canceled of record; and
(3) require the removed guardian to:
(A) deliver any estate property in the guardian’s possession to the persons entitled to the property or to one who has been appointed and has qualified as successor guardian; and
(B) relinquish control of the ward’s person as required in the order.

Derived from Probate Code § 761(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.0531. Notice of Removal Order

The court clerk shall issue notice of an order rendered by the court removing a guardian under Section 1203.051(a)(1), (2), (3), (4), (6), or (7). The notice must:

(1) state the names of the ward and the removed guardian;
(2) state the date the court signed the order of removal;
(3) contain the following statement printed in 12-point bold font:
“If you have been removed from serving as guardian under Section 1203.051(a)(6)(A) or (B), Estates Code, you have the right to contest the order of removal by filing an application with the court for a hearing under Section 1203.056, Estates Code, to determine whether you should be reinstated as guardian. The application must be filed not later than the 30th day after the date the court signed the order of removal.”;
(4) contain as an attachment a copy of the order of removal; and
(5) be personally served on the removed guardian not later than the seventh day after the date the court signed the order of removal.

New.

§ 1203.054. Discharge and Release Following Removal

With respect to a person who is removed as guardian of the estate and whose successor is appointed without citation or notice as provided by Section 1203.102(b), the court may not discharge the person or release the person or the sureties on the person’s bond until a final order has been issued or final judgment has been rendered on the guardian’s final account.

Derived from Probate Code § 761(f).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.055. Delivery of Estate Property to Successor Guardian Following Removal

The court at any time may order a person removed as guardian under this subchapter who has any part of a ward’s estate to deliver any part of the estate to a person who has been appointed and has qualified as successor guardian.

Derived from Probate Code § 761(g).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.056. Removal and Reinstatement of Guardian Under Certain Circumstances

(a) The court may remove a guardian under Section 1203.051(a)(6)(A) or (B) only on the presentation of clear and convincing evidence given under oath.

(b) Not later than the 30th day after the date the court signs the order of removal, a guardian who is removed under Section 1203.051(a)(6)(A) or (B) may file an application with the court for a hearing to determine whether the guardian should be reinstated.

(c) On the filing of an application under Subsection (b), the court clerk shall issue to the applicant, the ward, a person interested in the ward’s welfare or estate, and, if applicable, a person who has control of the care and custody of the ward a notice stating:

(1) that an application for reinstatement has been filed;
(2) the name of the ward; and
(3) the name of the applicant for reinstatement.

(d) The notice required by Subsection (c) must cite all persons interested in the ward’s welfare or estate to appear at the time and place stated in the notice if the persons wish to contest the application.

(e) The court shall hold a hearing on an application for reinstatement under this section as soon as practicable after the application is filed, but not later than the 60th day after the date the court signed the order of removal. If, at the conclusion of the hearing, the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant’s removal, the court shall:

(1) set aside any order appointing a successor guardian; and
(2) enter an order reinstating the applicant as guardian of the ward or estate.

(f) If the court sets aside the appointment of a successor guardian under this section, the court may require the successor guardian to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the estate property.

Derived from Probate Code §§ 761(b), 762.

§ 1203.057. Removal of Joint Guardian

If a joint guardian is removed under Section 1203.052(a)(10), the other joint guardian is entitled to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians’ marriage.

Derived from Probate Code § 761(e).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Appointment of Successor Guardian; Revocation of Letters

§ 1203.101. Requirements for Revocation of Letters

Except as otherwise expressly provided by this title, letters of guardianship may be revoked only:

(1) on application; and
(2) after personal service of citation on the person whose letters are sought to be revoked requiring the person to appear and show cause why the application should not be granted.

Derived from Probate Code § 759(f).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.102. Appointment Because of Resignation, Removal, or Death; Hearing to Set Aside Immediate Appointment

(a) If a guardian resigns, is removed, or dies, the court may appoint a successor guardian on application and on service of notice as directed by the court, except as provided by Subsection (b). In the event the guardian of the person or of the estate of a ward dies, a personal representative of the deceased guardian, at the time and in the manner ordered by the court, shall account for, pay, and deliver all guardianship property entrusted to the representative’s care to a person legally entitled to receive the property.

(b) The court may appoint a successor guardian under this section without citation or notice if the court finds that a necessity exists for the immediate appointment. Subject to an order of the court, a successor guardian has the rights and powers of the removed guardian.

(c) The appointment of a successor guardian under Subsection (b) does not preclude an interested person from filing an application to be appointed guardian of the ward for whom the successor guardian was appointed. The court shall hold a hearing on an application filed
under the circumstances described by this subsection. At the conclusion of the hearing, the court may set aside the appointment of the successor guardian and appoint the applicant as the ward’s guardian if the applicant is not disqualified and after considering the requirements of Subchapter B or C, Chapter 1104, as applicable.

(d) If the court sets aside the appointment of the successor guardian under this section, the court may require the successor guardian to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the estate property.

Derived from Probate Code §§ 695(a), 759(a), 760(b), 761(f).


**§ 1203.103. Appointment Because of Existence of Prior Right**

If letters of guardianship have been granted to a person and another person applies for letters, the previously issued letters shall be revoked, and letters shall be granted to the subsequent applicant if that applicant:

(1) is qualified;
(2) has a prior right to be appointed successor guardian; and
(3) has not waived that prior right.

Derived from Probate Code § 759(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

**§ 1203.104. Appointment When Guardian Named in Will Becomes an Adult**

(a) A person named as guardian in a will who was not an adult when the will was probated is entitled to have letters of guardianship that were granted to another person revoked and appropriate letters granted to the named guardian on proof that the named guardian has become an adult and is not otherwise disqualified from serving as a guardian.

(b) This subsection applies only if a will names two or more persons as guardian. A person named as a guardian in the will who was a minor when the will was probated may, on becoming an adult, qualify and receive letters of guardianship if:

(1) letters have been issued to the named guardians in the will who are adults; and
(2) the person is not otherwise disqualified from receiving letters.

Derived from Probate Code § 759(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

**§ 1203.105. Appointment of Formerly Ill or Absent Guardian Named in Will**

(a) This section applies only to a person named as guardian in a will who was ill or absent from the state when the testator died or the will was proved and, as a result, could not:

(1) present the will for probate not later than the 30th day after the testator’s death; or
(2) accept and qualify as guardian not later than the 20th day after the date the will was probated.

(b) A person to whom this section applies may accept and qualify as guardian not later than the 60th day after the date the person recovers from illness or returns to the state if proof is presented to the court that the person was ill or absent.

(c) If a person accepts and qualifies as guardian under Subsection (b) and letters of guardianship have been issued to another person, the other person’s letters shall be revoked.

Derived from Probate Code § 759(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

**§ 1203.106. Appointment When Will Discovered After Grant of Letters**

If, after letters of guardianship have been issued, it is discovered that the decedent left a lawful will, the letters shall be revoked and proper letters shall be issued to a person entitled to the letters.

Derived from Probate Code § 759(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

**§ 1203.107. Appointment on Removal of Litigation Conflict**

The court may appoint as successor guardian a spouse, parent, or child of a proposed ward who was disqualified from serving as guardian because of a litigation conflict under Section 1104.354(1) on the removal of the conflict that caused the disqualification if the spouse, parent, or child is otherwise qualified to serve as a guardian.

Derived from Probate Code § 759(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

**§ 1203.108. Appointment of Department of Aging and Disability Services as Successor Guardian**

(a) In this section, “department” means the Department of Aging and Disability Services.

(b) The court may appoint the department as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if:

(1) there is no less-restrictive alternative to continuation of the guardianship;
(2) there is no family member or other suitable person, including a guardianship program, willing and able to serve as the ward’s successor guardian;
(3) the ward is located more than 100 miles from the court that created the guardianship;
(4) the ward has private assets or access to government benefits to pay for the ward’s needs;
(5) the department is served with citation and a hearing is held regarding the department’s appointment as proposed successor guardian; and
(6) the appointment of the department does not violate a limitation imposed by Subsection (c).

(c) The number of appointments under Subsection (b) is subject to an annual limit of 55. The appointments must be distributed equally or as equally as possible among the health and human services regions of this state. The department, at the department’s discretion, may establish a different distribution scheme to promote the efficient use and administration of resources.

(d) If the department is named as a proposed successor guardian in an application in which the department is not the applicant, citation must be issued and served on the department as provided by Section 1051.103(5).

Derived from Probate Code § 695(c), (d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.151. Notice of Availability of Successor Guardian

(a) If a guardianship program or governmental entity serving as a guardian for a ward under this title becomes aware of a family member or friend of the ward, or any other interested person, who is willing and able to serve as the ward’s successor guardian, the program or entity shall notify the court in which the guardianship is pending of the individual’s willingness and ability to serve.

(b) If, while serving as a guardian for a ward under this title, the Department of Aging and Disability Services becomes aware of a guardianship program or private professional guardian willing and able to serve in that capacity, the department shall notify the court in which the guardianship is pending of the guardianship program’s or private professional guardian’s willingness and ability to serve.

Derived from Probate Code § 695A(a), (a-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.152. Determination of Proposed Successor Guardian’s Qualification to Serve

When the court is notified of the existence of a proposed successor guardian under Section 1203.151(a), or the court otherwise becomes aware of a family member, a friend, or any other interested person who is willing and able to serve as a successor guardian for a ward of a guardianship program or governmental entity, the court shall determine whether the proposed successor guardian is qualified to serve under this title as the ward’s successor guardian.

Derived from Probate Code § 695A(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.153. Application to Appoint Successor Guardian

(a) If the court finds under Section 1203.152 that the proposed successor guardian for a ward is not disqualified from being appointed as the ward’s successor guardian under Subchapter H, Chapter 1104, and that the appointment is in the ward’s best interests, the guardianship program or governmental entity serving as the ward’s guardian or the court, on the court’s own motion, may file an application to appoint the individual as the ward’s successor guardian.

(b) Service of notice on an application filed under this section shall be made as directed by the court.

Derived from Probate Code § 695A(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Procedures After Resignation, Removal, or Death of Guardian

§ 1203.201. Payment to Ward While Office of Guardian Is Vacant

(a) A debtor, obligor, or payor may pay or tender money or another thing of value falling due to a ward while the office of guardian is vacant to the court clerk for the credit of the ward.

(b) Payment or tender under Subsection (a) discharges the debtor, obligor, or payor of the obligation for all purposes to the extent and purpose of the payment or tender.

(c) The court clerk shall issue a receipt for any payment or tender accepted under this section.

Derived from Probate Code § 759(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.202. Rights, Powers, and Duties of Successor Guardian

(a) A successor guardian has the rights and powers and is subject to all the duties of the predecessor.

(b) A guardian who accepts appointment and qualifies after letters of guardianship have been granted on the estate shall:

(1) succeed in like manner to the predecessor; and
(2) administer the estate in like manner as if the guardian’s administration were a continuation of the former administration.

(c) A successor guardian may:

(1) make himself or herself, and be made, a party to a suit prosecuted by or against the successor’s predecessor;
(2) settle with the predecessor and receive and give a receipt for any portion of the estate property that remains in the predecessor’s possession; or
(3) commence a suit on the bond or bonds of the predecessor, in the successor’s own name and capacity, for all the estate property that:
   (A) came into the predecessor’s possession; and
   (B) has not been accounted for by the predecessor.

Derived from Probate Code §§ 695(b), 763, 764.

§ 1203.203. Successor Guardian to Return Inventory, Appraisement, and List of Claims
(a) A successor guardian who has qualified to succeed a former guardian shall, in the manner required of an original appointee:
   (1) make and return to the court an inventory, appraisement, and list of claims of the estate not later than the 30th day after the date the successor qualifies; and
   (2) return additional inventories, appraisements, and lists of claims.
(b) On the application of any person interested in the estate, the court shall, in an order appointing a successor guardian, appoint an appraiser as in an original appointment of a guardian.

Derived from Probate Code § 765.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1204. Final Settlement, Accounting, and Discharge

Subchapter A. Time for Settlement of Guardianship
§ 1204.001. Settlement of Guardianship
   (a) A guardianship shall be settled and closed as provided by this section and Section 1202.001.
   (b) A guardianship of the estate of a ward shall be settled when:
      (1) the ward dies;
      (2) a minor ward becomes an adult by:
         (A) becoming 18 years of age;
         (B) removal of disabilities of minority according to the law of this state; or
         (C) marriage;
      (3) an incapacitated ward is decreed as provided by law to have been restored to full legal capacity;
      (4) the spouse of a married ward has qualified as survivor in community and the ward does not own separate property;
      (5) the ward’s estate is exhausted;
      (6) the foreseeable income accruing to the ward or to the ward’s estate is so negligible that maintaining the guardianship in force would be burdensome;

Subchapter B. Payment of Certain Expenses and Debts
§ 1204.051. Funeral Arrangements and Other Debts; Account for Final Settlement on Complaint of Personal Representative
§ 1204.052. Taxes and Expenses of Administration; Sale of Estate Property
§ 1204.053. Inheritance Taxes; Limitation on Closing Estate

Subchapter C. Account for Final Settlement

§ 1204.101. Verified Account Required
§ 1204.102. Contents of Account
§ 1204.103. Certain Debts Excluded From Settlement Computation
§ 1204.104. Guardian to Account for Ward’s Labor or Services
§ 1204.105. Citation and Notice on Presentation of Account
§ 1204.106. Examination of and Hearing on Account
§ 1204.107. Assets Becoming Due Pending Final Settlement; Receipt and Discharge
§ 1204.108. Delivery of Ward’s Property in Possession of Guardian of the Person on Settlement of Guardianship of the Estate
§ 1204.109. Delivery of Remaining Estate Property

Subchapter D. Closing of Guardianship and Discharge of Guardian
§ 1204.151. Discharge of Guardian When No Estate Property Remains
§ 1204.152. Discharge of Guardian When Estate Fully Administered

Subchapter E. Failure of Guardian to Act
§ 1204.201. Failure to Present Final Account or Report
§ 1204.202. Liability for Failure to Deliver Estate Property

Chapter 1204. Final Settlement, Accounting, and Discharge

Subchapter A. Time for Settlement of Guardianship
§ 1204.001. Settlement of Guardianship
   (a) A guardianship shall be settled and closed as provided by this section and Section 1202.001.
   (b) A guardianship of the estate of a ward shall be settled when:
      (1) the ward dies;
      (2) a minor ward becomes an adult by:
         (A) becoming 18 years of age;
         (B) removal of disabilities of minority according to the law of this state; or
         (C) marriage;
      (3) an incapacitated ward is decreed as provided by law to have been restored to full legal capacity;
      (4) the spouse of a married ward has qualified as survivor in community and the ward does not own separate property;
      (5) the ward’s estate is exhausted;
      (6) the foreseeable income accruing to the ward or to the ward’s estate is so negligible that maintaining the guardianship in force would be burdensome;
(7) all of the assets of the estate have been placed in a management trust under Chapter 1301 or have been transferred to a pooled trust subaccount in accordance with a court order issued as provided by Chapter 1302, and the court determines that a guardianship of the ward’s estate is no longer necessary; or
(8) the court determines for any other reason that a guardianship for the ward is no longer necessary.

(c) In a case arising under Subsection (b)(6), the court may authorize the income to be paid to a parent, or other person who has acted as guardian of the ward, to assist in the maintenance of the ward and without liability to account to the court for the income.

(d) If the estate of a minor ward consists only of cash or cash equivalents in an amount of $100,000 or less, the guardianship of the estate may be terminated and the assets paid to the county clerk of the county in which the guardianship proceeding is pending, and the clerk shall manage the funds as provided by Chapter 1355.

(e) In the settlement of a guardianship of the estate, the court may appoint an attorney ad litem to represent the ward’s interests and may allow the attorney ad litem reasonable compensation to be taxed as costs.

Derived from Probate Code § 745.

§ 1204.002. Appointment of Attorney Ad Litem to Represent Ward in Final Settlement Under Certain Circumstances

(a) The court may appoint an attorney ad litem to represent the ward’s interest in the final settlement with the guardian if:
(1) the ward is deceased and there is no executor or administrator of the ward’s estate;
(2) the ward is a nonresident; or
(3) the ward’s residence is unknown.
(b) The court shall allow the attorney ad litem appointed under this section reasonable compensation out of the ward’s estate for any services provided by the attorney.

Derived from Probate Code § 755.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Payment of Certain Expenses and Debts

§ 1204.051. Funeral Arrangements and Other Debts; Account for Final Settlement on Complaint of Personal Representative

Before a guardianship of the person or estate of a ward is closed on the ward’s death, the guardian may, subject to the court’s approval, make all funeral arrangements and pay the funeral expenses and all other debts out of the deceased ward’s estate. If a personal representative of the estate of a deceased ward is appointed, the court shall on the written complaint of the personal representative have the guardian of the deceased ward cited to appear and present an account for final settlement as provided by Section 1204.101.

Derived from Probate Code § 746.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.052. Taxes and Expenses of Administration; Sale of Estate Property

Notwithstanding any other provision of this title, a probate court in which proceedings to declare heirship are maintained may order:
(1) the guardian to pay any taxes or expenses of administering the estate; and
(2) the sale of property in the ward’s estate, when necessary, to:
(A) pay the taxes or expenses of administering the estate; or
(B) distribute the estate among the heirs.

Derived from Probate Code § 748.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.053. Inheritance Taxes; Limitation on Closing Estate

If the guardian has been ordered to pay inheritance taxes under this code, a deceased ward’s estate may not be closed unless the account for final settlement shows and the court finds that all inheritance taxes due and owing to this state with respect to all interests and property passing through the guardian’s possession have been paid.

Derived from Probate Code § 754.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Account for Final Settlement

§ 1204.101. Verified Account Required

A guardian of the estate shall present to the court the guardian’s verified account for final settlement when the guardianship of the estate is required to be settled.

Derived from Probate Code § 749.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.102. Contents of Account

(a) Except as provided by Subsection (b), it is sufficient for an account for final settlement to:
(1) refer to the inventory without describing each item of property in detail; and
(2) refer to and adopt any guardianship proceeding concerning sales, renting, leasing for mineral development, or any other transaction on behalf of the guardianship estate, including an exhibit, account, or voucher previously filed and approved, without restating the particular items.
(b) An account for final settlement shall be accompanied by proper vouchers supporting each item included in the account for which the guardian has not already accounted and, either by reference to any proceeding described by Subsection (a) or by a statement of the facts, must show:

(1) the property, rents, revenues, and profits received by the guardian, and belonging to the ward, during the term of the guardianship;
(2) the disposition made of the property, rents, revenues, and profits;
(3) any expenses and debts against the estate that remain unpaid;
(4) any estate property that remains in the guardian’s possession;
(5) that the guardian has paid all required bond premiums;
(6) the tax returns the guardian has filed during the guardianship;
(7) the amount of taxes the ward owed during the guardianship that the guardian has paid;
(8) a complete account of the taxes the guardian has paid during the guardianship, including:
   (A) the amount of the taxes;
   (B) the date the guardian paid the taxes; and
   (C) the name of the governmental entity to which the guardian paid the taxes;
(9) a description of all current delinquencies in the filing of tax returns and the payment of taxes, including a reason for each delinquency; and
(10) other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

Derived from Probate Code § 749.

§ 1204.105. Citation and Notice on Presentation of Account

(a) On presentation of an account for final settlement by a guardian of the estate of a ward, the county clerk shall issue citation to the persons and in the manner provided by this section.

(b) Citation issued under Subsection (a) must contain:

(1) a statement that an account for final settlement has been presented;
(2) the time and place the court will consider the account; and
(3) a statement requiring the person cited to appear and contest the account, if the person determines contesting the account is proper.

(c) Except as provided by Subsection (d) or (e), the county clerk shall:

(1) issue a citation to be personally served on a ward if:
   (A) the ward is 14 years of age or older;
   (B) the ward is a living resident of this state;
   and
   (C) the ward’s residence is known;
(2) issue a citation to be personally served on the executor or administrator of a deceased ward’s estate, if one has been appointed; and
(3) issue a citation to a ward or the ward’s estate by publication, or by posting if directed by written court order, if:
   (A) the ward’s residence is unknown;
   (B) the ward is not a resident of this state; or
   (C) the ward is deceased and no representative of the ward’s estate has been appointed and has qualified in this state.

(d) The ward, in person or by attorney, may waive by writing filed with the county clerk the issuance and personal service of citation required by Subsection (c)(1).

(e) Service of citation is not required under Subsection (c)(2) if the executor or administrator is the same person as the guardian.

(f) The court may allow the waiver of notice of an account for final settlement in a guardianship proceeding.

(g) The court by written order shall require additional notice if the court considers the additional notice necessary.

Derived from Probate Code § 751.

§ 1204.106. Examination of and Hearing on Account

(a) On the court’s satisfaction that citation has been properly served on all persons interested in the guardianship estate, the court shall examine the account for final settlement and the accompanying vouchers.

(b) After hearing all exceptions or objections to the account and evidence in support of or against the account, the court shall audit and settle the account and, if necessary, restate the account.
§ 1204.107. Assets Becoming Due Pending Final Settlement; Receipt and Discharge

(a) This section does not apply to money or another thing of value held under Section 1105.153.

(b) Until the order of final discharge of the guardian is entered in the judge’s guardianship docket, money or another thing of value falling due to the ward or the ward’s estate while the account for final settlement is pending may be paid or tendered to the emancipated ward, the guardian, or the personal representative of the deceased ward’s estate. The ward, guardian, or personal representative to whom the money or other thing of value is paid or tendered shall issue a receipt for the money or other thing of value, and the obligor or payor is discharged of the obligation for all purposes.

§ 1204.108. Delivery of Ward’s Property in Possession of Guardian of the Person on Settlement of Guardianship of the Estate

(a) If the guardianship of a ward is required to be settled as provided by Section 1204.001, the guardian of the person shall deliver all of the ward’s property in the guardian’s possession or control to the emancipated ward or other person entitled to the property. If the ward is deceased, the guardian shall deliver the property to the personal representative of the deceased ward’s estate or other person entitled to the property.

(b) If none of the ward’s property is in the guardian of the person’s possession or control, the guardian shall, not later than the 60th day after the date the guardianship is required to be settled, file with the court a sworn affidavit that states:

(1) the reason the guardianship was terminated; and
(2) to whom the ward’s property in the guardian’s possession was delivered.

(c) The judge may issue orders as necessary for the best interests of the ward or the deceased ward’s estate.

(d) This section does not discharge a guardian of the person from liability for breach of the guardian’s fiduciary duties.

§ 1204.109. Delivery of Remaining Estate Property

On final settlement of a guardianship estate, the court shall order that any part of the estate that remains in the guardian’s possession be delivered to:

(1) the ward;
(2) the personal representative of the ward’s estate, if the ward is deceased and a personal representative has been appointed; or
(3) any other person legally entitled to the estate.
(c) If a complaint has not been filed by anyone interested in the estate of a ward whose whereabouts are unknown to the court, on or after the fourth anniversary of the date the ward’s whereabouts became unknown to the court, the court may remove the estate from the court’s active docket without a final accounting and without appointing a successor personal representative.

Derived from Probate Code § 750.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.202. Liability for Failure to Deliver Estate Property

(a) On final settlement or termination of the guardianship of the estate, if the guardian neglects when legally demanded to deliver a portion of the estate or any funds or money in the guardian’s possession ordered to be delivered to a person entitled to that property, the person may file with the court clerk a written complaint alleging:

1. the fact of the neglect;
2. the date of the person’s demand; and
3. other relevant facts.

(b) After the filing of a complaint under Subsection (a), the court clerk shall issue a citation to be served personally on the guardian. The citation must:

1. apprise the guardian of the complaint; and
2. cite the guardian to appear before the court and answer, if the guardian desires, at a time designated in the citation.

(c) If at the hearing the court finds that the citation was properly served and returned, and that the guardian is guilty of the neglect charged, the court shall enter an order to that effect.

(d) If the court enters an order under Subsection (c), the guardian is liable to the person who filed the complaint under Subsection (a) for damages at the rate of 10 percent of the amount or appraised value of the money or estate withheld, per month, for each month or fraction of a month that the estate or money of a guardianship of the estate, or on termination of guardianship of the person, or funds is or has been withheld by the guardian after the date of demand. Damages under this subsection may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 758.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

SUBTITLE G. SPECIAL TYPES OF GUARDIANSHIPS

Chapter 1251. Temporary Guardianships

Subchapter A. Appointment of Temporary Guardian Generally

§ 1251.001. Appointment of Temporary Guardian

§ 1251.002. No Presumption of Incapacity

§ 1251.003. Application

§ 1251.004. Appointment of Attorney

§ 1251.005. Citation and Notice of Application

§ 1251.006. Scheduling of Hearing

§ 1251.007. Motion for Dismissal of Application

§ 1251.008. Rights of Proposed Ward at Hearing

§ 1251.009. Appearance by Proposed Temporary Guardian in Certain Circumstances

§ 1251.010. Order Appointing Temporary Guardian

§ 1251.011. Certain Agency as Temporary Guardian

§ 1251.012. Temporary Guardian’s Bond

§ 1251.013. Court Costs

Subchapter B. Temporary Guardianship Pending Challenge or Contest of Certain Guardianship Applications

§ 1251.051. Authority to Appoint Temporary Guardian or Grant Restraining Order

§ 1251.052. Qualification and Duration of Certain Temporary Guardianships

Subchapter C. Powers and Duties of Temporary Guardians

§ 1251.101. Authority of Temporary Guardian

§ 1251.102. Applicability of Guardianship Provisions

Subchapter D. Expiration and Closing of Temporary Guardianship

§ 1251.151. Duration of Temporary Guardianship

§ 1251.152. Accounting


Chapter 1251. Temporary Guardianships

Subchapter A. Appointment of Temporary Guardian Generally

§ 1251.001. Appointment of Temporary Guardian

(a) A court shall appoint a temporary guardian, with limited powers as the circumstances of the case require, if the court:

1. is presented with substantial evidence that a person may be an incapacitated person; and
2. has probable cause to believe that the person, the person’s estate, or both require the immediate appointment of a guardian.

(b) The person for whom a temporary guardian is appointed under this chapter retains all rights and powers that are not specifically granted to the person’s temporary guardian by court order.

Derived from Probate Code § 875(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
§ 1251.002. No Presumption of Incapacity

A person for whom a temporary guardian is appointed under this chapter may not be presumed to be incapacitated.

Derived from Probate Code § 874.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.003. Application

(a) A sworn, written application for the appointment of a temporary guardian shall be filed before the court appoints a temporary guardian.

(b) The application must state:

(1) the name and address of the person who is the subject of the guardianship proceeding;
(2) the danger to the person or property alleged to be imminent;
(3) the type of appointment and the particular protection and assistance being requested;
(4) the facts and reasons supporting the allegations and requests;
(5) the proposed temporary guardian’s name, address, and qualification;
(6) the applicant’s name, address, and interest; and
(7) if applicable, that the proposed temporary guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

Derived from Probate Code § 875(c).

§ 1251.004. Appointment of Attorney

On the filing of an application for temporary guardianship, the court shall appoint an attorney to represent the proposed ward in all guardianship proceedings in which independent counsel has not been retained by or on behalf of the proposed ward.

Derived from Probate Code § 875(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.005. Citation and Notice of Application

(a) On the filing of an application for temporary guardianship, the court clerk shall issue:

(A) citation to be served on:

(1) the proposed ward; and
(2) the proposed temporary guardian named in the application, if that person is not the applicant; and

(b) notice to be served on the proposed ward’s appointed attorney.

(b) The citation or notice issued as provided by Subsection (a) must describe:

(1) the rights of the parties; and
(2) the date, time, place, purpose, and possible consequences of a hearing on the application.

(b-1) The citation issued as provided by Subsection (a) must contain a statement regarding the authority of a person under Section 1051.252 who is interested in the estate or welfare of a proposed ward or, if a guardianship is created, the ward to 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 temporary guardianship proceeding by any person or by a person specifically designated in the request.

(c) A copy of the application must be attached to the citation or notice.

Derived from Probate Code § 875(e).

§ 1251.006. Scheduling of Hearing

(a) Immediately after an application for a temporary guardianship is filed, the court shall issue an order setting a certain date for the hearing on the application.

(b) Unless postponed as provided by Subsection (c), a hearing shall be held not later than the 10th day after the date the application for temporary guardianship is filed.

(c) The proposed ward or the proposed ward’s attorney may consent to postpone the hearing on the application for temporary guardianship for a period not to exceed 30 days after the date the application is filed.

(d) An application for temporary guardianship takes precedence over all matters except older matters of the same character.

Derived from Probate Code § 875(f)(1), (2), (3), (4).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.007. Motion for Dismissal of Application

(a) Subject to Subsection (b), the proposed ward or the proposed ward’s attorney may appear and move for the dismissal of the application for temporary guardianship.

(b) At least one day before making a motion under Subsection (a), the proposed ward or the proposed ward’s attorney shall provide notice to the party who filed the application for temporary guardianship.

(c) If a motion is made for dismissal of the application for temporary guardianship, the court shall hear and determine the motion as expeditiously as justice requires.

Derived from Probate Code § 875(f)(5).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.008. Rights of Proposed Ward at Hearing

At a hearing under this subchapter, the proposed ward has the right to:

(1) receive prior notice;
(2) be represented by counsel;
(3) be present;
(4) present evidence;
(5) confront and cross-examine witnesses; and
(6) a closed hearing if requested by the proposed ward or the proposed ward’s attorney.

 Derived from Probate Code § 875(f)(1).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.009. Appearance by Proposed Temporary Guardian in Certain Circumstances

If the applicant for a temporary guardianship is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application required by Section 1251.006(b) unless the proposed temporary guardian appears in court.

 Derived from Probate Code § 875(f)(6).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.010. Order Appointing Temporary Guardian

(a) The court shall appoint a temporary guardian by written order if, at the conclusion of the hearing required by Section 1251.006(b), the court determines that the applicant has established that there is substantial evidence that the proposed ward is an incapacitated person, that there is imminent danger that the proposed ward’s physical health or safety will be seriously impaired, or that the proposed ward’s estate will be seriously damaged or dissipated unless immediate action is taken.

(b) The court shall assign to the temporary guardian only those powers and duties that are necessary to protect the proposed ward against the imminent danger shown.

(c) The order appointing the temporary guardian must describe:

(1) the reasons for the temporary guardianship; and
(2) the powers and duties of the temporary guardian.

 Derived from Probate Code § 875(g).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.011. Certain Agency as Temporary Guardian

A court may not ordinarily appoint the Department of Aging and Disability Services as a temporary guardian under this chapter. The appointment of the department as a temporary guardian under this chapter should be made only as a last resort.

 Derived from Probate Code § 875(j).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.012. Temporary Guardian’s Bond

The court shall set bond for a temporary guardian according to Chapter 1105.

 Derived from Probate Code § 875(g).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.013. Court Costs

If the court appoints a temporary guardian after the hearing required by Section 1251.006(b), all court costs, including attorney’s fees, may be assessed as provided by Sections 1155.054 and 1155.151.

 Derived from Probate Code § 875(i).

Subchapter B. Temporary Guardianship Pending Challenge or Contest of Certain Guardianship Applications

§ 1251.051. Authority to Appoint Temporary Guardian or Grant Restraining Order

The court, on the court’s own motion or on the motion of any interested party, may appoint a temporary guardian or grant a temporary restraining order under Rule 680, Texas Rules of Civil Procedure, or both, without issuing additional citation if:

(1) an application for a temporary guardianship, for the conversion of a temporary guardianship to a permanent guardianship, or for a permanent guardianship is challenged or contested; and
(2) the court finds that the appointment or the issuance of the order is necessary to protect the proposed ward or the proposed ward’s estate.

 Derived from Probate Code § 875(k).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.052. Qualification and Duration of Certain Temporary Guardianships

(a) A temporary guardian appointed under Section 1251.051 must qualify in the same form and manner required of a guardian under this title.

(b) The term of a temporary guardian appointed under Section 1251.051 expires on the earliest of the following:

(1) the conclusion of the hearing challenging or contesting the application;
(2) the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward’s guardian; or
(3) the nine-month anniversary of the date the temporary guardian qualifies, unless the term is extended by court order issued after a motion to extend the term is filed and a hearing on the motion is held.

 Derived from Probate Code § 875(l).

Subchapter C. Powers and Duties of Temporary Guardians
§ 1251.101. Authority of Temporary Guardian

(a) When the temporary guardian files the oath or declaration prescribed by Section 1105.051 and the bond required under this title, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship.

(b) The clerk shall note compliance with the oath or declaration and bond requirements by the appointed temporary guardian on a certificate attached to the order.

(c) The order appointing the temporary guardian is evidence of the temporary guardian’s authority to act within the scope of the powers and duties stated in the order.

(d) The clerk may not issue certified copies of the order until the oath or declaration and bond requirements are satisfied.

Derived from Probate Code § 876.


§ 1251.102. Applicability of Guardianship Provisions

The provisions of this title relating to the guardianship of the persons and estates of incapacitated persons apply to the temporary guardianship of the persons and estates of incapacitated persons, to the extent the provisions may be made applicable.

Derived from Probate Code § 877.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Expiration and Closing of Temporary Guardianship

§ 1251.151. Duration of Temporary Guardianship

Except as provided by Section 1251.052, a temporary guardianship may not remain in effect for more than 60 days.

Derived from Probate Code § 875(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.152. Accounting

(a) At the expiration of a temporary guardianship, the temporary guardian shall file with the court clerk:

(1) a sworn list of all estate property that has come into the temporary guardian’s possession;

(2) a return of all sales made by the temporary guardian; and

(3) a full exhibit and account of all the temporary guardian’s acts as temporary guardian.

(b) The court shall act on the list, return, exhibit, and account filed under Subsection (a).

Derived from Probate Code §§ 878, 879.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.153. Delivery of Estate, Filing of Final Report, And Discharge of Temporary Guardian

(a) When temporary letters expire or cease to be effective for any reason, the court immediately shall enter an order requiring the temporary guardian to deliver the estate remaining in the temporary guardian’s possession to the person legally entitled to possession of the estate.

(a-1) At the expiration of a temporary guardianship of the person, the temporary guardian shall file with the court clerk a final report that:

(1) if the ward is living, describes each reason the temporary guardianship of the person expired, including a statement of facts regarding whether the temporary guardianship expired because:

(A) the ward was found by the court to have full capacity, or sufficient capacity with supports and services, to care for himself or herself;

(B) alternatives to guardianship have been established to meet the needs of the ward; or

(C) a permanent guardian appointed by the court has qualified to serve as the ward’s guardian; or

(2) if the ward is deceased, includes the date and place of death, if known, in the form and manner of the report required to be filed by a guardian of the person under Section 1163.103.

(b) On proof of delivery under Subsection (a) and approval by the court of a final report filed with the court clerk under Subsection (a-1), as applicable:

(1) the temporary guardian shall be discharged; and

(2) the sureties on the temporary guardian’s bond shall be released as to future liability.

Derived from Probate Code § 879.

§ 1252.053. Inventory and Appraisement; Administration of Estate
§ 1252.054. Delivery of Estate to Certain Guardians
§ 1252.055. Removal of Ward’s Property from State by Nonresident Guardian

Chapter 1252. Guardianships for Nonresident Wards

Subchapter A. Resident Guardian of Nonresident Ward’s Estate

§ 1252.001. Granting of Guardianship of Estate for Nonresident

(a) A guardianship of the estate of a nonresident incapacitated person who owns property in this state may be granted, if necessary, in the same manner as for the property of a resident of this state.

(b) A court in the county in which the principal estate of the nonresident incapacitated person is located has jurisdiction to appoint the guardian.

Derived from Probate Code § 882.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.002. Court Actions and Orders Concerning Estate

The court shall take all actions and make all necessary orders with respect to the estate described by Section 1252.001 of a nonresident ward for the maintenance, support, care, or education of the ward out of the proceeds of the estate, in the same manner as if the ward were a resident of this state sent abroad by the court for education or treatment.

Derived from Probate Code § 882.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.003. Closing Resident Guardianship

The court shall close a resident guardianship of an estate granted under this subchapter if a qualified nonresident guardian of the estate later qualifies in this state under Section 1252.051 as a nonresident guardian.

Derived from Probate Code § 882.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Nonresident Guardian of Nonresident Ward’s Estate

§ 1252.051. Appointment and Qualification of Nonresident Guardian

(a) A nonresident of this state may be appointed and qualified as guardian or coguardian of a nonresident ward’s estate located in this state in the same manner provided by this title for the appointment and qualification of a resident guardian of the estate of an incapacitated person if:

(1) a court of competent jurisdiction in the geographical jurisdiction in which the nonresident resides appointed the nonresident guardian;

(2) the nonresident is qualified as guardian or as a fiduciary legal representative by any name known in the foreign jurisdiction of the property or estate of the ward located in the jurisdiction of the foreign court; and

(3) the nonresident, with the written application for appointment, files in the county court of a county of this state in which all or part of the nonresident ward’s estate is located a complete transcript of the proceedings from the records of the court in which the nonresident applicant was appointed.

(b) The transcript required by Subsection (a)(3) must:

(1) show the applicant’s appointment and qualification as guardian or other fiduciary legal representative of the ward’s property or estate;

(2) be certified to and attested by the clerk of the foreign court or the court officer charged by law with custody of the court records, under the court seal, if any; and

(3) have attached a certificate of the judge, chief justice, or presiding magistrate of the foreign court certifying that the attestation of the clerk or legal custodian of the court records is in correct form.

Derived from Probate Code § 881(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.052. Appointment; Issuance of Letters of Guardianship

(a) If a nonresident applicant meets the requirements of Section 1252.051, without the necessity of notice or citation, the court shall enter an order appointing the nonresident as guardian or coguardian of a nonresident ward’s estate located in this state.

(b) After the nonresident applicant qualifies in the manner required of resident guardians and files with the court a power of attorney appointing a resident agent to accept service of process in all actions or proceedings with respect to the estate, the clerk shall issue the letters of guardianship to the nonresident guardian.

Derived from Probate Code § 881(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.053. Inventory and Appraisement; Administration of Estate

After qualification, a nonresident guardian:

(1) shall file an inventory and appraisement of the ward’s estate in this state subject to the court’s jurisdiction, as in ordinary cases; and

(2) is subject to the applicable provisions of this code governing the handling and settlement of an estate by a resident guardian.

Derived from Probate Code § 881(d).
TEXAS ESTATES CODE

§ 1252.054. Delivery of Estate to Certain Guardians
The court may order a resident guardian who has any of the ward’s estate to deliver the estate to a qualified and acting guardian of the ward.
Derived from Probate Code § 881(e).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.055. Removal of Ward’s Property from State by Nonresident Guardian
Regardless of whether qualified under this title, a nonresident guardian may remove personal property of the ward from this state if:
(1) the removal does not conflict with the tenure of the property or the terms of the guardianship under which the property is held; and
(2) all known debts against the estate in this state are paid or secured by a bond payable to and approved by the judge of the court in which guardianship proceedings are pending in this state.
Derived from Probate Code § 881A.
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1253. Interstate Guardianships

Subchapter A. Transfer of Guardianship to Foreign Jurisdiction

§ 1253.001. Application to Transfer Guardianship to Foreign Jurisdiction
On application of the guardian or on the court’s own motion, a court that has jurisdiction over the guardianship may transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved.
Derived from Probate Code § 891(a).

§ 1253.002. Notice of Application
Notice of an application to transfer a guardianship under this subchapter shall be:
(1) served personally on the ward; and
(2) given to the foreign court to which the guardianship is to be transferred.
Derived from Probate Code § 891(b).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1253.003. Determination Regarding Transfer of Guardianship
(a) On the court’s own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider an application to transfer a guardianship under this subchapter.
(b) The court shall transfer a guardianship to a foreign court if the court determines the transfer is in the best interests of the ward. The transfer of the guardianship must be made contingent on the acceptance of the guardianship in the foreign jurisdiction.
(c) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.
Derived from Probate Code § 891(c), (d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Receipt and Acceptance of Foreign Guardianship

§ 1253.004. Determination Regarding Transfer of Guardianship
Subchapter C. Guardianship Proceedings Filed in This State and in Foreign Jurisdiction

§ 1253.101. Delay of Certain Guardianship Proceedings
§ 1253.102. Determination if Venue; Action Following Determination

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1253.051. Application for Receipt and Acceptance of Foreign Guardianship

A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in the county in which the ward resides or in which it is intended that the ward will reside to have the guardianship transferred to that court. The application must have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court.

Derived from Probate Code § 892(a).


§ 1253.0515. Certification or Training of Guardian

(a) A guardian filing an application under this subchapter must comply with Subchapter C or D, Chapter 155, Government Code, as applicable.

(b) A court may not grant an application filed under this subchapter unless the guardian complies with Subsection (a).

New.

Added by Acts 2017, 85th Leg., ch. 313, § 6, eff. Sept. 1, 2017.

§ 1253.052. Notice of Application

Notice of an application for receipt and acceptance of a foreign guardianship under this subchapter shall be:

(1) served personally on the ward; and

(2) given to the foreign court from which the guardianship is to be transferred.

Derived from Probate Code § 892(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1253.053. Determination Regarding Receipt and Acceptance of Foreign Guardianship

(a) The court shall hold a hearing to:

(1) consider an application for receipt and acceptance of a foreign guardianship under this subchapter; and

(2) consider modifying the administrative procedures or requirements of the proposed transferred guardianship in accordance with local and state law.

(b) In reviewing the application, the court should determine:

(1) that the proposed guardianship is not a collateral attack on an existing or proposed guardianship in another jurisdiction in this or another state; and

(2) for a guardianship in which a court in one or more states may have jurisdiction, that the application has been filed in the court that is best suited to consider the matter.

(c) The court shall grant the application if the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward.

(d) In granting the application, the court shall give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the ward’s incapacity and the rights, powers, and duties of the guardian.

(e) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.

(f) At the time of granting an application for receipt and acceptance of a foreign guardianship, the court may also modify the administrative procedures or requirements of the transferred guardianship in accordance with local and state law.

Derived from Probate Code § 892(d), (e), (f), (g).


§ 1253.055. Guardianship Transfer Proceedings Filed in Two or More Courts

If an application for receipt and acceptance of a foreign guardianship under this subchapter is filed in two or more courts with jurisdiction, the proceeding shall be heard in the court with jurisdiction over the application filed on the earliest date, if venue is otherwise proper in that court. A court that does not have venue to hear the application shall transfer the proceeding to the proper court.

Derived from Probate Code § 892(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1253.056. Construction With Other Law

The denial of an application for receipt and acceptance of a guardianship under this subchapter does not affect the right of a guardian appointed by a foreign court to file an application to be appointed guardian of the incapacitated person under Section 1101.001.

Derived from Probate Code § 892(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Guardianship Proceedings Filed in This State and in Foreign Jurisdiction

§ 1253.101. Delay of Certain Guardianship Proceedings

A court in which a guardianship proceeding is filed and in which venue of the proceeding is proper may delay further action in the proceeding in that court if:

(1) another guardianship proceeding involving a matter at issue in the proceeding filed in the court is subsequently filed in a court in a foreign jurisdiction; and
§ 1253.102. Determination of Venue; Action Following Determination

(a) A court that delays further action in a guardianship proceeding under Section 1253.101 shall determine whether venue of the proceeding is more suitable in that court or in the foreign court.

(b) In making a determination under Subsection (a), the court may consider:

(1) the interests of justice;
(2) the best interests of the ward or proposed ward;
(3) the convenience of the parties; and
(4) the preference of the ward or proposed ward, if the ward or proposed ward is 12 years of age or older.

(c) The court shall resume the guardianship proceeding delayed under Section 1253.101 if the court determines under this section that venue is more suitable in that court. If the court determines that venue is more suitable in the foreign court, the court shall, with the consent of the foreign court, transfer the proceeding to that foreign court.

§ 1253.103. Necessary Orders

A court that delays further action in a guardianship proceeding under Section 1253.101 may issue any order the court considers necessary to protect the proposed ward or the proposed ward’s estate.

§ 1253.151. Determination of Acquisition of Jurisdiction in This State Due to Unjustifiable Conduct

If at any time a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;
(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the ward or proposed ward or the protection of the ward’s or proposed ward’s property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
(3) continue to exercise jurisdiction after considering:

(A) the extent to which the ward or proposed ward and all persons required to be notified of the proceedings have acquiesced in the exercise of the court’s jurisdiction;
(B) whether the court of this state is a more appropriate forum than the court of any other state after considering the factors described by Section 1253.102(b); and
(C) whether the court of any other state would have jurisdiction under the factual circumstances of the matter.

§ 1253.152. Assessment of Expenses Against Party

(a) If a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because a party seeking to invoke the court’s jurisdiction engaged in unjustifiable conduct, the court may assess against that party necessary and reasonable expenses, including attorney’s fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses.

(b) The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by other law.

§ 1301.001. Definition

§ 1301.002. Applicability of Texas Trust Code

Subchapter A. General Provisions

§ 1301.051. Eligibility to Apply for Creation of Trust

§ 1301.0511. Notice Required for Application for Creation of Trust; Citation of Applicant Not Required
§ 1301.052. Venue For Proceeding Involving Trust for an Alleged Incapacitated Person

§ 1301.053. Creation of Trust

§ 1301.054. Creation of Trust for Incapacitated Person Without Guardian

§ 1301.055. Authority of Court to Appoint Guardian Instead of Creating Trust

§ 1301.056. Contents of Order Creating Trust

§ 1301.057. Appointment of Trustee

§ 1301.058. Bond Requirements for Trustees

Subchapter C. Terms of Management Trust

§ 1301.101. Required Terms

§ 1301.102. Optional Terms

§ 1301.103. Enforceability of Certain Terms

§ 1301.1535. Initial Accounting by Certain Trustees Required

Subchapter D. Administration Of Management Trusts

§ 1301.151. Jurisdiction Over Trust Matters

§ 1301.152. Court’s Authority to Discharge Guardian of Estate

§ 1301.153. Investment in Texas Tomorrow Fund

§ 1301.154. Annual Accounting

§ 1301.155. Appointment of Successor Trustee

§ 1301.156. Liability of Certain Persons For Conduct of Trustee

Subchapter E. Modification, Revocation, or Termination of Management Trusts

§ 1301.201. Modification or Revocation Of Trust

§ 1301.202. Transfer to Pooled Trust Subaccount

§ 1301.203. Termination of Trust

§ 1301.204. Distribution of Trust Property

Chapter 1301. Management Trusts

Subchapter A. General Provisions

§ 1301.001. Definition

In this chapter, “management trust” means a trust created under Section 1301.053 or 1301.054.

New.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.002. Applicability of Texas Trust Code

(a) A management trust is subject to Subtitle B, Title 9, Property Code.

(b) To the extent of a conflict between Subtitle B, Title 9, Property Code, and a provision of this chapter or of a management trust, the provision of this chapter or of the trust controls.

Derived from Probate Code § 869B.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
appointment of a guardian for the person is pending, if any.

(b) If a proceeding for the appointment of a guardian for an alleged incapacitated person is not pending on the date an application is filed for the creation of a trust under Section 1301.054 for the person, venue for a proceeding to create a trust must be determined in the same manner as venue for a proceeding for the appointment of a guardian is determined under Section 1023.001.

Derived from Probate Code §§ 867(b-2), 867A.


§ 1301.053. Creation of Trust

(a) On application by an appropriate person as provided by Section 1301.051 and subject to Section 1301.054(a), if applicable, the court with jurisdiction over the proceedings may enter an order that creates a trust for the management of the funds of the person with respect to whom the application is filed if the court finds that the creation of the trust is in the person’s best interests.

(b) The court may maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward.

Derived from Probate Code § 867(b) & (f).


§ 1301.054. Creation of Trust for Incapacitated Person Without Guardian

(a) On application by an appropriate person as provided by Section 1301.051 and regardless of whether an application for guardianship has been filed on the alleged incapacitated person’s behalf, a proper court exercising probate jurisdiction may enter an order that creates a trust for the management of the estate of an alleged incapacitated person who does not have a guardian if the court, after a hearing, finds that:

(1) the person is an incapacitated person; and

(2) the creation of the trust is in the incapacitated person’s best interests.

(b) The court shall conduct the hearing to determine incapacity under Subsection (a) using the same procedures and evidentiary standards as are required in a hearing for the appointment of a guardian for a proposed ward.

(c) Except as provided by Subsection (c-1), the court shall appoint an attorney ad litem and, if necessary, may appoint a guardian ad litem, to represent the interests of the alleged incapacitated person in the hearing to determine incapacity under Subsection (a).

(c-1) If the application for the creation of the trust is filed by a person who has only a physical disability, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of the person in the hearing to determine incapacity under Subsection (a).

(d) The court may maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward.

Derived from Probate Code § 867(b-1), (b-3), & (f).


§ 1301.055. Authority of Court to Appoint Guardian Instead of Creating Trust

If, after a hearing under Section 1301.054, the court finds that the person for whom the application was filed is an incapacitated person but that it is not in the incapacitated person’s best interests for the court to create a trust under this subchapter for the incapacitated person’s estate, the court may appoint a guardian of the person or estate, or both, for the incapacitated person without commencing a separate proceeding for that purpose.

Derived from Probate Code § 867(b-4).


§ 1301.056. Contents of Order Creating Trust

An order creating a management trust must:

(1) direct any person or entity holding property that belongs to the person for whom the trust is created or to which that person is entitled to deliver all or part of that property to a person or corporate fiduciary appointed as trustee of the trust; and

(2) include terms and limitations placed on the trust.

Derived from Probate Code § 867(f).


§ 1301.057. Appointment of Trustee

(a) In this section, “financial institution” means a financial institution, as defined by Section 201.101, Finance Code, that has trust powers and exists and does business under the laws of this state, another state, or the United States.

(b) Except as provided by Subsection (c), the court shall appoint a financial institution to serve as trustee of a management trust, other than a management trust created for a person who has only a physical disability.

(c) The court may appoint a person or entity described by Subsection (d) to serve as trustee of a management trust created for a ward or incapacitated person instead of appointing a financial institution to serve in that capacity if the court finds:

(1) that the appointment is in the best interests of the person for whom the trust is created; and
(2) if the value of the trust’s principal is more than $150,000, that the applicant for the creation of the trust, after the exercise of due diligence, has been unable to find a financial institution in the geographic area willing to serve as trustee.

(d) The following are eligible for appointment as trustee of a management trust created for a ward or incapacitated person under Subsection (c):

(1) an individual, including an individual who is certified as a private professional guardian;
(2) a nonprofit corporation qualified to serve as a guardian; and
(3) a guardianship program.

Derived from Probate Code § 867(a), (b-5), (c), (d), (e).

§ 1301.058. Bond Requirements for Trustees

(a) The following serve without giving a bond in accordance with the trust terms required by Sections 1301.101(a)(4) and (a-1):

(1) a trustee of a management trust that is a corporate fiduciary; and
(2) any other trustee of a management trust created for a person who has only a physical disability.

(b) Except as provided by Subsection (a), the court shall require a person serving as trustee of a management trust to file with the county clerk a bond that:

(1) is in an amount equal to the value of the trust’s principal and projected annual income; and
(2) meets the conditions the court determines are necessary.

Derived from Probate Code §§ 868(a), 868B.

Subchapter C. Terms of Management Trust

§ 1301.101. Required Terms

(a) Except as provided by Subsection (c), a management trust created for a ward or incapacitated person must provide that:

(1) the ward, incapacitated person, or person who has only a physical disability is the sole beneficiary of the trust;
(2) the trustee may disburse an amount of the trust’s principal or income as the trustee determines is necessary to spend for the health, education, maintenance, or support of the person for whom the trust is created;
(3) the trust income that the trustee does not disburse under Subdivision (2) must be added to the trust principal;
(4) a trustee that is a corporate fiduciary serves without giving a bond;
(5) subject to the court’s approval and Subsection (b), a trustee is entitled to receive reasonable compensation for services the trustee provides to the person for whom the trust is created as the person’s trustee; and
(6) the trust terminates:

(A) except as provided by Paragraph (B), if the person for whom the trust is created is a minor:

(i) on the earlier of:

(a) the person’s death; or
(b) the person’s 18th birthday; or
(ii) on the date provided by court order, which may not be later than the person’s 25th birthday;

(B) if the person for whom the trust is created is a minor and is also incapacitated for a reason other than being a minor:

(i) on the person’s death; or
(ii) when the person regains capacity; or

(C) if the person for whom the trust is created is not a minor:

(i) according to the terms of the trust;
(ii) on the date the court determines that continuing the trust is no longer in the person’s best interests, subject to Section 1301.202(c); or
(iii) on the person’s death.

(a-1) A management trust created for a person who has only a physical disability must provide that the trustee of the trust:

(1) serves without giving a bond; and
(2) is entitled to receive, without the court’s approval, reasonable compensation for services the trustee provides to the person as the person’s trustee.

(b) A trustee’s compensation under Subsection (a)(5) must be:

(1) paid from the management trust’s income, principal, or both; and
(2) determined, paid, reduced, and eliminated in the same manner as compensation of a guardian under Subchapter A, Chapter 1155.

(c) The court creating or modifying a management trust may omit or modify otherwise applicable terms required by Subsection (a), (a-1), or (b) if the court is creating the trust for a person who has only a physical disability, or if the court determines that the omission or modification:

(1) is necessary and appropriate for the person for whom the trust is created to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the person; or
(2) is in the best interests of the person for whom the trust is created.

Derived from Probate Code § 868(a), (d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 982, § 30, eff.
§ 1301.102. Optional Terms

(a) A management trust created for a ward or incapacitated person may provide that the trustee make a distribution, payment, use, or application of trust funds for the health, education, maintenance, or support of the person for whom the trust is created or of another person whom the person for whom the trust is created is legally obligated to support:

(1) as necessary and without the intervention of:
   (A) a guardian or other representative of the ward; or
   (B) a representative of the incapacitated person or person who has only a physical disability; and
(2) to:
   (A) the ward’s guardian;
   (B) a person who has physical custody of the person for whom the trust is created or of another person whom the person for whom the trust is created is legally obligated to support; or
   (C) a person providing a good or service to the person for whom the trust is created or to another person whom the person for whom the trust is created is legally obligated to support.

(b) The court may include additional provisions in a management trust on the trust’s creation or modification under this chapter if the court determines the addition does not conflict with Section 1301.101.

Derived from Probate Code § 868(b), (e).


§ 1301.103. Enforceability of Certain Terms

A provision in a management trust created for a ward or incapacitated person that relieves a trustee from a duty or liability imposed by this chapter or Subtitle B, Title 9, Property Code, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the trust beneficiary.

Derived from Probate Code § 868(c).


Subchapter D. Administration of Management Trusts

§ 1301.151. Jurisdiction Over Trust Matters

A court that creates a management trust has the same jurisdiction to hear matters relating to the trust as the court has with respect to guardianship and other matters covered by this title.

Derived from Probate Code § 869C.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.152. Court’s Authority to Discharge Guardian of Estate

On or at any time after the creation of a management trust, the court may discharge the guardian of the ward’s estate if the court determines that the discharge is in the ward’s best interests.

Derived from Probate Code § 868A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.153. Investment in Texas Tomorrow Fund

The trustee of a management trust may invest trust funds in the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code, if the trustee determines that investment is in the best interest of the ward or incapacitated person for whom the trust is created.

Derived from Probate Code § 868(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.1535. Initial Accounting by Certain Trustees Required

(a) This section applies only to a trustee of a management trust created for a person who on the date the trust is created is:

(1) a ward under an existing guardianship; or

(2) a proposed ward with respect to whom an application for guardianship has been filed and is pending.

(b) Not later than the 30th day after the date a trustee to which this section applies receives property into the trust, the trustee shall file with the court that created the guardianship or the court in which the application for guardianship was filed and is pending a report describing all property held in the trust on the date of the report and specifying the value of the property on that date.

Derived from Probate Code 870A.


§ 1301.154. Annual Accounting

(a) Except as provided by Subsection (d), the trustee of a management trust shall prepare and file with the court an annual accounting of transactions in the trust in the same manner and form that is required of a guardian of the estate under this title.
(b) The trustee of a management trust created for a ward shall provide a copy of the annual account to each guardian of the ward.

(c) The annual account is subject to court review and approval in the same manner that is required of an annual account prepared by a guardian under this title.

(d) The court may not require a trustee of a trust created for a person who has only a physical disability to prepare and file with the court the annual accounting as described by Subsection (a).

Derived from Probate Code § 871.


§ 1301.155. Appointment of Successor Trustee

The court may appoint a successor trustee if the trustee of a management trust resigns, becomes ineligible, or is removed.

Derived from Probate Code § 869A.

 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.156. Liability of Certain Persons for Conduct of Trustee

The guardian of the person or of the estate of a ward for whom a management trust is created or the surety on the guardian’s bond is not liable for an act or omission of the trustee of the trust.

Derived from Probate Code § 872.

 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Modification, Revocation, or Termination of Management Trusts

§ 1301.201. Modification or Revocation of Trust

(a) The court may modify or revoke a management trust at any time before the date of the trust’s termination.

(b) The following may not revoke a management trust:

(1) the ward for whom the trust is created or the guardian of the ward’s estate;

(2) the incapacitated person for whom the trust is created; or

(3) the person who has only a physical disability for whom the trust is created.

Derived from Probate Code § 869.


§ 1301.202. Transfer to Pooled Trust Subaccount

(a) If the court determines that it is in the best interests of the person for whom a management trust is created, the court may order the transfer of all property in the management trust to a pooled trust subaccount established in accordance with Chapter 1302.

(a-1) For purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of a person who has only a physical disability for whom the management trust was created.

(b) The transfer of property from the management trust to the pooled trust subaccount shall be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C) or otherwise for purposes of the management trust beneficiary’s eligibility for medical assistance under Chapter 32, Human Resources Code.

(c) The court may not allow termination of the management trust from which property is transferred under this section until all of the property in the management trust has been transferred to the pooled trust subaccount.

Derived from Probate Code § 868C.


§ 1301.203. Termination of Trust

(a) Except as provided by Subsection (a-1), if the person for whom a management trust is created is a minor, the trust terminates on:

(1) the earlier of:

(A) the person’s death; or

(B) the person’s 18th birthday; or

(2) the date provided by court order, which may not be later than the person’s 25th birthday.

(a-1) If the person for whom a management trust is created is a minor and is also incapacitated for a reason other than being a minor, the trust terminates:

(1) on the person’s death; or

(2) when the person regains capacity.

(b) If the person for whom a management trust is created is not a minor, the trust terminates:

(1) according to the terms of the trust;

(2) on the date the court determines that continuing the trust is no longer in the person’s best interests, subject to Section 1301.202(c); or

(3) on the person’s death.

Derived from Probate Code § 870.

§ 1301.204. Distribution of Trust Property

(a) Unless otherwise provided by the court and except as provided by Subsection (b), the trustee of a management trust shall:

(1) prepare a final account in the same form and manner that is required of a guardian under Sections 1204.101 and 1204.102; and

(2) on court approval, distribute the principal or any undistributed income of the trust to:

(A) the ward or incapacitated person when the trust terminates on the trust’s own terms;

(B) the successor trustee on appointment of a successor trustee; or

(C) the representative of the deceased ward’s or incapacitated person’s estate on the ward’s or incapacitated person’s death.

(b) The court may not require a trustee of a trust created for a person who has only a physical disability to prepare and file with the court a final account as described by Subsection (a)(1). The trustee shall distribute the principal and any undistributed income of the trust in the manner provided by Subsection (a)(2) for a trust the beneficiary of which is a ward or incapacitated person.

Derived from Probate Code § 873.


Chapter 1302. Pooled Trust Subaccounts

§ 1302.001. Definitions

§ 1302.002. Application to Establish Subaccount

§ 1302.003. Appointment of Attorney Ad Litem

§ 1302.004. Establishment of Subaccount

§ 1302.005. Terms of Subaccount

§ 1302.006. Fees and Reporting

§ 1302.007. Jurisdiction Exclusive

Chapter 1302. Pooled Trust Subaccounts

§ 1302.001. Definitions

In this chapter:

(1) “Beneficiary” means a person for whom a subaccount is established.

(2) “Medical assistance” means benefits and services under the medical assistance program administered under Chapter 32, Human Resources Code.

(3) “Pooled trust” means a trust that meets the requirements of 42 U.S.C. Section 1396p(d)(4)(c) for purposes of exempting the trust from the applicability of 42 U.S.C. Section 1396p(d) in determining the eligibility of a person who is disabled for medical assistance.

(4) “Subaccount” means an account in a pooled trust established solely for the benefit of a beneficiary.

Derived from Probate Code § 910.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.002. Application to Establish Subaccount

The following persons may apply to the court for the establishment of a subaccount for the benefit of a minor or other incapacitated person, an alleged incapacitated person, or a disabled person who is not an incapacitated person:

(1) the guardian of the incapacitated person;

(2) a person who has filed an application for the appointment of a guardian for the alleged incapacitated person;

(3) an attorney ad litem or guardian ad litem appointed to represent:

(A) the incapacitated person who is a ward or that person’s interests; or

(B) the alleged incapacitated person who does not have a guardian; or

(4) the disabled person.

Derived from Probate Code § 911.


§ 1302.003. Appointment of Attorney Ad Litem

(a) The court shall appoint an attorney ad litem for a person who is a minor or has a mental disability and who is the subject of an application under Section 1302.002.

(b) The attorney ad litem is entitled to a reasonable fee and reimbursement of expenses to be paid from the person’s property.

Derived from Probate Code § 912.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.004. Establishment of Subaccount

If the court finds that it is in the best interests of a person who is the subject of an application under Section 1302.002, the court may order:

(1) the establishment of a subaccount of which the person is the beneficiary; and

(2) the transfer to the subaccount of any of the person’s property on hand or accruing to the person.

Derived from Probate Code § 913.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.005. Terms of Subaccount

Unless the court orders otherwise, the terms governing the subaccount must provide that:

(1) the subaccount terminates on the earliest of the date of:

(A) the beneficiary’s 18th birthday, if the beneficiary is not disabled on that date and was a minor at the time the subaccount was established; or

(B) the beneficiary’s death; or

(C) a court order terminating the subaccount;

and

Electronic copy available at: https://ssrn.com/abstract=4537861
(2) on termination, any property remaining in the beneficiary’s subaccount after making any required payments to satisfy the amounts of medical assistance reimbursement claims for medical assistance provided to the beneficiary under this state’s medical assistance program and other states’ medical assistance programs shall be distributed to:

(A) the beneficiary, if on the date of termination the beneficiary is living and is not incapacitated;

(B) the beneficiary’s guardian, if on the date of termination the beneficiary is living and is incapacitated; or

(C) the personal representative of the beneficiary’s estate, if on the date of termination the beneficiary is deceased.

Derived from Probate Code § 914.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.006. Fees and Reporting

(a) The manager or trustee of a pooled trust may:

(1) assess fees against a subaccount of that pooled trust that is established under this chapter, in accordance with the manager’s or trustee’s standard fee structure; and

(2) pay fees assessed under Subdivision (1) from the subaccount.

(b) If required by the court, the manager or trustee of the pooled trust shall file a copy of the annual report of account with the court clerk.

Derived from Probate Code § 916.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.007. Jurisdiction Exclusive

Notwithstanding any other law, the court that orders the establishment of a subaccount for a beneficiary has exclusive jurisdiction of a subsequent proceeding or action that relates to both the beneficiary and the subaccount, and the proceeding or action may be brought only in that court.

Derived from Probate Code § 915.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR GUARDIANSHIP

Chapter 1351. Sale of Property of Certain Incapacitated Persons

Subchapter A. Sale of Minor’s Interest in Property Without Guardianship

(a) A parent or managing conservator of a minor who is not a ward may apply to the court under this subchapter for an order to sell an interest of the minor in property without being appointed guardian if the net value of the interest does not exceed $250,000 [§100,000].

(b) If a minor who is not a ward does not have a parent or managing conservator willing or able to file an application under Subsection (a), the court may appoint an attorney ad litem or guardian ad litem to act on the minor’s behalf for the limited purpose of applying for an order to sell the minor’s interest in property under this subchapter.

Derived from Probate Code § 889(a).


§ 1351.002. Application; Venue

(a) A parent, managing conservator, or attorney ad litem or guardian ad litem appointed under Section 1351.001(b) shall apply to the court under oath for the sale of property under this subchapter.

(b) An application must contain:
(1) the minor’s name;
(2) a legal description of the real property or a description that identifies the personal property, as applicable;
(3) the minor’s interest in the property;
(4) the purchaser’s name;
(5) a statement that the sale of the minor’s interest in the property is for cash; and
(6) a statement that all money received from the sale of the minor’s interest in the property shall be used for the minor’s use and benefit.

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a minor.

 Derived from Probate Code § 889(b).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsecs (a) & (b) amended by Acts 2015, 84th Leg., ch. 1031, § 27, eff. Sept. 1, 2015.

§ 1351.003. Hearing; Requirements for Sale

(a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than five days from the date the application was filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) At the time of the hearing, the court shall order the sale of the property if the court is satisfied from the evidence that the sale is in the minor’s best interests. The court may require an independent appraisal of the property to be sold to establish the minimum sale price.

 Derived from Probate Code §§ 889(c), (d).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.004. Payment of Sale Proceeds into Court Registry

If the court enters an order of sale of property as provided by this subchapter, the purchaser of the property shall pay the proceeds of the sale belonging to the minor into the court registry.

 Derived from Probate Code § 889(e).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.005. Withdrawal of Sale Proceeds from Registry Not Prohibited

This subchapter does not prevent the sale proceeds deposited into the court registry under Section 1351.004 from being withdrawn from the court registry under Chapter 1355.

 Derived from Probate Code § 889(f).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.006. Disaffirmation of Sale Prohibited

A minor may not disaffirm a sale of property made in accordance with a court order under this subchapter.

 Derived from Probate Code § 889(a).
 Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Sale of Ward’s Property Without Guardianship of the Estate

§ 1351.051. Applicability of Subchapter

This subchapter applies only to a ward who has:

(1) a guardian of the person but does not have a guardian of the estate; or
(2) a guardian of the person or estate appointed by a foreign court.

 Derived from Probate Code § 890(a).

§ 1351.052. Authority to Sell Ward’s Interest in Property Without Appointment as Guardian of the Estate in This State

A guardian of the person of a ward or a guardian of the person or estate of a ward appointed by a foreign court may apply to the court under this subchapter for an order to sell an interest in property in the ward’s estate without being appointed guardian of the ward’s estate in this state if the net value of the interest does not exceed $250,000 [$100,000].

 Derived from Probate Code § 890(b).

§ 1351.053. Application; Venue

(a) An application under this subchapter must:

(1) be under oath; and
(2) contain the information required by Section 1351.002(b).

(b) For purposes of Subsection (a)(2), references in Section 1351.002(b) to “minor” are replaced with references to “ward.”

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for the ward.

 Derived from Probate Code § 890(b). (c).

§ 1351.054. Hearing

(a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than five days from the date the application was filed.

(b) The court may cause citation to be issued if the court considers citation necessary.
(c) The procedures and evidentiary requirements for the hearing are the same as the procedures and evidentiary requirements for a hearing of an application filed under Subchapter A.

Derived from Probate Code §§ 890(d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.055. Payment of Sale Proceeds into Court Registry

If the court enters an order of sale of property as provided by this subchapter, the purchaser of the property shall pay the proceeds of the sale belonging to the ward into the court registry.

Derived from Probate Code § 890(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.056. Withdrawal of Sale Proceeds from Registry Not Prohibited

This subchapter does not prevent the sale proceeds deposited into the court registry under Section 1351.055 from being withdrawn from the court registry under Chapter 1355.

Derived from Probate Code § 890(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.057. Disaffirmation of Sale Prohibited

A ward may not disaffirm a sale of property made in accordance with a court order under this subchapter.

Derived from Probate Code § 890(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1352. Mortgage of Minor’s Interest in Residence Homestead

Subchapter A. General Provisions

§ 1352.001. Definitions

In this chapter:

(1) “Home equity loan” means a loan made under Section 50(a)(6), Article XVI, Texas Constitution.

(2) “Residence homestead” has the meaning assigned by Section 11.13, Tax Code.

Derived from Probate Code §§ 889A(a), 890A(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Mortgage of Minor’s Interest Without Guardianship

§ 1352.051. Applicability of Subchapter

This subchapter applies only to a minor who:

(1) is not a ward; and

(2) has an interest in a residence homestead.

Derived from Probate Code § 889A(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.052. Authority to Mortgage Minor’s Interest Without Guardianship

(a) If the net value of a minor’s interest in a residence homestead does not exceed $250,000 [$100,000], a parent, subject to Subsection (b), or managing conservator of the minor may apply to the court under this subchapter for an order authorizing the parent or managing conservator to receive on the minor’s behalf, without being appointed guardian, an extension of credit that is secured wholly or partly by a lien on the homestead.

(b) A parent of a minor may file an application under this subchapter only if the parent has a homestead interest in the property that is the subject of the application.
§ 1352.053. Application; Venue

(a) A parent or managing conservator shall apply to the court under oath for the authority to encumber the residence homestead as provided by this subchapter.

(b) The application must contain:

(1) the minor’s name and address;
(2) a legal description of the property constituting the homestead;
(3) a description of the minor’s ownership interest in the property constituting the homestead;
(4) the fair market value of the property constituting the homestead;
(5) the amount of the home equity loan;
(6) the purpose or purposes for which the home equity loan is being sought;
(7) a detailed description of the proposed expenditure of the loan proceeds to be received by the parent or managing conservator on the minor’s behalf; and
(8) a statement that all loan proceeds received by the parent or managing conservator on the minor’s behalf through a home equity loan authorized under this subchapter shall be used in a manner that is for the minor’s benefit.

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a minor.

§ 1352.054. Hearing; Requirements to Mortgage Minor’s Interest

(a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than the fifth day after the date the application is filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) At the time of the hearing, the court, on approval of the surety bond required by Section 1352.055, shall authorize the parent or managing conservator to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is:

(1) for a purpose described by Section 1352.056(1) or (2); and
(2) in the minor’s best interests.

§ 1352.055. Surety Bond; Discharge of Sureties

(a) Before a hearing under Section 1352.054 is held, the parent or managing conservator shall file with the county clerk a surety bond. The bond must be:

(1) in an amount at least equal to two times the amount of the proposed home equity loan;
(2) payable to and approved by the court; and
(3) conditioned on the parent or managing conservator:

(A) using the proceeds of the home equity loan attributable to the minor’s interest solely for the purposes authorized by Section 1352.056; and
(B) making payments on the minor’s behalf toward the outstanding balance of the home equity loan.

(b) After the first anniversary of the date a parent or managing conservator executes a home equity loan authorized under this subchapter, the court may, on motion of the borrower, reduce the amount of the surety bond required under this section to an amount that is not less than the loan’s outstanding balance.

(c) The court may not discharge the person’s sureties from all further liability under a surety bond until the court:

(1) approves the filing of the parent’s or managing conservator’s reports required under Sections 1352.057 and 1352.058;
(2) finds that the parent or managing conservator used loan proceeds resulting from the minor’s interest for the purposes authorized by Section 1352.056; and
(3) is presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an outstanding obligation.

§ 1352.056. Use Of Proceeds

Proceeds of a home equity loan that is the subject of an application under Section 1352.053 that are attributable to the minor’s interest may be spent only to:

(1) make improvements to the homestead;
(2) pay for the minor’s education or medical expenses; or
(3) pay the loan’s outstanding balance.

§ 1352.057. Annual Report

A parent or managing conservator executing a home equity loan on a minor’s behalf under this subchapter shall file an annual report with the court regarding the transaction.

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1352.058. Sworn Report of Expenditures
When the parent or managing conservator has spent the proceeds of a home equity loan authorized under this subchapter, the parent or managing conservator shall file with the county clerk a sworn report accounting for the proceeds.
Derived from Probate Code § 889A(g).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.059. Disaffirmation of Home Equity Loan Prohibited
A minor may not disaffirm a home equity loan authorized by the court under this subchapter.
Derived from Probate Code § 889A(k).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Mortgage of Minor Ward’s Interest Without Guardianship of the Estate

§ 1352.101. Applicability of Subchapter
This subchapter applies only to a minor ward who:
(1) has a guardian of the person but does not have a guardian of the estate; and
(2) has an interest in a residence homestead.
Derived from Probate Code § 890A(b), (c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.102. Authority to Mortgage Minor Ward’s Interest Without Guardianship of the Estate
If the net value of a minor ward’s interest in a residence homestead does not exceed $250,000 ($100,000), the guardian of the person of the ward may apply to the court under this subchapter for an order authorizing the guardian to receive on the ward’s behalf an extension of credit that is secured wholly or partly by a lien on the homestead.
Derived from Probate Code § 890A(c).

§ 1352.103. Application; Venue
(a) An application under this subchapter must contain the information required by Section 1352.053(b).
(b) For purposes of Subsection (a), references in Section 1352.053(b) to “parent or managing conservator” are replaced with references to “guardian of the person.”
(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a ward.
Derived from Probate Code § 890A(d).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.104. Hearing; Requirements to Mortgage Minor Ward’s Interest
(a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than the fifth day after the date the application is filed.
(b) The court may cause citation to be issued if the court considers citation necessary.
(c) The procedures and evidentiary requirements for a hearing of an application filed under this subchapter are the same as the procedures and evidentiary requirements for a hearing of an application filed under Subchapter B.
(d) At the time of the hearing, the court, on approval of the surety bond required by Section 1352.105, shall authorize the guardian to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is:
(1) for a purpose described by Section 1352.106(1) or (2); and
(2) in the minor ward’s best interests.
Derived from Probate Code § 890A(e), (g), (h).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.105. Surety Bond; Discharge of Sureties
(a) Before a hearing under Section 1352.104 is held, the guardian of the person shall file a surety bond with the county clerk to the same extent and in the same manner as a parent or managing conservator of a minor is required to file a surety bond under Section 1352.055.
(b) The court may not discharge the guardian’s sureties from all further liability under a bond required by this section or another provision of this title until the court:
(1) finds that the guardian used loan proceeds resulting from the minor ward’s interest solely for the purposes authorized by Section 1352.106; and
(2) is presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an outstanding obligation.
Derived from Probate Code § 890A(f), (i).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.106. Use Of Proceeds
Proceeds of a home equity loan that is the subject of an application under Section 1352.102 that are attributable to the minor ward’s interest may be spent only to:
(1) make improvements to the homestead;
(2) pay for the ward’s education or maintenance expenses; or
(3) pay the loan’s outstanding balance.
Derived from Probate Code § 890A(c).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.107. Annual Accounting
A guardian of the person executing a home equity loan on a minor ward’s behalf must account for the
§ 1352.108. Disaffirmation of Home Equity Loan Prohibited

A minor ward may not disaffirm a home equity loan authorized by the court under this subchapter.

Derived from Probate Code § 890A(k).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1353. Management and Control of Incapacitated Spouse’s Property

Subchapter A. Appointment of Community Administrator or Guardian of the Estate

§ 1353.001. Effect of Subchapter

(a) The manner in which community property is administered under this subchapter does not affect:

(1) the duties and obligations between spouses, including the duty to support the other spouse; and

(2) the rights of any creditor of either spouse.

(b) This subchapter does not partition community property between an incapacitated spouse and a spouse who is not incapacitated.

Derived from Probate Code § 883(e), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.002. Spouse as Community Administrator

(a) Except as provided by Section 1353.004, when a spouse is judicially declared to be incapacitated, the other spouse, in the capacity of surviving partner of the marital partnership, acquires full power to manage, control, and dispose of the entire community estate, including the part of the community estate that the incapacitated spouse legally has the power to manage in the absence of the incapacity, as community administrator without an administration.

(b) The spouse who is not incapacitated is presumed to be suitable and qualified to serve as community administrator.

Derived from Probate Code § 883(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.003. Appointment of Guardian of the Estate to Administer Separate Property

(a) Except as provided by Section 1353.004, when a spouse who owns separate property is judicially declared to be incapacitated, the other spouse, in the capacity of surviving partner of the marital partnership, acquires full power to manage, control, and dispose of the entire community estate, including the part of the community estate that the incapacitated spouse legally has the power to manage in the absence of the incapacity, as community administrator without an administration.

(b) The qualification of a guardian of the estate of the separate property of an incapacitated spouse under Subsection (a) does not deprive the spouse who is not incapacitated of the right to manage, control, and dispose of the entire community estate as provided by this title.

Derived from Probate Code § 883(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
§ 1353.004. Appointment of Guardian of the Estate Under Certain Circumstances

(a) This section applies only if:
   (1) a spouse who is not incapacitated is removed as community administrator; or
   (2) the court finds that the spouse who is not incapacitated:
      (A) would be disqualified to serve as guardian under Subchapter H, Chapter 1104; or
      (B) is not suitable to serve as the community administrator for any other reason.
(b) The court shall appoint a guardian of the estate for the incapacitated spouse if the court:
   (1) has not appointed a guardian of the estate under Section 1353.003(a); or
   (2) has appointed the spouse who is not incapacitated as the guardian of the estate under Section 1353.003(a).
(c) After considering the financial circumstances of the spouses and any other relevant factors, the court may order the spouse who is not incapacitated to deliver to the guardian of the estate of the incapacitated spouse not more than one-half of the community property that is subject to the spouses’ joint management, control, and disposition under Section 3.102, Family Code.
   (c-1) If the court finds that the ward’s spouse fails to comply with an order described by Subsection (c), the court may, after notice and a hearing, order any third party or entity in possession to deliver to the incapacitated spouse’s guardian of the estate the community property described by Subsection (c).
   (d) The court shall authorize the guardian of the estate of the incapacitated spouse to administer:
      (1) any separate property of the incapacitated spouse;
      (2) any community property that is subject to the incapacitated spouse’s sole management, control, and disposition under Section 3.102, Family Code;
      (3) any community property delivered to the guardian of the estate under Subsection (c); and
      (4) any income earned on property described by this section.
   (e) Community property administered by a guardian of the estate under Subsection (d) is considered the incapacitated spouse’s sole management, control, and disposition under Section 1353.003(a).

§ 1353.005. Administration of Certain Property by Non-Incapacitated Spouse

(a) On a person’s removal as community administrator or on qualification of a guardian of the estate of the person’s incapacitated spouse under Section 1353.004, as appropriate, a spouse who is not incapacitated shall continue to administer:
   (1) the person’s own separate property;
   (2) any community property that is subject to the person’s sole management, control, and disposition under Section 3.102, Family Code;
   (3) either:
      (A) any community property subject to the spouses’ joint management, control, and disposition under Section 3.102, Family Code; or
      (B) if the person is required to deliver a portion of that community property described by Paragraph (A) to the guardian of the estate of the person’s incapacitated spouse under Section 1353.004(c), only the portion of the community property remaining after delivery; and
   (4) any income earned on property described by this section the person is authorized to administer.
   (b) Community property administered under this section by a spouse who is not incapacitated is considered that spouse’s community property, subject to that spouse’s sole management, control, and disposition under Section 3.102, Family Code.

§ 1353.006. Effect of Court Order on Creditors’ Claims

A court order that directs the administration of community property under Section 1353.004 or 1353.005 does not affect the enforceability of a creditor’s claim existing on the date the court renders the order.

Subchapter B. Duties of Community Administrators and Guardians of the Estate

§ 1353.051. Inventory and Appraisement by Community Administrator

(a) On its own motion or on the motion of an interested person for good cause shown, the court may order a community administrator to file a verified, full, and detailed inventory and appraisement of:
   (1) any community property that is subject to the incapacitated spouse’s sole management, control, and disposition under Section 3.102, Family Code;
   (2) any community property subject to the spouses’ joint management, control, and disposition under Section 3.102, Family Code; and
   (3) any income earned on property described by this subsection.
   (b) An inventory and appraisement ordered under this section must be:
      (1) prepared in the same form and manner that is required of a guardian under Section 1154.051; and
      (2) prepared in the same form and manner that is required of a guardian under Section 1154.051; and
(2) filed not later than the 90th day after the date the order is issued.

Derived from Probate Code § 883B(a), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.052.  Account by Community Administrator

(a) At any time after the expiration of 15 months after the date a community administrator’s spouse is judicially declared to be incapacitated, the court, on its own motion or on the motion of an interested person for good cause shown, may order the community administrator to prepare and file an account of:

(1) any community property that is subject to the incapacitated spouse’s sole management, control, and disposition under Section 3.102, Family Code;
(2) any community property subject to the spouses’ joint management, control, and disposition under Section 3.102, Family Code; and
(3) any income earned on property described by this subsection.

(b) An account ordered under Subsection (a) must be:

(1) prepared in the same form and manner that is required of a guardian under Subchapter A, Chapter 1163, except that the community administrator is not required to file the account annually with the county clerk; and
(2) filed not later than the 60th day after the date the order is issued.

(c) After an initial account has been filed by a community administrator under this section, the court, on the motion of an interested person for good cause shown, may order the community administrator to file subsequent periodic accounts at intervals of not less than 12 months.

Derived from Probate Code § 883B(b), (d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.053.  Disclosure of Certain Lawsuits to the Court by Community Administrator

A person whose spouse is judicially declared to be incapacitated and who acquires the power to manage, control, and dispose of the entire community estate under Section 1353.002(a) shall inform the court in writing of any suit filed by or on behalf of the person that:

(1) is a suit for dissolution of the marriage of the person and the person’s incapacitated spouse; or
(2) names the incapacitated spouse as a defendant.

Derived from Probate Code § 884A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.054.  Delivery of Community Property by Guardian of the Estate to Community Administrator

A guardian of the estate of an incapacitated married person who, as guardian, is administering community property as part of the ward’s estate, shall deliver on demand the community property to the spouse who is not incapacitated if the spouse becomes community administrator under Section 1353.002(a).

Derived from Probate Code § 884.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C.  Removal or Termination of Powers of Community Administrator

§ 1353.101.  Grounds for Removal of Community Administrator

A court may remove a community administrator if:

(1) the community administrator fails to comply with a court order for:

(A) an inventory and appraisement under Section 1353.051; or
(B) an account or subsequent account under Section 1353.052;

(2) sufficient grounds appear to support belief that the community administrator has misapplied or embezzled, or is about to misapply or embezzle, all or part of the property committed to the community administrator’s care;

(3) the community administrator is proved to have been guilty of gross misconduct or gross mismanagement in the performance of duties as community administrator; or

(4) the community administrator:

(A) becomes an incapacitated person;
(B) is sentenced to the penitentiary; or
(C) for any other reason becomes legally incapacitated from properly performing the community administrator’s fiduciary duties.

Derived from Probate Code § 883C(A).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.102.  Procedure for Removal of Community Administrator

(a) A court may remove a community administrator on the court’s own motion or on the motion of an interested person, after the community administrator has been cited by personal service to answer at a time and place specified in the notice.

(b) The removal order must:

(1) state the cause of removal; and
(2) direct the disposition of the assets remaining in the name or under the control of the removed community administrator.

(c) A community administrator who defends an action for the removal of the community administrator in good faith, regardless of whether successful, is entitled to recover from the incapacitated spouse’s part of the community estate the community administrator’s necessary expenses and disbursements in the removal proceedings, including reasonable attorney’s fees.

Derived from Probate Code § 883C(a), (b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
Chapter 1354. Receivership for Estates of Certain Incapacitated Persons

§ 1354.001. Appointment of Receiver

(a) A judge of a probate court in the county in which an incapacitated person resides or in which the incapacitated person’s endangered estate is located shall, with or without application, enter an order appointing a suitable person as receiver to take charge of the estate if:

1. it appears that all or part of the estate of the incapacitated person is in danger of injury, loss, or waste and in need of a guardianship or other representative;
2. there is no guardian of the estate who is qualified in this state; and
3. a guardian is not needed.

(b) The court order must specify the duties and powers of the receiver the judge considers necessary for the protection, conservation, and preservation of the estate.

(c) The clerk shall enter an order issued under this section in the judge’s guardianship docket.

Derived from Probate Code § 885(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.002. Bond

(a) A court order issued under Section 1354.001 shall require a receiver appointed under that section to give a bond, as in ordinary receiverships, in an amount the judge considers necessary to protect the estate.

(b) The person appointed as receiver shall:

1. make and submit a bond for the judge’s approval; and
2. file the bond, when approved, with the clerk.

Derived from Probate Code § 885(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.003. Powers and Duties of Receiver

The person appointed as receiver shall take charge of the endangered estate as provided by the powers and duties vested in the person by the order of appointment and subsequent orders of the judge.

Derived from Probate Code § 885(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.004. Expenditures by Receiver

(a) If, while the receivership is pending, the needs of the incapacitated person require the use of the income or corpus of the estate for the education, clothing, or subsistence of the person, the judge shall, with or without application, enter an order in the judge’s guardianship docket that appropriates an amount of income or corpus sufficient for that purpose.

(b) The receiver shall use the amount appropriated by the court to pay a claim for the education, clothing, or
§ 1354.005. Use of Excess Estate Assets

(a) A receiver who, while the receivership is pending, has possession of an amount of money belonging to the incapacitated person in excess of the amount needed for current necessities and expenses may, under direction of the judge, invest, lend, or contribute all or part of the excess money in the manner, for the security, and on the terms provided by this title for investments, loans, or contributions by guardians.

(b) The receiver shall report to the judge all transactions made under this section in the same manner that a report is required of a guardian under this title.

§ 1354.006. Receiver’s Expenses, Account, and Compensation

(a) All necessary expenses incurred by a receiver in administering the estate may be reported monthly to the judge in the form of a sworn statement of account that includes a report of:

(1) the receiver’s acts;
(2) the condition of the estate;
(3) the status of the threatened danger to the estate; and
(4) the progress made toward abatement of the danger.

(b) If the judge is satisfied that the statement is correct and reasonable in all respects, the judge shall promptly enter an order approving the expenses and authorizing reimbursement of the receiver from the estate funds in the receiver’s possession.

(c) A receiver shall be compensated for services provided in the receiver’s official capacity in the same manner and amount provided by this title for similar services provided by a guardian of an estate.

§ 1354.007. Closing Receivership; Notice

(a) When the threatened danger has abated and the estate is no longer liable to injury, loss, or waste because there is no guardian or other representative of the estate, the receiver shall:

(1) report to the judge; and
(2) file with the clerk a full and final sworn account of:

(A) all property of the estate received by the receiver;
(B) all property of the estate in the receiver’s possession while the receivership was pending;
(C) all sums paid out;
(D) all acts performed by the receiver with respect to the estate; and
(E) all property of the estate remaining in the receiver’s possession on the date of the report.

(b) On the filing of the report, the clerk shall:

(1) issue and cause to be posted a notice to all persons interested in the welfare of the incapacitated person; and
(2) give personal notice to the person who has custody of the incapacitated person to appear before the judge at a time and place specified in the notice and contest the report and account if the person desires.

§ 1354.008. Discharge of Receiver

(a) If, on hearing the receiver’s report and account, the judge is satisfied that the danger of injury, loss, or waste to the estate has abated and that the report and account are correct, the judge shall:

(1) enter an order finding that the danger of injury, loss, or waste to the estate has abated; and
(2) direct the receiver to deliver the estate to:

(A) the person from whom the receiver took possession as receiver;
(B) the person who has custody of the incapacitated person; or
(C) another person the judge finds is entitled to possession of the estate.

(b) A person who receives the estate under Subsection (a) shall execute and file with the clerk an appropriate receipt for the estate that is delivered to the person.

(c) The judge’s order shall discharge the receivership and the sureties on the receiver’s bond.

(d) If the judge is not satisfied that the danger has abated, or is not satisfied with the receiver’s report and account, the judge shall enter an order continuing the receivership in effect until the judge is satisfied that the danger has abated or is satisfied with the report and account.

§ 1354.009. Record

An order, bond, report, account, or notice in a receivership proceeding must be recorded in the judge’s guardianship docket.
Chapter 1355. Payment of Certain Claims Without Guardianship

Subchapter A. Payment of Claims to Certain Incapacitated Persons and Former Wards

§ 1355.001. Payment of Claims to Resident Creditor
(a) In this section, “resident creditor” means a person who:
(1) is a resident of this state; and
(2) is entitled to money in an amount that is $250,000 [§100,000] or less, the right to which is liquidated and is uncontested in any pending lawsuit.
(b) This section applies only to a resident creditor who:
(1) is an incapacitated person or the former ward of a guardianship terminated under Chapter 1204; and
(2) does not have a legal guardian of the creditor’s estate.
(c) A debtor who owes money to a resident creditor to whom this section applies may pay the money to the county clerk of the county in which the creditor resides to the account of the creditor. When making a payment under this subsection, a debtor shall give to the clerk:
(1) the creditor’s name;
(2) the creditor’s social security identification number;
(3) the nature of the creditor’s disability;
(4) the creditor’s post office address; and
(5) if the creditor is a minor, the creditor’s age.
(d) The receipt for the money signed by the county clerk is binding on the resident creditor as of the date of receipt and to the extent of the payment.
(e) The county clerk shall:
(1) by letter mailed to the address given under Subsection (c)(4), apprise the resident creditor that the deposit was made; and
(2) on receipt of the payment, bring the payment to the court’s attention.

Derived from Probate Code § 887(a).

§ 1355.002. Payment of Claims to Nonresident Creditor
(a) In this section, “creditor” means a person who is entitled to money in an amount that is not more than $250,000 [§100,000] owing as a result of transactions in this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state.
(b) This section applies only to a nonresident creditor who is:
(1) a nonresident minor [and has a nonresident guardian of the estate appointed by a foreign court]; or
(2) a nonresident person who is adjudged by a foreign court to be incapacitated [and has a nonresident guardian of the estate appointed by that court]; or
(3) the nonresident former ward of a guardianship terminated under Chapter 1204 who has no legal guardian qualified in this state.
(c) A debtor in this state who owes money to a nonresident creditor to whom this section applies may pay the money:
(1) to the creditor’s guardian of the estate qualified in the domiciliary jurisdiction; or
(2) to the county clerk of:
(A) any county in this state in which real property owned by the creditor is located; or
(B) if the creditor is not known to own real property in this state, the county in which the debtor resides.
(d) A payment made under this section is for the nonresident creditor’s account and for the nonresident creditor’s use and benefit.
(e) A receipt for payment signed by the county clerk is binding on the nonresident creditor as of the date and to the extent of payment if the receipt states:
(1) the creditor’s name; and
(2) the creditor’s post office address, if the address is known.
(f) A county clerk who receives a payment under Subsection (c) for a nonresident creditor shall handle the
money in the same manner as provided for a payment to
the account of a resident creditor under Sections
1355.001, 1355.051, 1355.052, 1355.102, 1355.103, and
1355.104. Those sections apply to the handling and
disposition of money or any increase, dividend, or income
paid to the clerk for the use, benefit, and account of the
nonresident creditor to whom this section applies.

Derived from Probate Code § 887(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014. Subsecs. (b), (c), (d), (e), & (f) Amended by Acts
2021, 87th Leg., ch. 521, § 64, eff. Sept. 1, 2021. Subsecs.
(a) and (b) amended by Acts 2023, 88th Leg., ch. 207,
§ 30, eff. Sept. 1, 2023.

Subchapter B. Administration of Money

§ 1355.051. Investment of Money by Clerk

(a) On receipt of a payment under Section 1355.001,
the county clerk shall invest the money as authorized
under this title under court order in the name and for the
account of the minor or other person entitled to the
money.

(b) The county clerk shall credit any increase,
dividend, or income from an investment made under this
chapter to the account of the minor or other person
entitled to the investment.

Derived from Probate Code § 887(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1355.052. Annual Report

Not later than March 1 of each year, the court clerk
shall make a written report to the court of the status of an
investment made by the county clerk under Section
1355.051. The report must contain:

(1) the amount of the original investment or the
value of the investment at the last annual report,
whichever is later;

(2) any increase, dividend, or income from the
investment since the last annual report;

(3) the total amount of the investment and all
increases, dividends, or income at the date of the
report; and

(4) the name of the depository or the type of
investment.

Derived from Probate Code § 887(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

Subchapter C. Withdrawal of Money

§ 1355.101. Applicability of Subchapter

Except as provided by Section 1355.105, this
subchapter applies only to a resident creditor to whom
Section 1355.001 applies.

Now.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1355.102. Custodian of Resident Creditor

(a) The following may serve as custodian of a resident
creditor under this section:

(1) a parent of the creditor;

(2) the unestranged spouse of the creditor; or

(3) if there is no spouse and both of the creditor’s
parents are dead or nonresidents of this state, the
person who:

(A) resides in this state; and

(B) has actual custody of the creditor.

(b) An unestranged spouse residing in this state shall
be given priority over a creditor’s parent to serve as
custodian under this subchapter.

Derived from Probate Code § 887(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1355.103. Withdrawal of Money by Custodian;
Bond

(a) A resident creditor’s custodian may withdraw the
money from the court clerk for the creditor’s use and
benefit if the custodian files with the clerk:

(1) a written application; and

(2) a bond approved by the county judge.

(b) A custodian’s bond must be:

(1) twice the amount of the money to be
withdrawn by the custodian;

(2) payable to the judge or the judge’s successors
in office; and

(3) conditioned that the custodian will:

(A) use the money for the resident creditor’s
benefit under the court’s direction; and

(B) when legally required, faithfully account
to the resident creditor and the creditor’s heirs or
legal representatives for the money and any
increase to the money on:

(i) the removal of the creditor’s disability;

(ii) the creditor’s death; or

(iii) the appointment of a guardian for the
creditor.

(c) A custodian may not receive a fee or commission
for taking care of, handling, or spending money
withdrawn by the custodian.

Derived from Probate Code § 887(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1,
2014.

§ 1355.104. Custodian’s Report

(a) The custodian shall file with the county clerk a
sworn report of the custodian’s accounting when the
custodian has:

(1) spent the money in accordance with the
court’s directions; or

(2) otherwise complied with the terms of the
custodian’s bond by accounting for the money and
any increase in the money.

Electronic copy available at: https://ssrn.com/abstract=4537861
(b) The filing of a custodian’s report, when approved by the court, operates as a discharge of the person as custodian and of the person’s sureties from all further liability under the bond.

(c) The court shall satisfy itself that the custodian’s report is true and correct and may require proof as in other cases.

Derived from Probate Code § 887(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.105. Withdrawal of Money by Creditor or Creditor’s Heir, Representative, or Guardian

(a) On presentation to the court clerk of an order of a county or probate court of the county in which the money is held, money that is not withdrawn by an authorized person as provided by this chapter may be withdrawn by:

(1) the creditor, after termination of the creditor’s disability;
(2) a subsequent personal representative of the creditor;
(3) the creditor’s heirs; or
(4) a nonresident guardian of the estate appointed by a foreign court for a creditor who is:
   (A) a nonresident minor; or
   (B) a nonresident person who is adjudged to be incapacitated.

(b) Except as provided by Subsection (b-1), a withdrawal under Subsection (a) may be made at any time and without a special bond for that purpose.

(b-1) A court may require a nonresident guardian of the estate of a creditor who is a nonresident minor or nonresident incapacitated person as described by Subsection (a)(4) to provide proof that the nonresident guardian of the estate gave an adequate bond in the foreign jurisdiction if the court determines that it is in the nonresident minor’s or nonresident incapacitated person’s best interest.

(c) The order presented under Subsection (a) must direct the court clerk to deliver the money to:

(1) the creditor;
(2) the creditor’s personal representative;
(3) the creditor’s heirs named in the order; or
(4) if the creditor is a nonresident minor or nonresident person who is adjudged to be incapacitated, the creditor’s nonresident guardian of the estate.

(d) Before the court may issue an order under this section, the person’s identity and credentials must be proved to the court’s satisfaction. For purposes of this subsection, a nonresident guardian of the estate described by Subsection (c)(4) must present to the court exemplified copies of the order of a foreign court appointing the guardian and current letters of guardianship issued in the foreign jurisdiction.

Derived from Probate Code § 887(f).


Subchapter D. Use of Money by Eleemosynary Institution for Benefit of Resident

§ 1355.151. Applicability of Subchapter

This subchapter applies only to money of a resident of an eleemosynary institution of this state that is on deposit in a court registry and does not exceed $10,000.

Derived from Probate Code § 887(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.152. Payment of Money to Institution

(a) The judge of a county court, district court, or other court of this state may by order direct the court clerk to pay money to an eleemosynary institution of this state for the use and benefit of a resident of the institution if the court receives satisfactory proof by affidavit or otherwise that the resident:

(1) is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity renders the person incapable of caring for himself or herself and of managing the person’s property and financial affairs; and
(2) has no known legal guardian appointed for the resident’s estate.

(b) The affidavit under Subsection (a) may be executed by the superintendent, business manager, or field representative of the institution of which the person is a resident.

(c) The institution to which the payment is made under Subsection (a) may not be required to give bond or security for receiving the money from the court registry.

(d) The receipt from the institution for a payment, or the canceled check or warrant by which the payment was made:

(1) is sufficient evidence of the disposition of the payment; and
(2) relieves the court clerk from further responsibility for the disposition.

Derived from Probate Code § 887(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.153. Deposit of Money in Trust

(a) On receipt of money under this subchapter, an eleemosynary institution shall deposit all of the money received to the resident’s trust account.

(b) Money deposited in a trust account may be used only:

(1) by or for the personal use of the owner of the trust account, under the rules or custom of the institution in the expenditure of money by a resident; or
(2) by the responsible officer of the institution, for the resident’s use and benefit.

Derived from Probate Code § 887(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1355.154.  Death of Resident or Depletion of Money
(a) After the expenditure of all money in a resident’s trust account, or after the resident’s death, the responsible officer of the eleemosynary institution shall furnish a statement of expenditures of the money to the resident’s nearest relative who is entitled to receive the statement.
(b) A copy of the statement described by Subsection (a) shall be filed with the court that first granted the order to dispose of the money in accordance with this title.
(c) The balance of a trust account of a resident of an eleemosynary institution who dies may be applied to:
(1) the resident’s burial expenses; or
(2) the care, support, and treatment account of the resident at the institution.

Derived from Probate Code § 887(g).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1356.  Court Approval of Certain Arts and Entertainment, Advertisement, and Sports Contracts

Subchapter A.  General Provisions
§ 1356.001.  Definitions
§ 1356.002.  Duration Of Contract Of A Minor

Subchapter B.  Court Action Regarding Certain Contracts
§ 1356.051.  Approval of Certain Contracts of a Minor
§ 1356.052.  Notice Required
§ 1356.053.  Necessary Parties to Proceeding
§ 1356.054.  Set-Aside and Preservation of Portion of Net Earnings
§ 1356.055.  Valid Contract Not Voidable
§ 1356.056.  Guardian Ad Litem

Chapter 1356.  Court Approval of Certain Arts and Entertainment, Advertisement, and Sports Contracts

Subchapter A.  General Provisions
§ 1356.001.  Definitions
In this chapter:
(1) “Advertise” means to solicit or induce the purchase of consumer goods or services through electronic or print media, including:
(A) radio;  
(B) television;  
(C) computer; or
(D) direct mail.
(2) “Advertisement contract” means a contract under which a person is employed or agrees to advertise consumer goods or services.
(3) “Artist” means:
(A) an actor who performs in a motion picture, theatrical, radio, television, or other entertainment production;
(B) a musician or musical director;
(C) a director or producer of a motion picture, theatrical, radio, television, or other entertainment production;
(D) a writer;
(E) a cinematographer;
(F) a composer, lyricist, or arranger of musical compositions;
(G) a dancer or choreographer of musical productions;
(H) a model; or
(I) any other individual who provides similar professional services in a motion picture, theatrical, radio, television, or other entertainment production.
(4) “Arts and entertainment contract” means a contract under which:
(A) an artist is employed or agrees to provide services in a motion picture, theatrical, radio, television, or other entertainment production; or
(B) a person agrees to purchase, secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic tangible or intangible property or any rights in that property for use in the field of entertainment, including:
(i) a motion picture;
(ii) television;
(iii) the production of phonograph records; or
(iv) theater.
(5) “Consumer goods” means goods used or bought for use primarily for personal, family, or household purposes.
(6) “Net earnings,” with respect to a minor, means the total amount to be received for the services of the minor under a contract less:
(A) the amount required by law to be paid as taxes to any government or governmental agency;
(B) a reasonable amount to be spent for the support, care, maintenance, education, and training of the minor;
(C) fees and expenses paid in connection with procuring the contract or maintaining employment of the minor; and
(D) attorney’s fees for services provided in connection with the contract or any other business of the minor.
(7) “Sports contract” means a contract under which an athlete is employed or agrees to participate, compete, or engage in a sports or athletic activity at a professional or amateur sports event or athletic event.

Derived from Probate Code §§ 901, 904(a).
Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 1356.002. Duration of Contract of a Minor

This chapter may not be construed to authorize a contract that binds a minor after the seventh anniversary of the date of the contract.

Derived from Probate Code § 902.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Court Action Regarding Certain Contracts

§ 1356.051. Approval of Certain Contracts of a Minor

(a) On the petition of the guardian of the estate of a minor, a court may issue an order approving for purposes of this chapter an arts and entertainment contract, advertisement contract, or sports contract that is entered into by the minor.

(b) Approval of a contract under this section extends to the contract as a whole and each term and provision of the contract, including any optional or conditional contract provision relating to the extension or termination of the contract’s term.

(c) A court may withhold approval of a contract in which part of the minor’s net earnings will be set aside as provided by Section 1356.054 until the guardian of the minor’s estate executes and files with the court written consent to the issuance of the order.

Derived from Probate Code § 903(a), (b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.052. Notice Required

Before the court may approve a contract under Section 1356.051, the guardian of the minor’s estate must provide the other party to the contract notice of the petition and an opportunity to request a hearing in the manner provided by the court.

Derived from Probate Code § 903(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.053. Necessary Parties to Proceeding

Each parent of a minor for whom a proceeding is brought under Section 1356.051 is a necessary party to the proceeding.

Derived from Probate Code § 903(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.054. Set-Aside and Preservation of Portion Of Net Earnings

(a) Notwithstanding any other law, in an order issued under Section 1356.051, the court may require that a portion of the net earnings of the minor under the contract be set aside and preserved for the benefit of the minor in a trust created under Section 1301.053 or 1301.054 or a similar trust created under the laws of another state.

(b) The amount to be set aside under this section must be reasonable as determined by the court.

Derived from Probate Code § 904(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.055. Valid Contract Not Voidable

A contract approved under Section 1356.051 that is otherwise valid is not voidable solely on the ground that it was entered into by a person during the age of minority.

Derived from Probate Code § 903(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.056. Guardian Ad Litem

The court may appoint a guardian ad litem for a minor who has entered into an arts and entertainment contract, advertisement contract, or sports contract if the court finds that the appointment would be in the best interest of the minor.

Derived from Probate Code § 905.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.
§ 1357.102. Reporting of Suspected Abuse, Neglect, or Exploitation

Chapter 1357. Supported Decision-Making Agreement Act

Subchapter A. General Provisions

§ 1357.001. Short Title
This chapter may be cited as the Supported Decision-Making Agreement Act.

New.

§ 1357.002. Definitions
In this chapter:
(1) “Adult” means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.
(2) “Disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.
(3) “Supported decision-making” means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.
(4) “Supported decision-making agreement” is an agreement between an adult with a disability and a supporter entered into under this chapter.
(5) “Supporter” means an adult who has entered into a supported decision-making agreement with an adult with a disability.

New.

§ 1357.003. Purpose
The purpose of this chapter is to recognize a less restrictive substitute for guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

New.

Subchapter B. Scope of Agreement and Agreement Requirements

§ 1357.051. Scope of Supported Decision-Making Agreement
An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter to do any or all of the following:
(1) provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult’s life decisions, without making those decisions on behalf of the adult with a disability;
(2) subject to Section 1357.054, assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;
(3) assist the adult with a disability in understanding the information described by Subdivision (2); and
(4) assist the adult in communicating the adult’s decisions to appropriate persons.

New.

§ 1357.052. Authority of Supporter; Nature of Relationship
(a) A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.
(b) The supporter owes to the adult with a disability fiduciary duties as listed in the form provided by Section 1357.056(a), regardless of whether that form is used for the supported decision-making agreement.
(c) The relationship between an adult with a disability and the supporter with whom the adult enters into a supported decision-making agreement:
(1) is one of trust and confidence; and
(2) does not undermine the decision-making authority of the adult.

New.

§ 1357.0525. Designation of Alternate Supporter in Certain Circumstances
In order to prevent a conflict of interest, if a determination is made by an adult with a disability that the supporter with whom the adult entered into a supported decision-making agreement is the most appropriate person to provide to the adult supports and services for which the supporter will be compensated, the adult may amend the supported decision-making agreement to designate an alternate person to act as the adult’s supporter for the limited purpose of participating

Electronic copy available at: https://ssrn.com/abstract=4537861
in person-centered planning as it relates to the provision of those supports and services.

New

§ 1357.053. Term of Agreement
(a) Except as provided by Subsection (b), the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.
(b) The supported decision-making agreement is terminated if:
   (1) the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter;
   (2) the supporter is found criminally liable for conduct described by Subdivision (1); or
   (3) a temporary or permanent guardian of the person or estate appointed for the adult with a disability qualifies.

New.

§ 1357.054. Access to Personal Information
(a) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.
(b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.
(c) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

New.

§ 1357.055. Authorizing and Witnessing of Supported Decision-Making Agreement
(a) A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.
(b) If signed before two witnesses, the attesting witnesses must be at least 14 years of age.

New.

§ 1357.056. Form of Supported Decision-Making Agreement
(a) Subject to Subsection (b), a supported decision-making agreement is valid only if it is in substantially the following form:

SUPPORTED DECISION-MAKING AGREEMENT

Important Information For Supporter: Duties
When you agree to provide support to an adult with a disability under this supported decision-making agreement, you have a duty to:
   (1) act in good faith;
   (2) act within the authority granted in this agreement;
   (3) act loyally and without self-interest; and
   (4) avoid conflicts of interest.

Appointment of Supporter
I, (insert your name), make this agreement of my own free will.
I agree and designate that:
Name:
Address:
Phone Number:
E-mail Address:
is my supporter. My supporter may help me with making everyday life decisions relating to the following:
Y/N obtaining food, clothing, and shelter
Y/N taking care of my physical health
Y/N managing my financial affairs.
My supporter is not allowed to make decisions for me.
To help me with my decisions, my supporter may:
1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;
2. Help me understand my options so I can make an informed decision; or
3. Help me communicate my decision to appropriate persons.
Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.
Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement
This supported decision-making agreement is effective immediately and will continue until (insert date)
or until the agreement is terminated by my supporter or me or by operation of law.

Signed this ______ day of ________, 20___

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

(signature of supporter)(printed name of supporter)
Signature

(my signature) (my printed name)
(witness 1 signature) (printed name of witness 1)
(witness 2 signature) (printed name of witness 2)
State of
County of
This document was acknowledged before me on _______________________________ (date)
by _______________________________ and
(name of adult with a disability
(name of supporter)

_________________ (signature of notarial officer)
(Seal, if any, of notary)

_________________ (printed name)
My commission expires:

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES IN ACCORDANCE WITH SECTION 48.051, HUMAN RESOURCES CODE.

(b) A supported decision-making agreement may be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

New.


§ 1357.102. Reporting of Suspected Abuse, Neglect, or Exploitation

If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Department of Family and Protective Services in accordance with Section 48.051, Human Resources Code.

New.


TITLE 4. DIGITAL ASSETS

Statutes in Context
Title 4

The 2017 Texas Legislature enacted the Texas Revised Uniform Fiduciary Access to Digital Assets Act (TRUFADAA) to provide guidance regarding how an executor, administrator, trustee, agent, and guardian may access a decedent's digital assets such as e-mail accounts, social networking accounts (e.g., Facebook, LinkedIn, and Twitter), and other material stored online.

Chapter 2001. Texas Revised Uniform Fiduciary Access to Digital Assets Act

Subchapter A. General Provisions

§ 2001.001. Short Title
§ 2001.002. Definitions
§ 2001.003. Applicability
§ 2001.005. Relation to Electronic Signatures in Global and National Commerce Act
Subchapter B. General Procedures for Access to Digital Assets


§ 2001.052. Terms-of-Service Agreement


Subchapter C. Procedures for Disclosure of Digital Assets of Deceased User


Subchapter D. Procedures for Disclosure of Digital Assets of Principal

§ 2001.131. Disclosure of Content of Electronic Communications of Principal

§ 2001.132. Disclosure of Other Digital Assets of Principal

Subchapter E. Disclosure of Digital Assets Held in Trust


§ 2001.152. Disclosure of Content of Electronic Communications Held in Trust When Trustee is Not Original User


Subchapter F. Disclosure of Digital Assets to Guardian


Subchapter G. Duty and Authority of Fiduciary and Others Regarding Digital Assets

§ 2001.201. Fiduciary Duty and Authority


Subchapter H. Custodian Compliance and Immunity Regarding Digital Assets

§ 2001.231. Custodian Compliance and Immunity

§ 2001.232. Immunity from Liability

Chapter 2001. Texas Revised Uniform Fiduciary Access to Digital Assets Act

Subchapter A. General Provisions

§ 2001.001. Short Title

This chapter may be cited as the Texas Revised Uniform Fiduciary Access to Digital Assets Act.

New.

Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

§ 2001.002. Definitions

In this chapter:

(1) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) "Agent" means an attorney in fact granted authority to act for a principal under a durable or other power of attorney. The term does not include an agent under a medical power of attorney.

(3) "Carries" means to engage in the transmission of an electronic communication.

(4) "Catalog of electronic communications" means information that identifies each person with whom a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) "Content of an electronic communication" means information concerning the substance or meaning of an electronic communication that:

(A) has been sent, uploaded, received, or downloaded by a user;

(B) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(C) is not readily accessible to the public.

(6) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(7) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(8) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) "Electronic communication" has the meaning assigned by 18 U.S.C. Section 2510(12), as it existed on January 1, 2017.

(11) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(12) "Fiduciary" means an original, additional, or successor personal representative, guardian, agent, or trustee.

(13) "Guardian" has the meaning assigned by Section 1002.012, except that the term does not include a guardian of the person of a ward.
(14) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(15) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(16) "Person" has the meaning assigned by Section 311.005, Government Code.

(17) "Personal representative," notwithstanding Section 22.031, means:
(A) an executor or independent executor;
(B) an administrator, independent administrator, or temporary administrator;
(C) a successor to an executor or administrator listed in Paragraph (A) or (B); or
(D) a person who performs functions substantially similar to those performed by the persons listed in Paragraph (A), (B), or (C) under the laws of this state, other than this chapter.

(18) "Power of attorney" means a record that grants an agent authority to act in the place of a principal with regard to property matters, including a durable power of attorney as provided by Subtitle P, Title 2. The term does not include a medical power of attorney.

(19) "Principal" means an individual who grants authority to an agent in a power of attorney.

(20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(21) "Remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined by 18 U.S.C. Section 2510(14), as it existed on January 1, 2017.

(22) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(23) "Trustee" has the meaning assigned by Section 111.004, Property Code.

(24) "User" means a person who has an account with a custodian.

New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

§ 2001.004. Uniformity of Application and Construction
In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law, with respect to the subject matter of this chapter, among states that enact a law based on the uniform act on which this chapter is based.
New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

§ 2001.005. Relation to Electronic Signatures in Global and National Commerce Act
This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).
New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

Subchapter B. General Procedures for Access to Digital Assets

(a) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user’s digital assets, including the content of an electronic communication. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under Subsection (a) or if the custodian has not provided an online tool, the user may allow or prohibit disclosure to a fiduciary of some or all of the user’s digital assets, including the content of an electronic communication sent or received by the user, in a will, trust, power of attorney, or other record.

(c) A user’s direction under Subsection (a) or (b) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user’s assent to the terms of service.
New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

§ 2001.052. Terms-of-Service Agreement
(a) This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

§ 2001.003. Applicability
(a) This chapter applies to a custodian if the user resides in this state or resided in this state at the time of the user’s death.

(b) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer’s business.
New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.
(b) This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate or trust, the fiduciary or designated recipient acts or represents.

(c) A fiduciary’s or designated recipient’s access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under Section 2001.051.


(a) When disclosing digital assets of a user under this chapter, the custodian may, at the custodian’s sole discretion:

(1) grant a fiduciary or designated recipient full access to the user’s account;

(2) grant a fiduciary or designated recipient partial access to the user’s account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(c) A custodian is not required to disclose under this chapter a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user’s digital assets, the custodian is not required to disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(1) a subset limited by date of the user’s digital assets;

(2) all of the user’s digital assets to the fiduciary or designated recipient;

(3) none of the user’s digital assets; or

(4) all of the user’s digital assets to the court for review in camera.


(a) If a deceased user consented to or a court directs disclosure of the content of an electronic communication of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Section 205.001, or other court order; and

(4) unless the user provided direction using an online tool, a copy of the user’s will, trust, power of attorney, or other record evidencing the user’s consent to disclosure of the content of an electronic communication if the user consented to the disclosure.

(b) In addition to the items required to be given to the custodian under Subsection (a), the personal representative shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the deceased user’s account;

(2) evidence linking the account to the user; or

(3) a finding by the court that:

(A) the deceased user had a specific account with the custodian, identifiable by the information specified in Subdivision (1);

(B) disclosure of the content of an electronic communication of the user would not violate 18 U.S.C. Section 2701 et seq., 47 U.S.C. Section 222, or other applicable law;

(C) unless the user provided direction using an online tool, the user consented to disclosure of the content of an electronic communication; or

(D) disclosure of the content of an electronic communication of the user is reasonably necessary for administration of the estate.


(a) Unless the deceased user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user and digital assets, other than the content of an electronic communication, of the user if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user; and
(3) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Section 205.001, or other court order.

(b) In addition to the items required to be given to the custodian under Subsection (a), the personal representative shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the deceased user’s account;
(2) evidence linking the account to the user;
(3) an affidavit stating that disclosure of the user’s digital assets is reasonably necessary for administration of the estate; or
(4) a finding by the court that:
   (A) the deceased user had a specific account with the custodian, identifiable by the information specified in Subdivision (1); or
   (B) disclosure of the user’s digital assets is reasonably necessary for administration of the estate.

New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

Subchapter D. Procedures for Disclosure of Digital Assets of Principal

§ 2001.131. Disclosure of Content of Electronic Communications of Principal

(a) To the extent a power of attorney expressly grants an agent authority over the content of an electronic communication sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content of an electronic communication if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;
(2) an original or copy of the power of attorney expressly granting the agent authority over the content of an electronic communication of the principal; and
(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect.

(b) In addition to the items required to be given to the custodian under Subsection (a), the agent shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal’s account; or
(2) evidence linking the account to the principal.

New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

§ 2001.132. Disclosure of Other Digital Assets of Principal

(a) Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalog of electronic communications sent or received by the principal and digital assets of the principal, other than the content of an electronic communication, if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;
(2) an original or copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal; and
(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect.

(b) In addition to the items required to be given to the custodian under Subsection (a), the agent shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal’s account; or
(2) evidence linking the account to the principal.

New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

Subchapter E. Disclosure of Digital Assets Held in Trust


Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalog of electronic communications of the trustee and the content of an electronic communication.

New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

§ 2001.152. Disclosure of Content of Electronic Communications Held in Trust When Trustee is Not Original User

(a) Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account any digital asset of the account held in trust, including a catalog of electronic communications of the trustee and the content of an electronic communication, if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;
(2) a certified copy of the trust instrument or a certification of trust under Section 114.086, Property Code, that includes consent to disclosure of the content of an electronic communication to the trustee; and
(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
(b) In addition to the items required to be given to the custodian under Subsection (a), the trustee shall provide the following if requested by the custodian:
   (1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust’s account; or
   (2) evidence linking the account to the trust.

New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.


(a) Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account a catalog of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets in which the trust has a right or interest, other than the content of an electronic communication, if the trustee gives the custodian:
   (1) a written request for disclosure in physical or electronic form;
   (2) a certified copy of the trust instrument or a certification of trust under Section 114.086, Property Code; and
   (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
(b) In addition to the items required to be given to the custodian under Subsection (a), the trustee shall provide the following if requested by the custodian:
   (1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust’s account; or
   (2) evidence linking the account to the trust.

New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

Subchapter F. Disclosure of Digital Assets to Guardian


(a) After an opportunity for a hearing under Title 3, the court may grant the guardian of a ward access to the digital assets of the ward.
(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to the guardian of a ward the catalog of electronic communications sent or received by the ward and any digital assets in which the ward has a right or interest, other than the content of an electronic communication, if the guardian gives the custodian:
   (1) a written request for disclosure in physical or electronic form; and
   (2) a certified copy of the court order that gives the guardian authority over the digital assets of the ward.
(c) In addition to the items required to be given to the custodian under Subsection (b), the guardian shall provide the following if requested by the custodian:
   (1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward; or
   (2) evidence linking the account to the ward.
(d) The guardian of a ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the guardian authority over the ward’s digital assets.

New.
Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

Subchapter G. Duty and Authority of Fiduciary and Others Regarding Digital Assets

§ 2001.201. Fiduciary Duty and Authority

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:
   (1) the duty of care;
   (2) the duty of loyalty; and
   (3) the duty of confidentiality.
(b) A fiduciary’s or designated recipient’s authority with respect to a digital asset of a user:
   (1) except as otherwise provided by Section 2001.051, is subject to the applicable terms of service;
   (2) is subject to other applicable law, including copyright law;
   (3) in the case of a fiduciary, is limited by the scope of the fiduciary’s duties; and
   (4) may not be used to impersonate the user.
(c) A fiduciary with authority over the property of a decedent, ward, principal, or settlor has the right to access any digital asset in which the decedent, ward, principal, or settlor has or had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.
(d) A fiduciary acting within the scope of the fiduciary’s duties is an authorized user of the property of the decedent, ward, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including all laws of this state governing unauthorized computer access.
(e) A fiduciary with authority over the tangible personal property of a decedent, ward, principal, or settlor:
   (1) has the right to access the property and any digital asset stored in it; and
(2) is an authorized user for the purpose of applicable computer fraud and unauthorized computer access laws, including all laws of this state governing unauthorized computer access.

New.

Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.


(a) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(b) A fiduciary of a user may request a custodian to terminate the user’s account. A request for termination must be in writing, in physical or electronic form, and accompanied by:

(1) if the user is deceased, a certified copy of the death certificate of the user; and

(2) one of the following giving the fiduciary authority over the account:

(A) a certified copy of letters testamentary or of administration, a small estate affidavit filed under Section 205.001, or other court order;

(B) a power of attorney; or

(C) the trust instrument.

(c) In addition to the items required to accompany a termination request under Subsection (b), the fiduciary shall provide the following if requested by the custodian:

(1) a number, user name, address, or other unique subscriber or account identifier assigned by the custodian to identify the user’s account;

(2) evidence linking the account to the user; or

(3) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in Subdivision (1).

New.

Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

Subchapter H. Custodian Compliance and Immunity Regarding Digital Assets

§ 2001.231. Custodian Compliance and Immunity

(a) Not later than 60 days after receipt of the information required under Subchapter C, D, E, F, or G, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under Subsection (a) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. Section 2702.

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(d) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the request.

(e) This chapter does not limit a custodian’s ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order that:

(1) specifies that an account belongs to the ward or principal;

(2) specifies that there is sufficient consent from the ward or principal to support the requested disclosure; and

(3) contains a finding required by a law other than this chapter.

New.

Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.

§ 2001.232. Immunity from Liability

A custodian and the custodian’s officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

New.

Added by Acts 2017, 85th Leg., ch. 400, § 1, eff. Sept. 1, 2017.
Title 2. Conveyances

Chapter 5. Conveyances

Subchapter A. General Provisions

Statutes in Context
§ 5.001
At common law, a fee simple was granted only if the words of limitation “and his heirs” were used. Section 5.001 reverses the common law presumption so that a grant “to A” results in A receiving a fee simple.

§ 5.001. Fee Simple
(a) An estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law. Words previously necessary at common law to transfer a fee simple estate are not necessary.
(b) This section applies only to a conveyance occurring on or after February 5, 1840.

§ 5.002. Failing as a Conveyance
An instrument intended as a conveyance of real property or an interest in real property that, because of this chapter, fails as a conveyance in whole or in part is enforceable to the extent permitted by law as a contract to convey the property or interest.

§ 5.003. Partial Conveyance
(a) An alienation of real property that purports to transfer a greater right or estate in the property than the person making the alienation may lawfully transfer alienates only the right or estate that the person may convey.
(b) Neither the alienation by deed or will of an estate on which a remainder depends nor the union of the estate with an inheritance by purchase or descent affects the remainder.

§ 5.004. Conveyance by Authorized Officer
(a) A conveyance of real property by an officer legally authorized to sell the property under a judgment of a court within the state passes absolute title to the property to the purchaser.
(b) This section does not affect the rights of a person who is not or who does not claim under a party to the conveyance or judgment.

§ 5.005. Aliens
An alien has the same real and personal property rights as a United States citizen.

§ 5.009. Duties of Life Tenant
(a) Subject to Subsection (b), if the life tenant of a legal life estate is given the power to sell and reinvest any life tenancy property, the life tenant is subject, with respect to the sale and investment of the property, to all of the fiduciary duties of a trustee imposed by the Texas Trust Code (Subtitle B, Title 9, Property Code) or the common law of this state.
(b) A life tenant may retain, as life tenancy property, any real property originally conveyed to the life tenant without being subject to the fiduciary duties of a trustee; however, the life tenant is subject to the common law duties of a life tenant.

Subchapter C. Future Estates

§ 5.041. Future Estates
A person may make an inter vivos conveyance of an estate of freehold or inheritance that commences in the future, in the same manner as by a will.

Statutes in Context
§ 5.042
Section 5.042 abolishes many of the arcane common law rules regarding conveyances such as the Rule in Shelley’s case and the Doctrine of Worthier Title.

§ 5.042. Abolition of Common-Law Rules
(a) The common-law rules known as the rule in Shelley’s case, the rule forbidding a remainder to the grantor’s heirs, the doctrine of worthier title, and the doctrine or rule prohibiting an existing lien upon part of a homestead from extending to another part of the homestead not charged with the debts secured by the existing lien upon part of the homestead do not apply in this state.
§ 5.043.   Reformation of Interests Violating Rule Against Perpetuities

(a) Within the limits of the rule against perpetuities, a court shall reform or construe an interest in real or personal property that violates the rule to effect the ascertainable general intent of the creator of the interest. A court shall liberally construe and apply this provision to validate an interest to the fullest extent consistent with the creator's intent.

(b) A deed, will, or other conveyance of property in this state that limits an interest in the property to a particular person or to a class such as the heirs, heirs of the body, issue, or next of kin of the conveyor or of a person to whom a particular interest in the same property is limited is effective according to the intent of the conveyor.

(c) Status as an heir or next of kin of a conveyor or the failure of a conveyor to describe a person in a conveyance other than as a member of a class does not affect a person's right to take or share in an interest as a conveyee.

(d) Subject to the intention of a conveyor, which controls unless limited by law, the membership of a class described in this section and the participation of a member in a property interest conveyed to the class are determined under this state's laws of descent and distribution.

(e) This section does not apply to a conveyance taking effect before January 1, 1964.

§ 23A.002. Definitions
In this chapter:
(1) “Ascendant” means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.
(2) “Collateral” means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual’s ancestor or descendant.
(3) “Descendant” means an individual who follows another individual in lineage, in the direct line of descent from the other individual.
(4) “Determination of value” means a court order determining the fair market value of heirs’ property under Section 23A.006 or 23A.010 or adopting the valuation of the property agreed to by all cotenants.
(5) “Heirs’ property” means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:
(A) there is no agreement in a record binding all the cotenants that governs the partition of the property;
(B) one or more of the cotenants acquired title from a relative, whether living or deceased; and
(C) any of the following applies:
(i) 20 percent or more of the interests are held by cotenants who are relatives;
(ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or
(iii) 20 percent or more of the cotenants are relatives.
(6) “Partition by sale” means a court-ordered sale of the entire heirs’ property, whether by open-market sale, sealed bids, or auction conducted under Section 23A.010.
(7) “Partition in kind” means the division of heirs’ property into physically distinct and separately titled parcels.
(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
(9) “Relative” means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this chapter.

Texas Rules of Civil Procedure governing partition of real property that are inconsistent with this chapter.

Added by Acts 2017, 85th Leg., ch. 297, § 1, eff. Sept. 1, 2017.

§ 23A.004. Service; Notice by Posting
(a) This chapter does not limit or affect the method by which service of a petition in a partition action may be made.
(b) If the plaintiff in a partition action seeks citation by publication and the court determines that the property may be heirs’ property, the plaintiff, not later than the 10th day after the date the determination is made, shall post, and maintain while the action is pending, a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Added by Acts 2017, 85th Leg., ch. 297, § 1, eff. Sept. 1, 2017.

§ 23A.005. Commissioners
If the court appoints commissioners under Rule 761, Texas Rules of Civil Procedure, each commissioner, in addition to the requirements and disqualifications applicable to commissioners under that rule, must be impartial and may not be a party to or a participant in the action.

Added by Acts 2017, 85th Leg., ch. 297, § 1, eff. Sept. 1, 2017.

§ 23A.006. Determination of Value
(a) Except as provided by Subsection (b) or (c), if the court determines that the property that is the subject of a partition action is heirs’ property, the court shall determine the fair market value of the property by ordering an appraisal under Subsection (d).
(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.
(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.
(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 23A.007. Cotenant Buyout

(a) If any cotenant requested partition by sale, after the determination of value under Section 23A.006, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) Not later than the 45th day after the date notice is sent under Subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under Section 23A.006 multiplied by the cotenant’s fractional ownership of the entire parcel.

(d) After the period provided by Subsection (b) expires:

(1) if only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact;

(2) if more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall:

(A) allocate the right to buy those interests among the electing cotenants based on each electing cotenant’s existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy; and

(B) send notice to all the parties of that fact and of the price to be paid by each electing cotenant; or

(3) if no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall:

(A) send notice to all the parties of that fact; and

(B) resolve the partition action under Section 23A.008(a) or (b).

(e) If the court sends notice to the parties under Subsection (d)(1) or (2), the court shall set a date, not earlier than the 60th day after the date notice was sent, by which an electing cotenant must pay the cotenant’s apportioned price into the court. After that date:

(1) if all electing cotenants timely pay their apportioned price into court, the court shall:

(A) issue an order reallocating all the interests of the cotenants; and

(B) disburse the amounts held by the court to the persons entitled to them;

(2) if no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Section 23A.008(a) or (b) as if the interests of the cotenants that requested partition by sale were not purchased; or

(3) if one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than the 20th day after the date the court gives notice under Subsection (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After that period expires:

(1) if only one cotenant pays the entire price for the remaining interest, the court shall:

(A) issue an order reallocating the remaining interest to that cotenant;

(B) promptly issue an order reallocating the interests of all the cotenants; and

(C) disburse the amounts held by the court to the persons entitled to the amounts;

(2) if no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Section 23A.008(a) or (b) as if the interests of the cotenants that requested partition by sale were not purchased; or

(3) if more than one cotenant pays the entire price for the remaining interest, the court shall:

(A) reapportion the remaining interest among those paying cotenants, based on each paying cotenant’s original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest;

(B) promptly issue an order reallocating all of the cotenants’ interests;

(C) disburse the amounts held by the court to the persons entitled to the amounts; and

(D) promptly refund any excess payment held by the court.
(g) Not later than the 45th day after the date the court sends notice to the parties under Subsection (a), any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under Subsection (g), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under Subsections (a) through (f) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) the purchase price for the interest of a nonappearing cotenant is based on the court’s determination of value under Section 23A.006.

Added by Acts 2017, 85th Leg., ch. 297, § 1, eff. Sept. 1, 2017.

§ 23A.008. Partition Alternatives

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants under Section 23A.007, or if after conclusion of the buyout under Section 23A.007 a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in Section 23A.009, finds that partition in kind will result in substantial prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have the requesting parties’ individual interests aggregated.

(b) If the court does not order partition in kind under Subsection (a), the court shall order partition by sale under Section 23A.010 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind under Subsection (a), the court may require that one or more other cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if those cotenants’ interests were not bought out under Section 23A.007, a part of the property representing the combined interests of those cotenants as determined by the court, and that part of the property shall remain undivided.

Added by Acts 2017, 85th Leg., ch. 297, § 1, eff. Sept. 1, 2017.

§ 23A.009. Considerations for Partition in Kind

(a) In determining under Section 23A.008(a) whether partition in kind would result in substantial prejudice to the cotenants as a group, the court shall consider the following:

1. whether the heirs’ property practicably can be divided among the cotenants;

2. whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if the property were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

3. evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

4. a cotenant’s sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

5. the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

6. the degree to which the cotenants have contributed the cotenants’ pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

7. any other relevant factor.

(b) The court may not consider any one factor under Subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

Added by Acts 2017, 85th Leg., ch. 297, § 1, eff. Sept. 1, 2017.

§ 23A.010. Open-Market Sale, Sealed Bids, or Auction

(a) If the court orders a sale of heirs’ property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or at an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than the 10th day after the date the order is entered, agree on a real estate broker to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under Subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

1. the broker shall comply with the reporting requirements of Section 23A.011; and

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 23A.013. Relation to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Added by Acts 2017, 85th Leg., ch. 297, § 1, eff. Sept. 1, 2017.

Chapter 26. Use of a Deceased Individual’s Name, Voice, Signature, Photograph, or Likeness

Statutes in Context
Chapter 26

Chapter 26 establishes that an individual has a property right in the use of the individual’s name, voice, signature, photograph, or likeness after the individual’s death. Chapter 26 further explains how that right may be transferred, who owns the right after the person’s death, and who may exercise the right.

§ 26.001. Definitions

In this chapter:

1. “Photograph” means a photograph or photographic reproduction, still or moving, videotape, or live television transmission of an individual in a manner that allows a person viewing the photograph with the naked eye to reasonably determine the identity of the individual.

2. “Property right” means the property right created by this chapter.

3. “Name” means the actual or assumed name used by an individual which, when used in conjunction with other information, is intended to identify a particular person.

4. “Media enterprise” means a newspaper, magazine, radio station or network, television station or network, or cable television system.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Jan. 1, 1987.

§ 26.002. Property Right Established

An individual has a property right in the use of the individual’s name, voice, signature, photograph, or likeness after the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.003. Applicability

This chapter applies to an individual:

1. alive on or after September 1, 1987, or who died before September 1, 1987, but on or after January 1, 1937; and
(2) whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death or comes to have commercial value after that time.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.004. Transferability

(a) The property right is freely transferable, in whole or in part, by contract or by means of trust or testamentary documents.

(b) The property right may be transferred before or after the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.005. Ownership After Death of Individual

(a) If the ownership of the property right of an individual has not been transferred at or before the death of the individual, the property right vests as follows:

(1) if there is a surviving spouse but there are no surviving children or grandchildren, the entire interest vests in the surviving spouse;

(2) if there is a surviving spouse and surviving children or grandchildren, one-half the interest vests in the surviving spouse and one-half the interest vests in the surviving children or grandchildren;

(3) if there is no surviving spouse, the entire interest vests in the surviving children of the deceased individual and the surviving children of any deceased children of the deceased individual; or

(4) if there is no surviving spouse, children, or grandchildren, the entire interest vests in the surviving parents of the deceased individual.

(b) The interests of the deceased individual’s children and grandchildren are divided among them and exercisable on a per stirpes basis in the manner provided by Section 201.101, Estates Code, according to the number of the deceased individual’s children represented. If there is more than one child of a deceased child of the deceased individual, the share of a child of a deceased child may only be exercised by a majority of the children of the deceased child.

(c) If the property right is split among more than one person, those persons who own more than a one-half interest in the aggregate may exercise the right on behalf of all persons who own the right.


§ 26.006. Registration of Claim

(a) A person who claims to own a property right may register that claim with the secretary of state.

(b) The secretary of state shall provide a form for registration of a claim under this section. The form must be verified and must include:

(1) the name and date of death of the deceased individual;

(2) the name and address of the claimant;

(3) a statement of the basis of the claim; and

(4) a statement of the right claimed.

(c) The secretary of state may microfilm or reproduce by another technique a document filed under this section and destroy the original document.

(d) A document or a reproduction of a document filed under this section is admissible in evidence.

(f) The fee for filing a claim is $25.

(g) A document filed under this section is a public record.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.007. Effect of Registration

(a) Registration of a claim is prima facie evidence of a valid claim to a property right.

(b) A registered claim is superior to a conflicting, unregistered claim unless a court invalidates the registered claim.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.008. Exercise of Ownership for First Year Following Death of Individual

(a) Except as provided by Subsection (b), for the first year following the death of the individual a property right may be exercised, if authorized by law or an appointing court, by the following persons who may be appointed by a court for the benefit of the estate of the deceased individual:

(1) an independent executor;

(2) an executor;

(3) an independent administrator;

(4) a temporary or permanent administrator; or

(5) a temporary or permanent guardian.

(b) For the first year following the death of the individual, an owner of a property right may exercise that right only if the owner registers a valid claim as provided by Section 26.006.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.009. Exercise of Ownership After First Year Following Death of Individual

After the first year following the death of the individual, an owner of a property right may exercise that right whether or not the owner has registered a claim as provided by Section 26.006.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.010. Termination

A property right expires on the first anniversary of the date of death of the individual if:
(1) the individual has not transferred the right; and
(2) a surviving person under Section 26.005 does not exist.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.011. Unauthorized Uses

Except as provided by Section 26.012, a person may not use, without the written consent of a person who may exercise the property right, a deceased individual’s name, voice, signature, photograph, or likeness in any manner, including:

(1) in connection with products, merchandise, or goods; or
(2) for the purpose of advertising, selling, or soliciting the purchase of products, merchandise, goods, or services.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.012. Permitted Uses

(a) A person may use a deceased individual’s name, voice, signature, photograph, or likeness in:

(1) a play, book, film, radio program, or television program;
(2) a magazine or newspaper article;
(3) material that is primarily of political or newsworthy value;
(4) single and original works of fine art; or
(5) an advertisement or commercial announcement concerning a use under this subsection.

(b) A media enterprise may use a deceased individual’s name, voice, signature, photograph, or likeness in connection with the coverage of news, public affairs, a sporting event, or a political campaign without consent. Any use other than the above by a media enterprise of a deceased individual’s name, voice, signature, photograph, or likeness shall require consent if the material constituting the use is integrally and directly connected with commercial sponsorship or paid advertising. No consent shall be required for the use of the deceased individual’s name, voice, signature, photograph, or likeness by a media enterprise if the broadcast or article is not commercially sponsored or does not contain paid advertising.

(c) A person who is an owner or employee of a media enterprise, including a newspaper, magazine, radio station or network, television station or network, cable television system, billboard, or transit ad, that is used for advertising a deceased individual’s name, voice, signature, photograph, or likeness in a manner not authorized by this section is not liable for damages as provided by this section unless the person:

(1) knew that the use was not authorized by this section; or
(2) used the deceased individual’s name, voice, signature, photograph, or likeness in a manner primarily intended to advertise or promote the media enterprise itself.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

(d) A person may use a deceased individual’s name, voice, signature, photograph, or likeness in any manner after the 50th anniversary of the date of the individual’s death.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.013. Liability for Unauthorized Use

(a) A person who uses a deceased individual’s name, voice, signature, photograph, or likeness in a manner not authorized by this chapter is liable to the person who owns the property right for:

(1) the amount of any damages sustained, as a result of the unauthorized use, by the person who owns the property right or $2,500, whichever is greater;
(2) the amount of any profits from the unauthorized use that are attributable to that use;
(3) the amount of any exemplary damages that may be awarded; and
(4) reasonable attorney’s fees and expenses and court costs incurred in recovering the damages and profits established by this section.

(b) The amount of profits under Subsection (a)(2) may be established by a showing of the gross revenue attributable to the unauthorized use minus any expenses that the person who committed the unauthorized use may prove.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.014. Other Rights Not Affected

This chapter does not affect a right an individual may have in the use of his own name, voice, signature, photograph, or likeness before the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

§ 26.015. Defenses to Liability

A person shall not be liable for damages under this chapter if he has acted in reliance on the results of a probate proceeding governing the estate of the deceased personality in question.

Added by Acts 1987, 70th Leg., ch. 152, § 1, eff. Sept. 1, 1987.

Title 5. Exempt Property and Liens

Subtitle A. Property Exempt from Creditors’ Claims

Chapter 41. Interests in Land

Subchapter A. Exemptions in Land Defined

Electronic copy available at: https://ssrn.com/abstract=4537861
The source of the tremendous protection granted to Texas homesteads is Article XVI, § 50 of the Texas Constitution. See Statutes in Context to Article XVI, § 50 for additional information.

Section 41.001(c) provides that after a homestead is sold, the proceeds remain protected for 6 months. In other words, a person who sells a homestead has 6 months to reinvest the proceeds in a new homestead.

§ 41.001. Interests in Land Exempt from Seizure

(a) A homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claims of creditors except for encumbrances properly fixed on homestead property.

(b) Encumbrances may be properly fixed on homestead property for:
   (1) purchase money;
   (2) taxes on the property;
   (3) work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254(a), (b), and (c);
   (4) an owelty of partition imposed against the entirety of the property by a 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 owner;
   (6) an extension of credit that meets the requirements of Section 50(a)(6), Article XVI, Texas Constitution; or
   (7) a reverse mortgage that meets the requirements of Sections 50(k)-(p), Article XVI, Texas Constitution.

(c) The homestead claimant’s proceeds of a sale of a homestead are not subject to seizure for a creditor’s claim for six months after the date of sale.


§ 41.002. Definition of Homestead

(a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.

(b) If used for the purposes of a rural home, the homestead shall consist of:
   (1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or
   (2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

(c) A homestead is considered to be urban if, at the time the designation is made, the property is:
   (1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and
   (2) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:
      (A) electric;
      (B) natural gas;
      (C) sewer;
      (D) storm sewer; and
      (E) water.

(d) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created.


Statutes in Context

§ 41.002

Homesteads are classified by property type as either rural or urban. The size of the exemption depends on this classification and is set forth in Article XVI, § 51 of the Texas Constitution. See Statutes in Context to Article XVI, § 51.

Note that § 41.002(b) attempts to reduce the size of a rural homestead for a single adult to 100 acres. It is unclear whether the Property Code may cut back the constitutionally provided 200-acre rural homestead.

§ 41.0021

The 2009 Legislature provided that if a settlor transfers property to a “qualifying trust” (basically a revocable inter vivos trust) which otherwise would qualify as the homestead of the settlor or the beneficiary but which had not been transferred into the trust, this property may still qualify as the settlor’s or beneficiary’s homestead if the person occupies and
uses it as his or her homestead. Accordingly, the homestead does not lose the creditor protection it would normally have merely because the homestead property is being held in trust form.

§ 41.0021. Homestead in Qualifying Trust

(a) In this section, “qualifying trust” means an express trust:

(1) in which the instrument or court order creating the express trust, an instrument transferring property to the trust, or any other agreement that is binding on the trustee provides that a settlor or beneficiary of the trust has the right to:

(A) revoke the trust without the consent of another person other than a spouse who is also a settlor of the trust;

(B) exercise an inter vivos general power of appointment over the property that qualifies for the homestead exemption, either alone or when aggregated with property subject to an inter vivos general power of appointment held by a spouse who is also a settlor of the trust;

(C) use and occupy the residential property as the settlor’s or beneficiary’s principal residence at no cost, or rent free and without charge, except for [to the settlor or beneficiary, other than payment of] taxes and other costs and expenses specified in the instrument or court order:

(i) for the life of the settlor or beneficiary;

(ii) for the shorter of the life of the settlor or beneficiary or a term of years specified in the instrument or court order; or

(iii) until the date the trust is revoked or terminated by an instrument or court order that describes the property with sufficient certainty to identify the property and that is recorded in the real property records of the county in which the property is located [and that describes the property with sufficient certainty to identify the property]; and

(2) the trustee of which acquires the property in an instrument of title or under a court order that:

(A) describes the property with sufficient certainty to identify the property and the interest acquired; and

(B) is recorded in the real property records of the county in which the property is located.

(b) Property that a settlor or beneficiary occupies and uses in a manner described by this subchapter and in which the settlor or beneficiary owns a beneficial interest through a qualifying trust is considered the homestead of the settlor or beneficiary under Section 50, Article XVI, Texas Constitution, and Section 41.001.

(c) A married person who transfers property to the trustee of a qualifying trust must comply with the requirements relating to the joinder of the person’s spouse as provided by Chapter 5, Family Code.

(d) A trustee may sell, convey, or encumber property transferred as described by Subsection (c) without the joinder of either spouse unless expressly prohibited by the instrument or court order creating the trust.

(e) This section does not affect the rights of a surviving spouse or surviving children under Section 52, Article XVI, Texas Constitution, or Chapter 353, Estates Code.


§ 41.003. Temporary Renting of a Homestead

Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.


§ 41.004. Abandonment of a Homestead

If a homestead claimant is married, a homestead cannot be abandoned without the consent of the claimant’s spouse.


§ 41.005. Voluntary Designation of Homestead

(a) If a rural homestead of a family is part of one or more parcels containing a total of more than 200 acres, the head of the family and, if married, that person’s spouse may voluntarily designate not more than 200 acres of the property as the homestead. If a rural homestead of a single adult person, not otherwise entitled to a homestead, is part of one or more parcels containing a total of more than 100 acres, the person may voluntarily designate not more than 100 acres of the property as the homestead.

(b) If an urban homestead of a family, or an urban homestead of a single adult person not otherwise entitled to a homestead, is part of one or more contiguous lots containing a total of more than ten acres, the head of the family and, if married, that person’s spouse or the single adult person, as applicable, may voluntarily designate not more than 10 acres of the property as the homestead.

(c) Except as provided by Subsection (e) or Subchapter B, to designate property as a homestead, a person or persons, as applicable, must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person or persons must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:

(1) a description sufficient to identify the property designated;

(2) a statement by the person or persons who executed the instrument that the property is designated as the homestead of the person’s family or...
as the homestead of a single adult person not otherwise entitled to a homestead;
(3) the name of the current record title holder of the property; and
(4) for a rural homestead, the number of acres designated and, if there is more than one survey, the number of acres in each.
(d) A person or persons, as applicable, may change the boundaries of a homestead designated under Subsection (c) by executing and recording an instrument in the manner required for a voluntary designation under that subsection. A change under this subsection does not impair rights acquired by a party before the change.
(e) Except as otherwise provided by this subsection, property on which a person receives an exemption from taxation under Section 11.43, Tax Code, is considered to have been designated as the person’s homestead for purposes of this subchapter if the property is listed as the person’s residence homestead on the most recent appraisal roll for the appraisal district established for the county in which the property is located. If a person designates property as a homestead under Subsection (c) or Subchapter B and a different property is considered to have been designated as the person’s homestead under this subsection, the designation under Subsection (c) or Subchapter B, as applicable, prevails for purposes of this chapter.
(f) If a person or persons, as applicable, have not made a voluntary designation of a homestead under this section as of the time a writ of execution is issued against the person, any designation of the person’s or persons’ homestead must be made in accordance with Subchapter B.
(g) An instrument that made a voluntary designation of a homestead in accordance with prior law and that is on file with the county clerk on September 1, 1987, is considered a voluntary designation of a homestead under this section.


§ 41.0051. Disclaimer and Disclosure Required

(a) A person may not deliver a written advertisement offering, for a fee, to designate property as a homestead as provided by Section 41.005 unless there is a disclaimer on the advertisement that is conspicuous and printed in 14-point boldface type or computer equivalent:

“This document is an advertisement of services. It is not an official document of the state of Texas.”

(b) A person who solicits solely by mail or by telephone a homeowner to pay a fee for the service of applying for a property tax refund from a tax appraisal district or other governmental body on behalf of the homeowner shall, before accepting money from the homeowner or signing a contract with the homeowner for the person’s services, disclose to the homeowner the name of the tax appraisal district or other governmental body that owes the homeowner a refund.

(c) A person’s failure to provide a disclaimer on an advertisement as required by Subsection (a) or to provide the disclosure required by Subsection (b) is considered a false, misleading, or deceptive act or practice for purposes of Section 17.46(a), Business and Commerce Code, and is subject to action by the consumer protection division of the attorney general’s office as provided by Section 17.46(a), Business and Commerce Code.


§ 41.006. Certain Sales of Homestead

(a) Except as provided by Subsection (c), any sale or purported sale in whole or in part of a homestead at a fixed purchase price that is less than the appraised fair market value of the property at the time of the sale or purported sale, and in connection with which the buyer of the property executes a lease of the property to the seller at lease payments that exceed the fair rental value of the property, is considered to be a loan with all payments made from the seller to the buyer in excess of the sales price considered to be interest subject to Title 4, Finance Code.

(b) The taking of any deed in connection with a transaction described by this section is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and the deed is void and no lien attaches to the homestead property as a result of the purported sale.

(c) This section does not apply to the sale of a family homestead to a parent, stepparent, grandparent, child, stepchild, brother, half brother, sister, half sister, or grandchild of an adult member of the family.


§ 41.007. Home Improvement Contract

(a) A contract for improvements to an existing residence described by Section 41.001(b)(3) must contain:

(1) the contractor’s certificate of registration number from the Texas Residential Construction Commission if the contractor is required to register as a builder with the commission;

(2) the address and telephone number at which the owner may file a complaint with the Texas Residential Construction Commission about the conduct of the contractor if the contractor is required to register as a builder with the commission; and

(3) the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent:

“IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract

Electronic copy available at: https://ssrn.com/abstract=4537861
and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(b) A violation of Subsection (a) of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under the provisions of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

(c) A provision of a contract for improvements to an existing residence described by Section 41.001(b)(3) that requires the parties to submit a dispute arising under the contract to binding arbitration must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

(d) A provision described by Subsection (c) is not enforceable against the owner unless the requirements of Subsection (c) are met.


§ 41.008. Conflict With Federal Law

To the extent of any conflict between this subchapter and any federal law that imposes an upper limit on the amount, including the monetary amount or acreage amount, of homestead property a person may exempt from seizure, this subchapter prevails to the extent allowed under federal law.

Added by Acts 1999, 76th Leg., ch. 1510, § 4.

Subchapter B. Designation of a Homestead in Aid of Enforcement of a Judgment Debt

§ 41.021. Notice to Designate

If an execution is issued against a holder of an interest in land of which a homestead may be a part and the judgment debtor has not made a voluntary designation of a homestead under Section 41.005, the judgment creditor may give the judgment debtor notice to designate the homestead as defined in Section 41.002. The notice shall state that if the judgment debtor fails to designate the homestead within the time allowed by Section 41.022, the court will appoint a commissioner to make the designation at the expense of the judgment debtor.


§ 41.022. Designation by Homestead Claimant

At any time before 10 a.m. on the Monday next after the expiration of 20 days after the date of service of the notice to designate, the judgment debtor may designate the homestead as defined in Section 41.002 by filing a written designation, signed by the judgment debtor, with the justice or clerk of the court from which the writ of execution was issued, together with a plat of the area designated.


§ 41.023. Designation by Commissioner

(a) If a judgment debtor who has not made a voluntary designation of a homestead under Section 41.005 does not designate a homestead as provided in Section 41.022, on motion of the judgment creditor, filed within 90 days after the issuance of the writ of execution, the court from which the writ of execution issued shall appoint a commissioner to designate the judgment debtor’s homestead. The court may appoint a surveyor and others as may be necessary to assist the commissioner. The commissioner shall file his designation of the judgment debtor’s homestead in a written report, together with a plat of the area designated, with the justice or clerk of the court not more than 60 days after the order of appointment is signed or within such time as the court may allow.

(b) Within 10 days after the commissioner’s report is filed, the judgment debtor or the judgment creditor may request a hearing on the issue of whether the report should be confirmed, rejected, or modified as may be deemed appropriate in the particular circumstances of the case. The commissioner’s report may be contradicted by evidence from either party, when exceptions to it or any item thereof have been filed before the hearing, but not otherwise. After the hearing, or if there is no hearing requested, the court shall designate the homestead as deemed appropriate and order sale of the excess.

(c) The commissioner, a surveyor, and others appointed to assist the commissioner are entitled to such fees and expenses as are deemed reasonable by the court. The court shall tax these fees and expenses against the judgment debtor as part of the costs of execution.


§ 41.024. Sale of Excess

An officer holding an execution sale of property of a judgment debtor whose homestead has been designated under this chapter may sell the excess of the judgment debtor’s interest in land not included in the homestead.


Chapter 42. Personal Property

Statutes in Context
Chapter 42

Chapter 42 provides that certain personal property is exempt from the claims of most creditors.
§ 42.001. Personal Property Exemption

(a) Personal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if:

(1) the property is provided for a family and has an aggregate fair market value of not more than $100,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property; or

(2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than $50,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.

(b) The following personal property is exempt from seizure and is not included in the aggregate limitations prescribed by Subsection (a):

(1) current wages for personal services, except for the enforcement of court-ordered child support payments;

(2) professionally prescribed health aids of a debtor or a dependent of a debtor;

(3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor; and

(4) a religious bible or other book containing sacred writings of a religion that is seized by a creditor other than a lessor of real property who is exercising the lessor’s contractual or statutory right to seize personal property after a tenant breaches a lease agreement for or abandons the real property.

(c) Except as provided by Subsection (b)(4), this section does not prevent seizure by a secured creditor with a contractual landlord’s lien or other security in the property to be seized.

(d) Unpaid commissions for personal services not to exceed 25 percent of the aggregate limitations prescribed by Subsection (a) are exempt from seizure and are included in the aggregate.

(e) A religious bible or other book described by Subsection (b)(4) that is seized by a lessor of real property in the exercise of the lessor’s contractual or statutory right to seize personal property after a tenant breaches a lease agreement for the real property or abandons the real property may not be included in the aggregate limitations prescribed by Subsection (a).

Amended by Acts 1991, 72nd Leg., ch. 175, § 1, eff. May 24, 1991; Acts 1997, 75th Leg., ch. 1046, § 1, eff. Sept. 1, 1997. Subsecs (b) & (c) amended by and subsec. (e) added by Acts 2007, 80th Leg., ch. 444, § 1, eff. Sept. 1, 2007. Subsec. (a) amended by Acts 2015, 84th Leg., ch. 793, § 1, eff. Sept. 1, 2015.

§ 42.002. Personal Property

(a) The following personal property is exempt under Section 42.001(a):

(1) home furnishings, including family heirlooms;

(2) provisions for consumption;

(3) farming or ranching vehicles and implements;

(4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;

(5) wearing apparel;

(6) jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);

(7) two firearms;

(8) athletic and sporting equipment, including bicycles;

(9) a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver’s license or who does not hold a driver’s license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person;

(10) the following animals and forage on hand for their consumption:

(A) two horses, mules, or donkeys and a saddle, blanket, and bridle for each;

(B) 12 head of cattle;

(C) 60 head of other types of livestock; and

(D) 120 fowl; and

(11) household pets.

(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code, or Subchapter F, Chapter 501, Transportation Code, or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.


§ 42.0021. Additional Exemption for Certain Savings Plans

(a) In this section, “qualified savings plan” means any stock bonus, pension, annuity, deferred compensation, profit-sharing, health, education, or similar plan or account, to the extent the plan or account is exempt from federal income tax or to the extent federal income tax on a person’s interest in the plan or account is deferred until actual payment of benefits to the person. A plan or account that is subject to federal income tax is considered to be exempt from federal income tax for purposes of this section if the plan or account is subject to the tax solely under Sections 511 through 514, Internal Revenue Code of 1986. The term includes:

(1) a retirement plan sponsored by a private employer, government, or church;

(2) a retirement plan for self-employed individuals;

(3) a simplified employee pension plan;
(4) an individual retirement account or annuity, including an inherited individual retirement account or annuity;
(5) a Roth IRA, including an inherited Roth IRA;
(6) a health savings account;
(7) a Coverdell education savings account;
(8) a plan or account established under Subchapter F, Chapter 54, Education Code, including a prepaid tuition contract;
(9) a plan or account established under Subchapter G, Chapter 54, Education Code, including a savings trust account;
(10) a qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986;
(11) a qualified ABLE program of any state that meets the requirements of Section 529A, Internal Revenue Code of 1986; and
(12) an annuity or similar contract purchased with assets distributed from a plan or account described by this subsection.

(b) In addition to the exemption prescribed by Section 42.001 and except as provided by this section, a person’s interest in and right to receive payments from a qualified savings plan, whether vested or not, is exempt from attachment, execution, and seizure for the satisfaction of debts.

(c) An interest or right in a qualified savings plan that was acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coanuitant, heir, or legatee, is exempt to the same extent that the interest or right of the decedent was exempt on the date of the decedent’s death.

(d) Contributions to a qualified savings plan that are excess contributions under Section 4975, Internal Revenue Code of 1986, and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law.

(e) Amounts distributed from a qualified savings plan are exempt from attachment, execution, and seizure for a creditor’s claim for 60 days after the date of distribution. If the amounts qualify as a rollover contribution under the Internal Revenue Code of 1986, whether taxable or nontaxable, the amounts will continue to be exempt thereafter under this section.

(f) A person’s interest in a retirement plan that is solely an unfunded, unsecured promise by an employer to pay deferred compensation is not exempt under this section unless otherwise exempt by law.

(420.003) Designation of Exempt Property
(a) If the number or amount of a type of personal property owned by a debtor exceeds the exemption allowed by Section 42.002 and the debtor can be found in the county where the property is located, the officer making a levy on the property shall ask the debtor to designate the personal property to be levied on. If the debtor cannot be found in the county or the debtor fails to make a designation within a reasonable time after the officer’s request, the officer shall make the designation.

(b) If the aggregate value of a debtor’s personal property exceeds the amount exempt from seizure under Section 42.001(a), the debtor may designate the portion of the property to be levied on. If, after a court’s request, the debtor fails to make a designation within a reasonable time or if for any reason a creditor contests that the property is exempt, the court shall make the designation.


(420.004) Transfer of Nonexempt Property
(a) If a person uses the property not exempt under this chapter to acquire, obtain an interest in, make improvement to, or pay an indebtedness on personal property which would be exempt under this chapter with the intent to defraud, delay, or hinder an interested person from obtaining that to which the interested person is or may be entitled, the property, interest, or improvement acquired is not exempt from seizure for the satisfaction of liabilities. If the property, interest, or improvement is acquired by discharging an encumbrance held by a third person, a person defrauded, delayed, or hindered is subrogated to the rights of the third person.

(b) A creditor may not assert a claim under this section more than two years after the transaction from

Electronic copy available at: https://ssrn.com/abstract=4537861
which the claim arises. A person with a claim that is unliquidated or contingent at the time of the transaction may not assert a claim under this section more than one year after the claim is reduced to judgment.

(c) It is a defense to a claim under this section that the transfer was made in the ordinary course of business by the person making the transfer.


§ 42.005. Child Support Liens

(a) Except as provided by Subsection (b), Sections 42.001, 42.002, and 42.0021 do not apply to a child support lien established under Subchapter G, Chapter 157, Family Code.

(b) The exemption from attachment, execution, and seizure for the satisfaction of debts provided under Section 42.0021 for a plan or account described by Section 42.0021(a)(8), (9), or (10) applies to a child support lien established under Subchapter G, Chapter 157, Family Code.


§ 71.001. Escheat

(a) If an individual dies intestate and without heirs, the real and personal property of that individual is subject to escheat.

(b) “Escheat” means the vesting of title to property in the state in an escheat proceeding under Subchapter B.


Statutes in Context

§ 71.002. Presumption of Death

An individual is presumed dead for the purpose of determining if the individual’s real or personal property is subject to escheat if the individual:

(1) is absent from the individual’s place of residence for seven years or longer; and

(2) is not known to exist.


§ 71.003. Presumption of Intestacy

An individual is presumed to have died intestate if, on or before the seventh anniversary of the date of the individual’s death, the individual’s will has not been recorded or probated in the county where the individual’s property is located.


§ 71.004. Presumption of Death Without Heirs

An individual is presumed to have died leaving no heirs if for the seven-year period preceding the court’s determination:

(1) a lawful claim to the individual’s property has not been asserted; and

(2) a lawful act of ownership of the individual’s property has not been exercised.


§ 71.005. Act of Ownership

For the purposes of this chapter, an individual exercises a lawful act of ownership in property by,
§ 71.006. Review of Probate Decree

(a) If the state claims that an estate that has been administered in probate court in this state is subject to escheat, the state may have the judgment of the probate court reviewed by filing a petition in district court alleging that the administration of the estate was obtained by fraud or mistake of fact.

(b) The case shall be tried in accordance with the law for the revision and correction of a decree of the probate court.


§ 71.007. Identification of Real Property Subject to Escheat

The tax assessor-collector of each county shall:

1. take all steps necessary to identify real property that may be subject to escheat; and
2. notify the commissioner of the General Land Office and the attorney general so that they may take appropriate action.


Subchapter B. Escheat Proceedings

§ 71.101. Petition for Escheat

(a) If any person, including the attorney general, the comptroller, or a district attorney, criminal district attorney, county attorney, county clerk, district clerk, or attorney ad litem is informed or has reason to believe that real or personal property is subject to escheat under this chapter, the person may file a sworn petition requesting the escheat of the property and requesting a writ of possession for the property.

(b) The petition must contain:

1. a description of the property;
2. the name of the deceased owner of the property;
3. the name of the tenants or persons claiming the estate, if known; and
4. the facts supporting the escheat of the estate.

(c) If the petition is filed by a person other than the attorney general, the person shall send to the attorney general written notice of the filing and a copy of the petition to permit the attorney general to elect to participate on behalf of the state.

(d) An action brought under this section is governed by the procedure relating to class actions provided by the Texas Rules of Civil Procedure.

(e) A petition filed under this section is not subject to an objection relating to misjoinder of parties or causes of action.


§ 71.102. Citation

(a) If a petition is filed under this subchapter, the district clerk shall issue citation as in other civil suits to:

1. each defendant alleged by the petition to possess or claim the property that is the subject of the petition;
2. any person required by this chapter to be cited; and
3. persons interested in the estate, including lienholders of record.

(b) The citation required by Subdivision (3) of Subsection (a) must be published as required for other civil suits and must:

1. briefly state the contents of the petition; and
2. request all persons interested in the estate to appear and answer at the next term of the court.


§ 71.103. Party to Proceeding

(a) A person who exercises a lawful act of ownership in property that is the subject of an escheat proceeding must be made a party to the proceeding by:

1. personal service of citation if the person is a resident of this state and the person’s address can be obtained by reasonable diligence; or
2. service of citation on a person’s agent if the person is a nonresident or a resident who cannot be found and the agent can be found by the use of reasonable diligence.

(b) For the purposes of this section, reasonable diligence includes an inquiry and investigation of the records of the office of the tax assessor-collector of the county in which the property sought to be escheated is located.

(c) The comptroller is an indispensable party to any judicial or administrative proceeding concerning the disposition and handling of property that is the subject of an escheat proceeding and must be made a party to the proceeding by personal service of citation.


§ 71.104. Appearance of Claimants

Any person, whether named in the escheat petition or not, who claims an interest in property that is the subject of an escheat proceeding may appear, enter a pleading, and oppose the facts stated in the petition.
§ 71.105. Trial
(a) If a person appears and denies the state’s right to the property or opposes a material fact of the petition, the court shall try the issue as any other issue of fact.
(b) The court may order a survey as in other cases in which the title or the boundary of the land is in question.

§ 71.106. Default Judgment
If citation is issued in accordance with Section 71.102 and no person answers within the period provided by the Texas Rules of Civil Procedure, the court shall render a default judgment in favor of the state.

§ 71.107. Judgment for State
(a) If the court renders a judgment for the state finding that an intestate died without heirs, the property escheats to the state and title to the property is considered to pass to the state on the date of death of the owner as established by the escheat proceeding. The court may award court costs to the state.
(b) If the judgment involves real property, the state may sell the property under the general laws governing the sale of Permanent School Fund lands, and, after the second anniversary of the date of the final judgment, the court shall issue a writ of possession for the property.
(c) If the judgment involves personal property, the court shall issue a writ of possession that contains an adequate description of the property as in other cases for recovery of personal property.
(d) When the record of an escheat proceeding reflects that a lienholder or his predecessor received actual or constructive notice of the escheat proceeding, the entry of the judgment in the escheat proceeding will either satisfy or extinguish any lien which the lienholder or his predecessor claimed or could have claimed on the escheated property at the escheat proceeding.
(e) The sheriff, constable, court clerk, or other officer appointed by the judge in an escheat proceeding shall execute a writ of possession by filing the writ with the deed or map records of the county where the escheated property relates to realty and by serving the writ on any holder, tenant, or occupant of any escheated property. Additionally, the person who executes a writ of possession shall either:
   (1) post the writ for at least three consecutive weeks on the door or posting board of the county courthouse in the county where the proceeding was conducted or in the county where the property is located; or
   (2) in the case of real property, post the writ for at least two consecutive weeks at a reasonably conspicuous place on the realty; or
   (3) publicize the writ in any other fashion ordered by the court.
(f) After validly executing a writ of possession, the sheriff, constable, court clerk, or other appointed officer shall note the method of the execution of the writ on the writ return and shall return the writ to the clerk to be filed in the court records of the escheat proceeding.

§ 71.108. Costs Paid by State
If the property does not escheat, the state shall pay court costs. The clerk of the court shall certify the amount of the costs, and when the certificate is filed in the office of the comptroller of public accounts, the comptroller shall issue a warrant for the amount of the costs.

§ 71.109. Appeal; Writ of Error
A party who appeared at an escheat proceeding may appeal the judgment rendered or may file an application for a writ of error on the judgment. The attorney general or the other person acting on behalf of the state in the escheat proceeding may make an appeal or file the writ.

Subchapter C. Disposition of Escheated Property
§ 71.201. Seizure and Sale of Personal Property
(a) If personal property escheated to the state, the court shall issue to the sheriff a writ that commands the sheriff to seize the escheated property.
(b) The sheriff shall:
   (1) dispose of the personal property at public auction in accordance with the law regarding the sale of personal property under execution; and
   (2) deposit into the State Treasury the proceeds of the sale, less court costs.

§ 71.202. Disposition of Real Property
(a) Real property that escheats to the state under this title before January 1, 1985, becomes a part of the permanent school fund. Real property that escheats to the state on or after January 1, 1985, is held in trust by the Commissioner of the General Land Office for the use and benefit of the foundation school fund. The revenue from all leases, sales, and use of land held for the foundation school fund shall be deposited to the credit of the foundation school fund.
(b) Before the 91st day after the day on which a judgment that provides for the recovery of real property is
rendered, the clerk of the district court rendering the judgment shall send to the Commissioner of the General Land Office:

(1) a certified copy of the judgment; and
(2) notice of any appeal of that judgment.

(c) The commissioner shall list real property as escheated foundation school fund land or permanent school land as appropriate when the commissioner receives:

(1) a certified copy of a judgment under which the property escheats to the state and from which appeal is not taken; or
(2) a certified copy of notice of the affianced on appeal of a judgment under which the property escheats to the state.


§ 71.203. Account of Escheated Property

The comptroller shall keep an account of the money paid to and real property vested in this state under this chapter.


Subchapter D. Recovery of Escheated Property

§ 71.301. Suit for Escheated Personal Property

(a) If personal property of a deceased owner escheats to the state under this chapter and is delivered to the state, a person who claims the property as an heir, devisee, or legatee of the deceased may file suit against the state in a district court of Travis County, Texas. The suit must be filed on or before the fourth anniversary of the date of the final judgment in the escheat proceeding.

(b) The petition must state the nature of the claim and request that the money be paid to the claimant.

(c) A copy of the petition shall be served on the comptroller, who shall represent the interests of the state. 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.


§ 71.302. Recovery of Personal Property

(a) If in a suit filed under Section 71.301 the court finds that a claimant is entitled to recover personal property, the court shall order the comptroller to issue a warrant for payment of the claim without interest or costs.

(b) A copy of the order under seal of the court is sufficient voucher for issuing the warrant.


§ 71.303. Suit for Escheated Real Property

(a) If real property escheats to the state under this chapter, a person who was not personally served with citation in the escheat proceedings may file suit in the district court of Travis County for all or a part of the property. The suit must be filed not later than the second anniversary of the date of the final judgment in the escheat proceedings.

(b) A copy of the petition must be served on the attorney general, who shall represent the interests of the state.

(c) To the extent the claimant is adjudged to be the owner of all or a part of the property, the state is divested of the property.


§ 71.304. State as Party in Suit for Assets

(a) A suit brought for the collection of personal property delivered to the comptroller under this chapter must be brought in the name of this state.

(b) A suit brought for the possession of real property held in trust by the Commissioner of the General Land Office under this chapter must be brought in the name of this state.


Chapter 72. Abandonment of Personal Property

Subchapter A. General Provisions

§ 72.001. Application of Chapter

(a) Tangible or intangible personal property is subject to this chapter if it is covered by Section 72.101 and:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in this state
(2) the records of the holder do not disclose the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this state;
(3) the records of the holder do not disclose the last known address of the apparent owner, and it is established that:

(A) the last known address of the person entitled to the property is in this state; or
(B) the holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last
TEXAS PROPERTY CODE

known address of the apparent owner or other person entitled to the property;
(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide by law for the escheat or custodial taking of the property or is in a state in which the state’s escheat or unclaimed property law is not applicable to the property, and the holder is a domiciliary of a government or governmental subdivision or agency of this state;
(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or
(6) the transaction out of which the property arose occurred in this state and:
(A) the last known address of the apparent owner or other person entitled to the property is:
(i) unknown; or
(ii) in a state that does not provide by law for the escheat or custodial taking of the property or in a state in which the state’s escheat or unclaimed property law is not applicable to the property; and
(B) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or a state in which the state’s escheat or unclaimed property law is not applicable to the property.
(a-1) Tangible or intangible personal property is not subject to this chapter if it is a worthless or non-freely transferable security.

(b) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

Text of subsec. (c) effective until June 1, 2003
(c) This chapter applies to property held by life insurance companies with the exception of unclaimed funds, as defined by Section 3, Article 4.08, Insurance Code, held by those companies that are subject to Article 4.08, Insurance Code.

Text of subsec. (c) effective June 1, 2003
(c) This chapter applies to property held by life insurance companies with the exception of unclaimed proceeds to which Chapter 1109, Insurance Code, applies and that are held by those companies that are subject to Chapter 1109, Insurance Code.

(d) A holder of property presumed abandoned under this chapter is subject to the procedures of Chapter 74.
(e) In this chapter, a holder is a person, wherever organized or domiciled, who is:
(1) in possession of property that belongs to another;
(2) a trustee; or
(3) indebted to another on an obligation.

(f) In this chapter, a corporation shall be deemed to be a domiciliary of the state of its incorporation.


Subchapter B. Presumption of Abandonment

Statutes in Context
§ 72.101

Section 72.101 sets forth the circumstances under which personal property is presumed abandoned.

§ 72.101. Personal Property Presumed Abandoned

(a) Except as provided by this section and Sections 72.1015, 72.1016, 72.1017, 72.102, and 72.104, personal property is presumed abandoned if, for longer than three years:

(1) the location of the owner of the property is unknown to the holder of the property; and
(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

(b)(1) The three-year period leading to a presumption of abandonment of stock or another intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, commences on the first date that either a sum payable as a result of the ownership interest is unclaimed by the owner or a communication to the owner is returned undelivered by the United States Postal Service.

(2) The running of the three-year period of abandonment ceases immediately on the exercise of an act of ownership interest or sum payable or a communication with the association as evidenced by a memorandum or other record on file with the association or its agents.

(3) At the time an ownership is presumed abandoned under this section, any sum then held for interest or owing to the owner as a result of the interest and not previously presumed abandoned is presumed abandoned.

(4) Any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the ownership interest is subject to the presumption of abandonment as provided by this section.

(c) Property distributable in the course of a demutualization or related reorganization of an insurance company is presumed abandoned on the first anniversary of the date the property becomes distributable if, at the time of the first distribution, the last known address of the owner according to the records of the holder of the property is known to be incorrect or the distribution or statements related to the distribution are returned by the post office as undeliverable and the owner has not:

Electronic copy available at: https://ssrn.com/abstract=4537861
(1) communicated in writing with the holder of the property or the holder’s agent regarding the interest; or
(2) otherwise communicated with the holder regarding the interest as evidenced by a memorandum or other record on file with the holder or its agents.
(d) Property distributable in the course of a demutualization or related reorganization of an insurance company that is not subject to Subsection (c) is presumed abandoned as otherwise provided by this section.
(e) This section does not apply to money collected as child support that:
(1) is being held for disbursement by the state disbursement unit under Chapter 234, Family Code, or a local registry, as defined by Section 101.018, Family Code, pending identification and location of the person to whom the money is owed; or
(2) has been disbursed by the state disbursement unit under Chapter 234, Family Code, by electronic funds transfer into a child support debit card account established for an individual under Section 234.010, Family Code, but not activated by the individual.


§ 72.102. Traveler’s Check and Money Order
(a) A traveler’s check or money order is not presumed to be abandoned under this chapter unless:
(1) the records of the issuer of the check or money order indicate that it was purchased in this state;
(2) the issuer’s principal place of business is in this state and the issuer’s records do not indicate the state in which the check or money order was purchased; or
(3) the issuer’s principal place of business is in this state, the issuer’s records indicate that the check or money order was purchased; or
(4) the 15th anniversary of the date on which the check or money order was issued.
(b) A traveler’s check to which Subsection (a) applies is presumed to be abandoned under this chapter unless:
(1) the 15th anniversary of the date on which the check or money order was issued;
(2) the 15th anniversary of the date on which the issuer of the check last received from the owner of the check communication concerning the check;
(3) the 15th anniversary of the date of the last writing, on file with the issuer, that indicates the owner’s interest in the check.
(c) A money order to which Subsection (a) applies is presumed to be abandoned on the latest of:
(1) the third anniversary of the date on which the money order was issued;
(2) the third anniversary of the date on which the issuer of the money order last received from the owner of the money order communication concerning the money order; or
(3) the third anniversary of the date of the last writing, on file with the issuer, that indicates the owner’s interest in the money order.


§ 72.103. Preservation of Property
Notwithstanding any other provision of this title except a provision of this section relating to a money order, a holder of abandoned property shall preserve the property and may not at any time, by any procedure, including a deduction for service, maintenance, or other charge, transfer or convert to the profits or assets of the holder or otherwise reduce the value of the property. For purposes of this section, value is determined as of the date of the last transaction or contact concerning the property, except that in the case of a money order, value is determined as of the date the property is presumed abandoned under Section 72.102(c). If a holder imposes service, maintenance, or other charges on a money order prior to the time of presumed abandonment, such charges may not exceed the amount of $1 per month for each month the money order remains uncashed prior to the month in which the money order is presumed abandoned.


Chapter 73. Property Held by Financial Institutions
Subchapter A. General Provisions
§ 73.001. Definitions and Application of Chapter
(a) In this chapter:
(1) “Account” means funds deposited with a depository in an interest-bearing account, or a child support debit card account established under Section 234.010, Family Code, a checking or savings account, or funds received by a depository in exchange for the purchase of a stored value card.
(2) “Depositor” means a person who has an ownership interest in an account.
TEXAS PROPERTY CODE

(3) “Owner” means a person who has an ownership interest in a safe deposit box.

(4) “Holder” means a depository.

(5) “Check” includes a draft, cashier’s check, certified check, registered check, or similar instrument.

(b) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

(c) Any property, other than an account, check, or safe deposit box, held by a depository is subject to the abandonment provisions of Chapter 72.

(d) A holder of accounts, checks, or safe deposit boxes presumed abandoned under this chapter is subject to the procedures of Chapter 74.


Subchapter B. Presumption of Abandonment

§ 73.101. Inactive Account or Safe Deposit Box Presumed Abandoned

(a) An account or safe deposit box is presumed abandoned if:

(1) except as provided by Subsection (c), the account or safe deposit box has been inactive for at least five years as determined under Subsection (b);

(2) the location of the depositor of the account or owner of the safe deposit box is unknown to the depository; and

(3) the amount of the account or the contents of the box have not been delivered to the comptroller in accordance with Chapter 74.

(b) For purposes of Subsection (a)(1):

(1) an account becomes inactive on the date the depositor’s last transaction or correspondence concerning the account; and

(2) a safe deposit box becomes inactive on the date a rental was due but not paid.

(c) If the account is a checking or savings account or is a matured certificate of deposit, the account is presumed abandoned if the account has been inactive for at least three years as determined under Subsection (b)(1).


§ 73.002. Depository

For the purposes of this chapter, a depository is a bank, savings and loan association, credit union, or other banking organization that:

(1) receives and holds a deposit of money or the equivalent of money in banking practice or other personal property in this state; or

(2) receives and holds such a deposit or other personal property in another state for a person whose last known residence is in this state.


§ 73.003. Preservation of Inactive Account or Safe Deposit Box

(a) A depository shall preserve an account that is inactive and the contents of a safe deposit box that is inactive. The depository may, not at any time, by any procedure, including the imposition of a service charge, transfer or convert to the profits or assets of the depository or otherwise reduce the value of the account or the contents of such a box. For purposes of this subsection, value is determined as of the date the account or safe deposit box becomes inactive.

(b) An account is inactive if for more than one year there has not been a debit or credit to the account because of an act by the depositor or an agent of the depositor, other than the depository, and the depositor has not communicated with the depository. A safe deposit box is inactive if the rental on the box is delinquent.

(c) This section does not affect the provisions of Subchapter B, Chapter 59, Finance Code.


Subchapter B. Presumption of Abandonment

§ 73.101. Inactive Account or Safe Deposit Box Presumed Abandoned

(a) An account or safe deposit box is presumed abandoned if:

(1) except as provided by Subsection (c), the account or safe deposit box has been inactive for at least five years as determined under Subsection (b);

(2) the location of the depositor of the account or owner of the safe deposit box is unknown to the depository; and

(3) the amount of the account or the contents of the box have not been delivered to the comptroller in accordance with Chapter 74.

(b) For purposes of Subsection (a)(1):

(1) an account becomes inactive on the date the depositor’s last transaction or correspondence concerning the account; and

(2) a safe deposit box becomes inactive on the date a rental was due but not paid.

(c) If the account is a checking or savings account or is a matured certificate of deposit, the account is presumed abandoned if the account has been inactive for at least three years as determined under Subsection (b)(1).


§ 73.102. Checks

A check is presumed to be abandoned on the latest of:

(1) the third anniversary of the date the check was payable;

(2) the third anniversary of the date the issuer or payor of the check last received documented communication from the payee of the check; or

(3) the third anniversary of the date the check was issued if, according to the knowledge and records of the issuer or payor of the check, during that period, a claim to the check has not been asserted or an act of ownership by the payee has not been exercised.

§ 92.0162. Right to Vacate and Avoid Liability Following Tenant’s Death

(a) A representative of the estate of a tenant who dies before the expiration of the tenant’s lease and was, at the time of the tenant’s death, the sole occupant of a rental dwelling may terminate the tenant’s rights and obligations under the lease and may vacate the leased premises and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the leased premises before the end of the lease term if:

(1) the representative provides to the landlord or the landlord’s agent written notice of the termination of the lease under this section;

(2) the deceased tenant’s property is removed from the leased premises in accordance with Section 92.014(c) or (d); and

(3) the representative signs an inventory of the removed property, if required by the landlord or the landlord’s agent.

(b) Termination of a lease under this section is effective on the later of:

(1) the 30th day after the date on which the notice under Subsection (a) was provided; or

(2) the date on which all of the conditions in Subsection (a) have been met.

(c) After receipt of the notice provided under Subsection (a), the landlord shall provide a copy of the written lease agreement to the person who provided the notice on written request of that person.

(d) This section does not affect the obligations or liability of the tenant or the tenant’s estate under the lease before the lease is terminated under this section, including the liability of the tenant or the tenant’s estate for:

(1) delinquent, unpaid rent; and

(2) damages to the leased premises not caused by normal wear and tear.

(e) A landlord or landlord’s agent who lawfully permits a person described by Subsection (a) to enter or facilitates the person’s entry into the leased premises under this section is not liable for an act or omission that arises in connection with permitting or facilitating the entry.

Section 101.001 is not actually in the Trust Code which begins with § 111.001. The reason for this section to be outside of the Trust Code which has a virtually identical provision (§ 114.082) is that § 101.001 applies even if there is no actual trust but rather just a designation of a person as trustee (a possible resulting trust). Section 101.001 applies when the conveyance is "to a person designated as a trustee" (emphasis added) while § 114.082 applies when the conveyance is "to a trustee."

§ 101.001. Conveyance by Person Designated as Trustee

If property is conveyed or transferred to a person designated as a trustee but the conveyance or transfer does not identify a trust or disclose the name of any beneficiary, the person designated as trustee may convey, transfer, or encumber the title of the property without subsequent question by a person who claims to be a beneficiary under a trust or who claims by, through, or under any undisclosed beneficiary or by, through, or under the person designated as trustee in that person's individual capacity.


Statutes in Context
§ 101.002

The trustee should earmark the trust property, that is, label the property as belonging to the trust. Earmarking prevents trust property from being confused with the trustee's own property so that the trustee's personal creditors, heirs, beneficiaries, and other claimants do not take trust property under the mistaken belief that it belongs to the trustee. Section 101.002 and its Trust Code counterpart § 114.0821, provide that failure to earmark does not cause the unearmarked trust property to be liable for the trustee's personal obligations.


Subtitle B. Texas Trust Code: Creation, Operation, and Termination of Trusts

Statutes in Context
Subtitle B

The owner of property may create a trust by transferring that property in a unique fashion. First, the owner must divide the title to the property into legal and equitable interests and, second, the owner must impose fiduciary duties on the holder of the legal title to deal with the property for the benefit of the holder of the equitable title. Once the owner transfers property in this manner, the property is usually referred to as the trust principal, corpus, estate, or res.

In general, a trust scenario arises when a property owner wants to bestow benefits on a worthy individual or charity but does not want to make an unrestricted outright gift. Thus, the owner transfers legal title to a reliable individual or financial institution and equitable title to the individual or charity deserving the windfall. The holder of legal title manages that property following state law requirements and the original owner's instructions as specified in the trust instrument. The trustee then makes payments to or for the benefit of the individual or charity according to the original owner's instructions. When the property is exhausted or the instructions are completed, the trust ends and, once again, title to any remaining property is unified in the hands of the individual or charity the property owner specified.

The person who creates a trust by splitting title and imposing fiduciary duties is called the settlor. You may see the settlor referred to by other terms. In old cases and statutes, the settlor may be dubbed by the archaic term, trustor. In tax-related discussions, the settlor is frequently designated as the grantor because the settlor is making a grant of the property by splitting the title. The settlor may also be called a donor because most transfers of beneficial title are actually gifts.

The person who holds the legal interest to the property is the trustee. The trustee has all of the duties, responsibilities, and liabilities associated with property ownership but the trustee receives none of the benefits of that ownership. The best the trustee can hope for is a fee for serving as the trustee. Thus, if I told you I am giving you legal title to $1 million, you would not be very happy. In fact, you would be quite upset unless you were going to get paid because I would have imposed upon you all the burdens of owning $1 million. And, it actually gets worse because you would be holding that legal title as a fiduciary. This means that you would be required to manage the property with reasonable care, avoid any type of self-dealing with the property, and be certain not to be in a position where your own personal interests could be in conflict with those of the beneficiaries. If your conduct would ever fall beneath these standards, even if the lapse were merely negligent, you could be personally responsible in a civil action for damages and could even face a criminal prosecution.
The equitable title to the trust property is held by the beneficiary. The beneficiary is entitled to enjoy the trust property but, unlike the donee of an outright gift, not in an unrestricted manner. The beneficiary may receive only the benefits from the property as the settlor specified in the trust instrument. Typically, the beneficiary has no control over the trustee or how the trustee manages the legal title to the property. However, the beneficiary has the right to sue the trustee if the trustee’s conduct breaches the fiduciary duties or if the trustee does not follow the settlor’s instructions as set forth in the trust instrument. You may see the beneficiary referred to by other terms. The French term cestui que trust is often used in older cases. When the emphasis is on the tax consequences of equitable title ownership, the beneficiary is typically called the grantee and when the gift element of the transfer is most important, the term donee may be used.

Trusts are an extremely powerful, useful, and advantageous estate planning technique. Some of the reasons a property owner may want to convey property in trust are summarized below.

1. Provide For and Protect Beneficiaries. The settlor’s desire to provide for and protect someone is probably the most common reason for creating a trust. Although a donor could make a quick, convenient, and uncomplicated outright gift, there are many situations in which such outright gifts would not effectuate the donor’s true intent.

   (a) Minors. Minors lack legal capacity to manage property and usually have insufficient maturity to do so as well. A trust permits the settlor to make a gift for the benefit of a minor without giving the minor control over the property or triggering the necessity for the minor to have a court-appointed guardian to manage that property. A trust is also more flexible and allows a settlor to have greater control over how the property is used when contrasted with other methods such as a transfer to a guardian or conservator of the minor’s estate or to a custodian under the Texas Uniform Transfers to Minors Act (see Property Code Chapter 141).

   (b) Individuals Who Lack Management Skills. An individual may lack the skills necessary to properly manage the trust property. This deficiency could be the result of mental or physical incompetence or a lack of experience in the rigors of making prudent investment decisions. For example, persons who suddenly obtain large amounts of money, such as performers, professional athletes, lottery winners, or personal injury plaintiffs, tend to deplete these windfalls rapidly because they have never learned how to manage their money wisely. By putting the money under the control of a trustee with investment experience, the settlor increases the likelihood that the beneficiary’s interests are served for a longer period of time.

   (c) Spendthrifts. Some individuals may be competent to manage property but are prone to use it in an excessive or frivolous manner. By using a carefully drafted trust, a settlor may protect the trust property from the beneficiary’s own excesses as well as the beneficiary’s creditors. See § 112.035 (spendthrift provisions).

   (d) Persons Susceptible to Influence. When a person suddenly acquires a significant amount of property, that person may be under pressure from family, friends, charities, investment advisers, and opportunist scam artists who wish to share in the windfall. A trust can make it virtually impossible for the beneficiary to transfer trust property to these people.

2. Flexible Distribution of Assets. An outright gift, either inter vivos or testamentary, gives the donee total control over the way the property is used. With a trust, the settlor can restrict the beneficiary’s control over the property in any manner the settlor desires as long as the restrictions are not illegal or in violation of public policy. This flexibility allows the settlor to determine how the trustee distributes trust benefits, such as by spreading the benefits over time, giving the trustee discretion to select who receives distributions and in what amounts, requiring the beneficiary to meet certain criteria to receive or continue receiving benefits, or limiting the purposes for which trust property may be used such as health care or education.

3. Protection Against Settlor’s Incompetence. Once an individual is incompetent due to illness, injury, or other cause, the person cannot manage the person’s own property. The court then needs to appoint a guardian of the estate or a conservator to manage the property. The process of judicially determining a person’s incompetency may cause the person considerable private and public embarrassment and there is no guarantee the incompetent person will be happy with the guardian’s decisions. Guardianships are also inconvenient and costly because guardians act under court supervision and are required to submit detailed reports on a regular basis.

A trust may be used to avoid this need for a guardian. The settlor may create a trust and maintain considerable control over the trust property by, for example, serving as the trustee, retaining the power to revoke the trust, and keeping a beneficial life interest. However, upon incompetency, the settlor’s designated successor trustee would take over the administration of the trust property in accordance with the directions the settlor expressed in the trust instrument. This type of arrangement is often called a stand-by trust.

An alternative method to protect property and avoid the need for a guardian in the event of incompetency is to have the client execute a durable
4. Professional Management of Property. The settlor may create a trust to obtain the services of a professional asset manager, either for the benefit of third-party beneficiaries or for the settlor as the beneficiary. Professional trustees, such as banks and trust companies, have more expertise and experience with various types of investments than most individuals. Assume that you have just inherited a wheat farm located in Kansas, an office building in New York City, an apartment building in San Francisco, U.S. Government savings bonds, corporate stock in a dozen domestic corporations, oil and gas property in Texas, and an import-export business in Italy. Would you have the skill to handle all of these different types of assets? If not, placing the assets in trust would be one way of obtaining professional management. And, there is another advantage to making a trust conveyance. If you negligently manage your own property and suffer financially as a result, there is not much you can do about it; you cannot successfully bring a law suit against yourself. However, if a trustee is negligent, you can bring suit for breach of fiduciary duties and, if successful, have a strong chance of recovery because most financial institutions and trust companies have money or other assets which can be reached to satisfy a damage award.

Professional trustees also have greater investment opportunities. For example, a bank may combine funds from several trusts into one common trust fund to take advantage of opportunities that require a large investment and to diversify, thus reducing the damage to the value of the trust when one investment turns sour.

5. Probate Avoidance. Property in a trust created during the settlor’s lifetime is not part of the probate estate upon the settlor’s death. The property remaining in the trust when the settlor dies is administered and distributed according to the terms of the trust; it does not pass under the settlor’s will or by intestate succession. Advantages to avoiding probate include getting the property into the hands of the beneficiaries quickly, avoiding gaps in management, and evading probate publicity. These advantages, however, do not apply to a trust created in the settlor’s will because the property must first pass through the probate process.

6. Tax Benefits. Another popular reason for using trusts is tax avoidance. Income taxes may be saved by transferring income-producing property to a trust which has a beneficiary who is in a lower tax bracket than the settlor. Additionally, gift taxes may be avoided by structuring the transfers to a trust to fall within the annual exclusion from the federal gift tax which, as of 2013, is $14,000 per year per donee. Likewise, if a trust is properly constructed, the trust property will not be included in the settlor’s taxable estate.

7. Avoid Conflicts of Interest. A person may be unable to own certain assets outright if ownership would cause impermissible conflicts of interest. For example, the President, a governor, a mayor, or other political figure may own stocks, bonds, real property, and other investments. While carrying out the official’s duties, there would be a tremendous likelihood that conflicts of interest would arise between the person’s investments and political decisions. Likewise, a corporate officer may also be placed in similar conflict of interest situations. To eliminate these conflicts, the person places the assets in trust, names an independent third party as trustee, and indicates that the person has no control over the management of the assets and no authority to inquire about the exact nature of the trust investments while the person remains in office. This type of arrangement is often called a blind trust.

Chapter 111. General Provisions

Statutes in Context
Chapter 111

There are three main time periods of Texas trust legislation.

Prior to 1943. Only sparse codification of trust law existed prior to 1943.

Texas Trust Act. The Texas Trust Act took effect on April 19, 1943 and, as amended, remained the cornerstone of trust law in Texas for over 40 years. The Texas Trust Act was very innovative in its extensive codification of the law relating to the creation, administration, and enforcement of trusts.

Texas Trust Code. The Texas Trust Code took effect on January 1, 1984. The Code modernized and expanded the Act while retaining most of its key features. For the applicability of the Code to old trusts, see § 111.006. The Texas Trust Code was one of the major foundations for the Uniform Trust Code approved in 2000 by the National Conference of Commissioners on Uniform State Laws.

§ 111.001. Short Title

This subtitle may be cited as the Texas Trust Code. Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.

Statutes in Context
§ 111.002

The Code and the Act are treated as one continuous statute. Thus, if a trust refers to the...
§ 111.002. Construction of Subtitle

This subtitle and the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon’s Texas Civil Statutes), shall be considered one continuous statute, and for the purposes of any statute or of any instrument creating a trust that refers to the Texas Trust Act, this subtitle shall be considered an amendment to the Texas Trust Act.

Statutes in Context
§ 111.003

The Code applies only to express trusts. Other trust-like or trust-nominated relationships are not covered.

§ 111.003. Trusts Subject to this Subtitle

For the purposes of this subtitle, a “trust” is an express trust only and does not include:

(1) a resulting trust;
(2) a constructive trust;
(3) a business trust; or
(4) a security instrument such as a deed of trust, mortgage, or security interest as defined by the Business & Commerce Code.

Statutes in Context
§ 111.0035

Under former Trust Code § 111.002, the terms of the trust prevailed over conflicting Trust Code rules except that the settlor could not waive certain self-dealing duties of corporate trustees. Section 111.0035 was added to the Trust Code in 2005 and amended by several subsequent Legislatures to expand the list of non-waivable items and provides detailed rules with regard to the waiver of certain trustee duties.

Trust Purposes: The settlor may not change the restriction in Trust Code § 112.031 that a trust may not be created for an illegal purpose or require the trustee to commit a criminal or tortious act or an act that is contrary to public policy.

Trustee Exculpation: In another new section enacted in 2005, § 114.007, the rules regarding trustee exculpation are recodified and expanded. The settlor is prohibited from restricting the limitations on exculpation imposed by this section.

Statute of Limitations: The settlor may not shorten the periods of limitation for commencing a judicial proceeding regarding a trust.

Trustee’s Duty to Account for Irrevocable Trusts: The settlor may not limit the duty of a trustee of an irrevocable trust to respond to a beneficiary’s demand for an accounting under Trust Code § 113.151 provided that the beneficiary is either (1) entitled or permitted to receive trust distributions or (2) would receive a distribution from the trust if the trust terminated at the time of the demand.

Note the settlor may restrict the trustee’s duty to account in other situations such as (1) if the trust is revocable or (2) if the beneficiaries of the irrevocable trust are remote, that is they are not eligible for current distributions or a distribution if the trust were to terminate.

Trustee’s Duty of Good Faith: The settlor may not limit the trustee’s duty to act in good faith and in accordance with the purposes of the trust.

Court’s Power: The settlor may not restrict the power of a court to take action or exercise jurisdiction. The statute provides a non-exclusive list of powers included in this restriction:

- Modify, reform, terminate, or take other action with regard to the trust under Trust Code § 112.054,
- Remove a trustee under Trust Code § 113.082,
- Exercise jurisdiction over the trust under Trust Code § 115.001,
- Determine matters related to the trustee’s bond (e.g., require, dispense with, modify, or terminate the bond),
- Adjust, deny, or order disgorgement of compensation to a trustee who committed a breach of trust,
- Make an award of costs and attorney’s fees under Trust Code § 114.064, and
- Create a forfeiture for trust contests brought in good faith and with probable cause under § 112.038.

Trustee’s Duty to Keep Beneficiary Informed: The settlor may not limit the common-law duty of a trustee to keep a beneficiary of an irrevocable trust who is 25 years old or older informed if the beneficiary is entitled or permitted to receive distributions or would receive a distribution if the trust were terminated.

§ 111.0035. Default and Mandatory Rules; Conflict Between Terms and Statute

(a) Except as provided by the terms of a trust and Subsection (b), this subtitle governs:

(1) the duties and powers of a trustee;
(2) relations among trustees; and
(3) the rights and interests of a beneficiary.
(b) The terms of a trust prevail over any provision of this subtitle, except that the terms of a trust may not limit:
(1) the requirements imposed under Section 112.031;
(2) the applicability of Section 114.007 to an exculpation term of a trust;
(3) the periods of limitation for commencing a judicial proceeding regarding a trust;
(4) a trustee’s duty:
   (A) with regard to an irrevocable trust, to respond to a demand for accounting made under Section 113.151 if the demand is from a beneficiary who, at the time of the demand:
      (i) is entitled or permitted to receive distributions from the trust; or
      (ii) would receive a distribution from the trust if the trust terminated at the time of the demand; and
   (B) to act in good faith and in accordance with the purposes of the trust;
(5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:
   (A) modify, reform, or terminate a trust or take other action under Section 112.054;
   (B) remove a trustee under Section 113.082;
   (C) exercise jurisdiction under Section 115.001;
   (D) require, dispense with, modify, or terminate a trustee’s bond;
   (E) adjust, deny, or order disgorgement of a trustee’s compensation if the trustee commits a breach of trust; or
   (F) make an award of costs and attorney’s fees under Section 114.064;
(6) the applicability of Section 112.038.

(c) The terms of a trust may not limit any common-law duty to keep a beneficiary of an irrevocable trust who is 25 years of age or older informed at any time during which the beneficiary:
(1) is entitled or permitted to receive distributions from the trust; or
(2) would receive a distribution from the trust if the trust were terminated.


§ 111.004. Definitions

In this subtitle:
(1) “Affiliate” includes:
   (A) a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person; or
   (B) any officer, director, partner, employee, or relative of a person, and any corporation or partnership of which a person is an officer, director, or partner.
(2) “Beneficiary” means a person for whose benefit property is held in trust, regardless of the nature of the interest.
(3) “Court” means a court of appropriate jurisdiction.
(4) Express trust” means a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property;
   (A) for the benefit of another person; or
   (B) for a particular purpose, in the case of a trust subject to Subchapter F.
(5) “Income” is defined in Section 116.002.
(6) “Interest” means any interest, whether legal or equitable or both, present or future, vested or contingent, defeasible or indefeasible.
(7) “Interested person” means a trustee, beneficiary, or any other person having an interest in or a claim against the trust or any person who is affected by the administration of the trust. Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.
(8) “Internal Revenue Code” means the Internal Revenue Code of 1954, as amended, or any corresponding statute subsequently in effect.
(9) “Inventory value” means the cost of property purchased by a trustee, the market value of property at the time it became subject to the trust, or, in the case of a testamentary trust, any value used by the trustee that is finally determined for the purposes of an estate or inheritance tax.
(10) “Person” means:
   (A) an individual;
   (B) a corporation;
   (C) a limited liability company;
   (D) a partnership;
   (E) a joint venture;
   (F) an association;
   (G) a joint-stock company;

§ 111.004. Definitions

In this subtitle:
(1) “Affiliate” includes:
   (A) a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person; or
   (B) any officer, director, partner, employee, or relative of a person, and any corporation or partnership of which a person is an officer, director, or partner.
(2) “Beneficiary” means a person for whose benefit property is held in trust, regardless of the nature of the interest.
(3) “Court” means a court of appropriate jurisdiction.
(4) Express trust” means a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property;
   (A) for the benefit of another person; or
   (B) for a particular purpose, in the case of a trust subject to Subchapter F.
(5) “Income” is defined in Section 116.002.
(6) “Interest” means any interest, whether legal or equitable or both, present or future, vested or contingent, defeasible or indefeasible.
(7) “Interested person” means a trustee, beneficiary, or any other person having an interest in or a claim against the trust or any person who is affected by the administration of the trust. Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.
(8) “Internal Revenue Code” means the Internal Revenue Code of 1954, as amended, or any corresponding statute subsequently in effect.
(9) “Inventory value” means the cost of property purchased by a trustee, the market value of property at the time it became subject to the trust, or, in the case of a testamentary trust, any value used by the trustee that is finally determined for the purposes of an estate or inheritance tax.
(10) “Person” means:
   (A) an individual;
   (B) a corporation;
   (C) a limited liability company;
   (D) a partnership;
   (E) a joint venture;
   (F) an association;
   (G) a joint-stock company;
(H) a business trust;
(I) an unincorporated organization;
(J) two or more persons having a joint or
common interest, including an individual or a
corporation acting as a personal representative or
in any other fiduciary capacity;
(K) a government;
(L) a governmental subdivision, agency, or
instrumentality;
(M) a public corporation; or
(N) any other legal or commercial entity.

(11) “Principal” is defined in Section 116.002

(12) “Property” means any type of property, whether
real, tangible or intangible, legal, or equitable, including
property held in any digital or electronic medium. The
term also includes choses in action, claims, and contract
rights, including a contractual right to receive death
benefits as designated beneficiary under a policy of
insurance, contract, employees’ trust, retirement account,
or other arrangement.

(13) “Relative” means a spouse or, whether by
blood or adoption, an ancestor, descendant, brother,
sister, or spouse of any of them.

(14) “Settlor” means a person who creates a trust
or contributes property to a trustee of a trust. If more
than one person contributes property to a trustee of a
trust, each person is a settlor of the portion of the
property in the trust attributable to that person’s
contribution to the trust. The terms “grantor” and
“trustor” mean the same as “settlor.”

(15) “Terms of the trust” means the manifestation
of intention of the settlor with respect to the trust
expressed in a manner that admits of its proof in
judicial proceedings.

(16) “Transaction” means any act performed by a
settlor, trustee, or beneficiary in relation to a trust,
including the creation or termination of a trust, the
investment of trust property, a breach of duty, the
receipt of trust property, the receipt of income or the
incurring of expense, a distribution of trust property,
an entry in the books and records of the trust, and an
accounting by a trustee to any person entitled to
receive an accounting.

(17) “Trust property” means property placed in
trust by one of the methods specified in Section
112.001 or property otherwise transferred to or
acquired or retained by the trustee for the trust.

(18) “Trustee” means the person holding the
property in trust, including an original, additional, or
successor trustee, whether or not the person is
appointed or confirmed by a court.

(19) “Employees’ trust” means:
(A) a trust that forms a part of a stock-bonus,
pension, or profit-sharing plan under Section 401,
401 (1986));
(B) a pension trust under Chapter 111; 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.

(20) “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)).

(21) “Retirement account” means a retirement-
amenity contract, an individual retirement account, a
simplified employee pension, or any other retirement
savings arrangement.

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

(23) “Simplified employee pension” means a
trust, custodial arrangement, or annuity under Section
Sec. 408 (1986)).

(24) “Environmental law” means any federal,
state, or local law, rule, regulation, or ordinance
relating to protection of the environment.

(25) “Breach of trust” means a violation by a
trustee of a duty the trustee owes to a beneficiary.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2,
§ 2, eff. Jan. 1, 1984; Acts 1987, 70th Leg., ch. 741, §§ 1,
2, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 846, § 28,
Leg., ch. 659, § 2, eff. Jan. 1, 2004; Acts 2003, 78th
amended by Acts 2005, 79th Leg., ch. 148, § 3, eff. Jan. 1,
Leg., ch. 451, § 3, eff. Sept. 1, 2007. Subsec. (12)
amended by Acts 2013, 83rd Leg., ch. 699, § 1, eff. Sept. 1,
975, § 1, eff. June 18, 2023.

§ 111.005. Reenactment of Common Law

If the law codified in this subtitle repealed a statute
that abrogated or restated a common law rule, that
common law rule is reestablished, except as the contents
of the rule are changed by this subtitle.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2,

Statutes in Context
§ 111.006

The Code applies to (1) all trusts created after
January 1, 1984 and (2) all transactions after
January 1, 1984 involving trusts even if the trust was
created before January 1, 1984.

§ 111.006. Application

This subtitle applies:

(1) to all trusts created on or after January 1,
1984, and to all transactions relating to such trusts; and
(2) to all transactions occurring on or after January 1, 1984, relating to trusts created before January 1, 1984; provided that transactions entered into before January 1, 1984, and which were subject to the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), and the rights, duties, and interests flowing from such transactions remain valid on and after January 1, 1984, and must be terminated, consummated, or enforced as required or permitted by this subtitle.


Chapter 112. Creation, Validity, Modification, and Termination of Trusts

Subchapter A. Creation

§ 112.001. Methods of Creating Trust

A trust may be created by:

1. a property owner's declaration that the owner holds the property as trustee for another person;
2. a property owner's inter vivos transfer of the property to another person as trustee for the transferee or a third person;
3. a property owner's testamentary transfer to another person as trustee for a third person;
4. an appointment under a power of appointment to another person as trustee for the donee of the power or for a third person; or
5. a promise to another person whose rights under the promise are to be held in trust for a third person.


Statutes in Context

§ 112.002

Trust intent is the threshold factor in determining whether or not a conveyance of property is sufficient to create an express trust. If the transferor does not manifest trust intent, no trust is created and the court will not intervene to create a trust.

A transferor of property has trust intent if the transferor (1) divides title to the property into legal and equitable components, and (2) imposes enforceable fiduciary duties on the holder of legal title to deal with the property for the benefit of the equitable title holder. See § 111.004(4) (defining "express trust").

No particular words or conduct is necessary to establish trust intent. Likewise, the mere use of trust terminology alone is insufficient to show trust intent.

§ 112.003

Testamentary Trust. A settlor can create a trust to take effect upon the settlor's death by including a gift in trust in the settlor's will. See § 112.001(3). The split of title and the imposition of duties does not occur until the settlor dies. This type of trust is called a testamentary trust. A precondition to the validity of a testamentary trust is for the will itself to be valid. If the will fails, any testamentary trust contained in that will is also ineffective. After the will is established, the trust is examined to determine its validity. The trust is not automatically valid just because the will is valid.

§ 112.002. Intention to Create Trust

A trust is created only if the settlor manifests an intention to create a trust.


Statutes in Context

§ 112.003

Because a trust is a type of gratuitous property transfer, rather than a contractual arrangement, the beneficiary does not need to give consideration to the settlor for the transfer. Do not be confused when a written document creating a trust is carelessly referred to as a "trust agreement" rather than a "trust instrument." The term "agreement" in this context does not connote an agreement of any kind, contractual or otherwise, between the settlor and the beneficiary.
A promise to create a trust in the future, just like any other promise to make a gift, is not enforceable unless the promise qualifies as a contract.

§ 112.003. Consideration
Consideration is not required for the creation of a trust. A promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are present.

Statutes in Context
§ 112.004
Generally, a trust must be in writing to be enforceable. The policy underlying the requirement that certain trusts be evidenced by a writing is to protect a transferee who actually received an outright conveyance from having those rights infringed upon by someone claiming that the transfer was actually one in trust. Thus, an alleged trustee will use the lack of a writing to raise the Statute of Frauds as a defense to a plaintiff who is trying to deprive the alleged trustee of that person's rights as the donee of an outright gift.

The writing must contain (1) evidence of the terms of the trust (e.g., identity of the beneficiaries, the property, and how that property is to be used) and (2) the signature of the settlor or the settlor's authorized agent (see Government Code § 311.005(6) defining "signed").

The normal requirements are relaxed in some situations for trusts containing personal property. Subsection (1) explains when an oral trust may be enforceable and subsection (2) provides when a writing which does not meet the standard requirements may be sufficient. For example, see Ahlgren v. Ahlgren, No. 13-22-00029-CV, 2022 WL 1260190 (Tex. App.—Corpus Christi-Edinburg, Apr. 25, 2022, no pet. h.).

Courts may enforce an oral trust of real property if the trustee partially performs. In other words, if the alleged trustee acts, at least temporarily, as if a trust exists, the trustee may be estopped from denying the existence of a trust at a later time and claiming the property as the donee of an outright gift. For example, if the trustee permits the beneficiary to possess the land or make valuable improvements to that land, the trustee may be prohibited from later asserting that a trust did not exist.

Violating the Statute of Frauds merely makes the trust unenforceable (voidable) rather than void. Accordingly, the trustee may carry out the terms of a trust which does not comply with the statute of frauds although no one could have forced the trustee to do so.

See also § 112.051(c) which requires a trust revocation, modification, or amendment to be in writing if the settlor created the trust in writing.

§ 112.004. Statute of Frauds
A trust in either real or personal property is enforceable only if there is written evidence of the trust's terms bearing the signature of the settlor or the settlor's authorized agent. A trust consisting of personal property, however, is enforceable if created by:
(1) a transfer of the trust property to a trustee who is neither settlor nor beneficiary if the transferor expresses simultaneously with or prior to the transfer the intention to create a trust; or
(2) a declaration in writing by the owner of property that the owner holds the property as trustee for another person or for the owner and another person as a beneficiary.

Statutes in Context
§ 112.005
A trust is a method of holding title to property. Consequently, the existence of property is essential for the initial creation and continued existence of a trust. No trust exists until it has property and a trust terminates when no property remains.

Any type of property (e.g., real, personal, tangible, intangible, legal, equitable, chose in action, claim, contract right, etc.) may be held in trust. See § 111.004(12) (defining “property”) and § 111.004(17) (defining “trust property”).

If a person cannot transfer the property, such as property belonging to another person, property that has valid restrictions on its transfer, or the expectancy to inherit from someone who is still alive, then that property cannot support a trust.

Legal title to the trust property must reach the hands of the trustee. It is not enough for the settlor to sign a trust instrument, own assets that would make good trust property, and intend for that property to be in the trust. The settlor must consummate this intent by actually transferring or delivering the property.

§ 112.005. Trust Property
A trust cannot be created unless there is trust property.

Statutes in Context
§ 112.006
Generally, property may be added to an existing trust. However, additions are not permitted if either
§ 112.006. Additions to Trust Property

Property may be added to an existing trust from any source in any manner unless the addition is prohibited by the terms of the trust or the property is unacceptable to the trustee.


Statutes in Context

§ 112.007

The settlor must have the capacity to convey property to create a trust. This requirement does not impose any different standard on the settlor as the settlor would face in an outright, non-trust, transfer of the same property. If the settlor can convey property, the settlor may elect to convey that property by splitting the legal and equitable title and creating a trust. Thus, the capacity required to create an inter vivos trust is usually the same as the capacity to make an outright gift and the capacity necessary to create a testamentary trust is the same as the capacity necessary to create a testamentary trust.

§ 112.008

The trustee must have the legal capacity to take, hold, and transfer the trust property, that is, (a) an individual trustee must be of legal age (or have had the disabilities of minority removed) and competent and (b) a corporate trustee must have the power to act as a trustee in Texas. See Finance Code §§ 32.001(b)(3) & 182.001(b)(3). Although the trustee may be a person unconnected with the rest of the trust arrangement, such detachment is not necessary. A trustee may also be the settlor or a beneficiary of the same trust as long as the sole trustee is not also the sole beneficiary. See § 112.034 (merger).

§ 112.009. Acceptance by Trustee

(a) The signature of the person named as trustee on the writing evidencing the trust or on a separate written acceptance is conclusive evidence that the person accepted the trust. A person named as trustee who exercises power or performs duties under the trust is presumed to have accepted the trust, except that a person named as trustee may engage in the following conduct without accepting the trust:

(1) acting to preserve the trust property if, within a reasonable time after acting, the person gives notice of the rejection of the trust to:

(A) the settlor; or...
(B) if the settlor is deceased or incapacitated, all beneficiaries then entitled to receive trust distributions from the trust; and
(2) inspecting or investigating trust property for any purpose, including determining the potential liability of the trust under environmental or other law.
(b) A person named as trustee who does not accept the trust incurs no liability with respect to the trust.
(c) If the person named as the original trustee does not accept the trust or if the person is dead or does not have capacity to act as trustee, the person named as the alternate trustee under the terms of the trust or the person selected as alternate trustee according to a method prescribed in the terms of the trust may accept the trust. If a trustee is not named or if there is no alternate trustee designated or selected in the manner prescribed in the terms of the trust, the court shall appoint a trustee on a petition of any interested person.

§ 112.010. Presumed Acceptance by Beneficiary; Disclaimer
(a) Acceptance by a beneficiary of an interest in a trust is presumed.
(b) A disclaimer of an interest in or power over trust property is governed by Chapter 240.

§ 112.031. Trust Purposes
A trust may be created for any purpose that is not illegal. The terms of the trust may not require the trustee to commit a criminal or tortious act or an act that is contrary to public policy.

Subchapter B. Validity

Statutes in Context
§ 112.010
Just as heirs may disclaim inheritances and beneficiaries may disclaim testamentary gifts, potential trust beneficiaries are not required to accept the proffered equitable title. The reasons a beneficiary may decide to disclaim and the requirements of the disclaimer are fundamentally the same as for an heir or beneficiary who disclaims. See Property Code Title 13 which contains the Texas Uniform Disclaimer of Property Interests Act which took effect on September 1, 2015 replacing the previous disclaimer provisions of the Estates and Trust Codes.

Statutes in Context
§ 112.011
To be consistent with the Estates Code provision on posthumous class gift members, § 255.401, the 2017 Legislature amended the Trust Code to include a parallel provision. Thus, a beneficiary must be alive or in gestation at the death of the person by whom the class is measured unless the trust instrument expressly provides otherwise.

§ 112.011. Posthumous Class Gifts Membership
(a) A right to take as a member under a class gift does not accrue to any person unless the person is born before, or is in gestation at, the time of death of the person by whom the class is measured and survives that person by at least 120 hours.
(b) For purposes of Subsection (a), a person is:
(1) considered to be in gestation if insemination or implantation occurs at or before the time of death of the person by which the class is measured; and
(2) presumed to be in gestation at the time of death of the person by which the class is measured if the person was born before the 301st day after the date of the person’s death.
(c) A provision in the trust instrument that is contrary to this section prevails over this section.

Statutes in Context
§ 112.031
The settlor may create a trust for any purpose as long as that purpose is not illegal. In addition, the terms of the trust may not require the trustee to commit an act that is criminal, tortious, or contrary to public policy.

Courts have used two main approaches in evaluating the legality of a trust purpose. The first analysis concentrates on the settlor’s intent and the effect of the trust’s existence on the behavior of other persons. Under the intent approach, a trust is illegal if the existence of the trust could induce another person to commit a crime even if the trustee does not have to perform an illegal act. This is the majority approach in the United States and appears to be the one adopted by § 112.031 by its use of the word “purpose.” The second approach focuses on how the trust property is actually used, rather than on the motives of the settlor.

Statutes in Context
§ 112.031
A trust may be created for any purpose that is not illegal. The terms of the trust may not require the trustee to commit a criminal or tortious act or an act that is contrary to public policy.

TEXAS PROPERTY CODE

Statutes in Context
§ 112.032

The historical origin of the two components of trust intent, the split of title and the imposition of duties, is derived from the common law history of trusts. The common law precursor to a trust was called a use. Before the fifteenth century, uses were not enforceable and thus a “beneficiary” had no rights and had to hope that the “trustee” would fulfill a merely honorary obligation. This situation changed in the 1400s as uses started to be enforceable as equitable estates in property. By the 1500s, uses were common and were, from the government’s point of view, often abused. Property owners were employing uses to avoid their duties of property ownership under the feudal land ownership system, especially financial obligations such as paying money (today called taxes) to the monarch (now the Internal Revenue Service), to hinder creditors and others with claims against the property, and to provide benefits for various religious organizations contrary to the Crown’s wishes.

The English Parliament enacted the Statute of Uses in 1536 to end these abuses. The statute executed the use which meant that the beneficiary’s equitable interest in real property was turned into a legal interest as well. Because this had the effect of eliminating the legal interest which the trustee formerly held, the beneficiary was now the owner of all title, both legal and equitable, and was fully responsible for all of the burdens of property ownership. Had the Statute of Uses been carried out exactly as written, trusts as we know them would not exist.

An important exception to the Statute of Uses developed for the active trust and is reflected in § 112.032. An active trust is an arrangement where the trustee’s holding of property is not merely nominal in an attempt to gain some untoward benefit, but where the trustee actually needs legal title to the property to perform a power or duty relating to the property for the beneficiary’s benefit.

Although the Texas Statute of Uses applies only to real property, a similar result would be reached for personal property because without a true split of title and imposition of duties, the definition of an express trust in § 111.004(4) would not be satisfied.

§ 112.032. Active and Passive Trusts; Statute of Uses

(a) Except as provided by Subsection (b), title to real property held in trust vests directly in the beneficiary if the trustee has neither a power nor a duty related to the administration of the trust.

(b) The title of a trustee in real property is not divested if the trustee’s title is not merely nominal but is subject to a power or duty in relation to the property.


Statutes in Context
§ 112.033

The settlor may wish to create a trust but may also desire to retain considerable interests in and powers over the trust property. May a settlor do so and still create a valid trust? If the settlor conveys the property in trust so that the settlor and trustee are different persons, there is a clear split of title and imposition of duties. However, if the settlor makes a declaration of trust so the settlor is also the trustee, the reality of the split of title and duty imposition is less clear.

Section 112.033 which codified the result in Westerfeld v. Huckaby, 474 S.W.2d 189 (Tex. 1972), takes a very liberal approach by providing that the settlor may retain virtually all interests over the trust property provided there is some beneficial interest created in another person. This interest may be quite “weak” because it is contingent on some future event or is subject to revocation.

§ 112.033. Reservation of Interests and Powers by Settlor

If during the life of the settlor an interest in a trust or the trust property is created in a beneficiary other than the settlor, the disposition is not invalid as an attempted testamentary disposition merely because the settlor reserves or retains, either in himself or another person who is not the trustee, any or all of the other interests in or powers over the trust or trust property, such as:

1. a beneficial life interest for himself;
2. the power to revoke, modify, or terminate the trust in whole or in part;
3. the power to designate the person to whom or on whose behalf the income or principal is to be paid or applied;
4. the power to control the administration of the trust in whole or in part;
5. the right to exercise a power or option over property in the trust or over interests made payable to the trust under an employee benefit plan, life insurance policy, or otherwise; or
6. the power to add property or cause additional employee benefits, life insurance, or other interests to be made payable to the trust at any time.


Statutes in Context
§ 112.034

Any separation of legal and equitable title coupled with the imposition of fiduciary duties on the holder of the legal title is sufficient to satisfy the split of title requirement for a valid trust. Only if all legal

Electronic copy available at: https://ssrn.com/abstract=4537861
and all equitable title are in the same person is a trust not created.

If all legal and equitable title becomes reunited in one person after originally being separated, merger occurs and the trust will cease to exist. In the normal course of events, this is what happens when the trust terminates and the trustee distributes the property to the remainder beneficiaries. However, merger could occur earlier either because of circumstances the settlor did not anticipate or because the trustee and beneficiary are working together to terminate the trust. A trust containing a spendthrift provision (see § 112.035) will not end via merger unless the settlor is also the beneficiary. Instead, the court will appoint a trustee to keep title split. This rule prevents the trustee and beneficiary from circumventing the settlor’s intent by triggering a merger.

§ 112.034. Merger
(a) If a settlor transfers both the legal title and all equitable interests in property to the same person or retains both the legal title and all equitable interests in property in himself as both the sole trustee and the sole beneficiary, a trust is not created and the transferee holds the property as his own. This subtitle does not invalidate a trust account validly created and in effect under Chapter 113, Estates Code.
(b) Except as provided by Subsection (c) of this section, a trust terminates if the legal title to the trust property and all equitable interests in the trust become united in one person.
(c) The title to trust property and all equitable interests in the trust property may not become united in a beneficiary, other than the settlor, whose interest is protected under a spendthrift trust, and in that case the court shall appoint a new trustee or cotrustee to administer the trust for the benefit of the beneficiary.


Statutes in Context
§ 112.035
A spendthrift clause is a provision of a trust which does two things. First, it prohibits the beneficiary from selling, giving away, or otherwise transferring the beneficiary’s interest in the trust. The provision permits the settlor to carry out the settlor’s intent of benefiting the designated beneficiary but not the beneficiary’s assignees or creditors. Settlors include spendthrift restrictions in practically every trust because they protect beneficiaries from their own improvidence and their personal creditors. Note, however, that neither the settlor nor the beneficiary must show that a beneficiary is actually incapable of prudently managing property to obtain spendthrift protection.

Spendthrift restrictions are easy to create. The settlor does not need to use any particular language as long as the settlor’s intent is clear. In fact, § 112.035(b) provides that it is adequate for the settlor to simply write, “This is a spendthrift trust.”

A spendthrift provision has no effect once the trustee delivers a trust distribution to the beneficiary.

Under several circumstances, courts will not enforce spendthrift provisions for public policy reasons. The following is a nonexclusive list: (1) A creditor may still reach trust property if the settlor is also the beneficiary under § 112.035(d). Note, however, that a growing number of states enforce spendthrift provisions even if the trust is self-settled. (2) The court may order the trustees of a spendthrift trust to make payments for the support of the beneficiary’s child. See Statutes in Context to Family Code § 154.005. (3) Property in a spendthrift trust will not be protected from the beneficiary’s federal tax obligations. See United States v. Dallas Nat’l Bank, 152 F.2d 582 (5th Cir. 1945).

Subsection (e) prevents the beneficiary of a Crumrey trust from being deemed a settlor and thereby losing spendthrift protection if the beneficiary elects not to exercise the withdrawal right. Subsection (f) helps assure that a surviving spouse does not lose spendthrift protection under a bypass trust under specified circumstances.

An assignment that would defeat a spendthrift provision may not be made under Estates Code § 122.206.

§ 112.035. Spendthrift Trusts
(a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.
(b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a “spendthrift trust” is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.
(c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.
(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor’s beneficial interest does not prevent the settlor’s creditors from satisfying claims from the settlor’s interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because:
(1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust
income or principal that is payable by the settlor under the law imposing the tax; or
(2) the settlor’s interest in the trust was created by the exercise of a power of appointment by a third party.
(e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of:
(1) a power described by Subsection (f); or
(2) the beneficiary’s right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of:
(A) the amount specified in Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or
(B) the amount specified in Section 2503(b), Internal Revenue Code of 1986, with respect to the contributions by each donor.
(f) A beneficiary of the trust may not be considered to be a settlor, to have made a voluntary or involuntary default of the appointive assets, the appointive assets are:
(1) a presently exercisable power to:
   (A) consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary, if the power is:
      (i) exercisable only on consent of another person holding an interest adverse to the beneficiary’s interest; or
      (ii) limited by an ascertainable standard, including health, education, support, or maintenance of the beneficiary; or
   (B) appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary’s estate, or a creditor of the beneficiary’s estate;
(2) a testamentary power of appointment; or
(3) a presently exercisable right described by Subsection (e)(2).
(f-1) A beneficiary of the trust or the estate of a beneficiary of the trust may not be considered to be a settlor merely because the beneficiary, in any capacity, holds or exercises:
(1) held or exercised a testamentary power of appointment other than a general power of appointment;
(2) held a testamentary general power of appointment; or
(3) exercised a testamentary general power of appointment in favor of or for the benefit of the takers in default of the appointive assets.
(f-2) If a beneficiary of the trust exercised a testamentary general power of appointment in favor of or for the benefit of any appointee other than the takers in default of the appointive assets, the appointive assets are:
(1) subject to the claims of creditors of the beneficiary, but only to the extent the beneficiary’s own property is insufficient to meet the beneficiary’s debts; and
(2) unless appointed to the beneficiary’s estate, not subject to:
   (A) administration as a part of the beneficiary’s estate;
   (B) recovery by the personal representative of the beneficiary’s estate, except as provided by Section 2207B, Internal Revenue Code of 1986; or
   (C) the payment of taxes or administration expenses of the beneficiary’s estate.
(f-3) For the purposes of Subsections (f-1) and (f-2), “general power of appointment” has the meaning assigned by Section 2041(b)(1), Internal Revenue Code of 1986.
(g) For the purposes of this section, property contributed to the following trusts is not considered to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:
(1) an irrevocable inter vivos marital trust if:
   (A) the settlor is a beneficiary of the trust after the death of the settlor’s spouse; and
   (B) the trust is treated as:
      (i) qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986; or
      (ii) a general power of appointment trust under Section 2523(e), Internal Revenue Code of 1986;
(2) an irrevocable inter vivos trust for the settlor’s spouse if the settlor is a beneficiary of the trust after the death of the settlor’s spouse; or
(3) an irrevocable trust for the benefit of a person:
   (A) if the settlor is the person’s spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse; or
   (B) to the extent that the property of the trust was subject to a general power of appointment in another person.
(h) For the purposes of Subsection (g), a person is a beneficiary whether named a beneficiary:
(1) under the initial trust instrument; or
(2) through the exercise of a limited or general power of appointment by:
   (A) that person’s spouse; or
   (B) another person.

§ 112.0335. Construction of Certain Trusts

(a) Unless the terms of the trust provide otherwise, if a trust is created and amendable or revocable by the settlor, or by the settlor and the settlor’s spouse, Chapter 255, Estates Code, applies at the settlor’s death to the construction and interpretation of at-death transfers as if the settlor of the trust is the testator, the beneficiaries of the at-death transfer are devisees, and the at-death transfers are devises.

(b) Section 355.109, Estates Code, applies to the abatement of at-death transfers.

(c) For purposes of this section, “at-death transfer” means a transfer pursuant to the terms of a trust described by Subsection (a) that is intended to take effect or become irrevocable by reason of the settlor’s death.

(d) For purposes of the Estates Code provisions specified by this section:

(1) an at-death transfer of specifically identifiable trust property is a specific bequest, devise, or legacy;

(2) an at-death transfer from the general assets of the trust that does not transfer specifically identifiable property is a general bequest, devise, or legacy; and

(3) an at-death transfer of trust property that remains after all specific and general transfers have been satisfied is the residuary estate.

Added by Acts 2019, 86th Leg., ch. 1112, § 2, eff. Sept. 1, 2019.

§ 112.036. Rule Against Perpetuities

(a) The rule against perpetuities applies to an interest in a trust other than a charitable trust.

(b) For purposes of this section, the effective date of a trust is the date the governing instrument creating an interest in the trust becomes irrevocable with respect to that interest. If an interest in one trust is distributed to another trust with a different effective date, the effective date of that interest in the second trust becomes the earlier of the effective dates of the two trusts.

(c) An interest in a trust must vest, if at all:

(1) not later than 300 years after the effective date of the trust, if the effective date of the trust is on or after September 1, 2021, or

(A) 300 years after the effective date; or

(B) 21 years after some life in being at the time of the effective date, plus a period of gestation.

If a trust violates the Rule, the court must reform or construe the transfer under Property Code § 5.043 to carry out the general intent and specific directives of the settlor to the extent possible without violating the Rule. The court may apply the equitable doctrine of cy pres in this process.

Section 112.036 makes it clear that the Rule does not apply to charitable trusts.
(2) if the effective date is before September 1, 2021, except as provided by Subsection (d), not later than 21 years after some life in being at the time of the effective date [creation of the interest], plus a period of gestation [if the effective date of the trust is before September 1, 2021].

(d) An interest in a trust that has an effective date before September 1, 2021, may vest as described by Subsection (c)(1) if the trust instrument provides that an interest in the trust vests under the provisions of this section applicable to trusts on the date that the interest vests.

(c) Any interest in a trust may be reformed or construed to the extent and as provided by Section 5.043.

(f) Under this section, a settlor of a trust may not direct that a real property asset be retained or refuse that a real property asset may be sold for a period longer than 100 years.


Statutes in Context § 112.037

Traditionally, a trust in favor of specific animals failed for a variety of reasons such as for being in violation of the Rule Against Perpetuities because the measuring life was not human or for being an unenforceable honorary trust because it lacked a human or legal entity as a beneficiary who would have standing to enforce the trust. To get around this problem, pet owners who wanted to assure that their pets were properly cared for after they died created a traditional trust which indirectly provided pet care by instructing the trustee to help the person, the actual beneficiary of the trust, who is providing care to the pet by paying for the pet’s expenses (and perhaps a fee) according to the pet owner’s directions as long as the beneficiary takes proper care of the pet.

With the enactment of § 112.037 in 2005, Texas joined the growing number of states which authorize statutory pet trusts. This type of trust is a basic plan and does not require the pet owner to make as many decisions regarding the terms of the trust. The statute “fills in the gaps” and thus a simple provision in a will such as, “I leave $1,000 in trust for the care of my dog, Rover” may be effective.

§ 112.037. Trust For Care of Animal

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates on the death of the animal or, if the trust is created to provide for the care of more than one animal alive during the settlor’s lifetime, on the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of an animal that is the subject of a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed to enforce the trust.

(c) Except as provided by Subsections (d) and (e), property of a trust authorized by this section may be applied only to the property’s intended use under the trust.

(d) Property of a trust authorized by this section may be applied to a use other than the property’s intended use under the trust to the extent the court determines that the value of the trust property exceeds the amount required for the intended use.

(e) Except as otherwise provided by the terms of the trust, property not required for the trust’s intended use must be distributed:

(1) if the settlor is living at the time the trust property is distributed, the settlor; or

(2) if the settlor is not living at the time the trust property is distributed:

(A) if the settlor has a will, beneficiaries under the settlor’s will; or

(B) in the absence of an effective provision in a will, the settlor’s heirs.

(f) For purposes of Section 112.036, the lives in being used to determine the maximum duration of a trust authorized by this section are:

(1) the individual beneficiaries of the trust;

(2) the individuals named in the instrument creating the trust; and

(3) if the settlor or settlers are alive at the time the trust becomes irrevocable, the settlor or settlers of the trust or, if the settlor or settlers are not living at the time the trust becomes irrevocable, the individuals who would inherit the settlor or settlers’ property under the law of this state had the settlor or settlers died intestate at the time the trust becomes irrevocable.


Statutes in Context § 112.038

A forfeiture clause is presumed enforceable unless the party who wants the clause to be unenforceable establishes by a preponderance of the evidence that just cause existed for bringing the action and the action was brought and maintained in good faith. The unenforceability of in terrorem provisions under these circumstances cannot be changed by the settlor under § 111.0035(b)(6). In addition, forfeiture clauses will “not be construed to prevent a beneficiary from seeking to compel a
fiduciary to perform the fiduciary’s duties, seeking redress against a fiduciary for a breach of the fiduciary’s duties, or seeking a judicial construction of a will or trust.”

§ 112.038. Forfeiture Clause

(a) A provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:
1. just cause existed for bringing the action; and
2. the action was brought and maintained in good faith.

(b) This section is not intended to and does not repeal any law, recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary’s duties, seeking redress against a fiduciary for a breach of the fiduciary’s duties, or seeking a judicial construction of a will or trust.


Statutes in Context

§ 112.051

Unlike under the law of most states, trusts are presumed revocable in Texas. A trust may, of course, be made irrevocable by its express terms.

The settlor may not enlarge the duties of the trustee without obtaining the trustee’s express consent.

Subsection (c) augments § 112.004, the Statute of Frauds provision, by requiring a written trust to be revoked, modified, or amended in writing even if the trust originally would not have had to be in writing (e.g., an oral trust of personal property).

§ 112.051. Revocation, Modification, or Amendment by Settlor

(a) A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it.

(b) The settlor may modify or amend a trust that is revocable, but the settlor may not enlarge the duties of the trustee without the trustee’s express consent.

(c) If the trust was created by a written instrument, a revocation, modification, or amendment of the trust must be in writing.


Statutes in Context

§ 112.052

Trusts eventually terminate unless they are charitable. Upon termination, all legal and equitable title to any remaining trust property becomes reunited in the hands of the remainder beneficiaries.

The trustee’s powers do not end immediately upon trust termination. Section 112.052 permits the trustee to continue to exercise trust powers for the reasonable period of time necessary to wind up the affairs of the trust. The length of this period depends on the circumstances of each case and the type of property involved. More sophisticated investments and businesses may take longer to wrap up and transfer to the beneficiary than other assets which need a mere change in registration or physical delivery. See Myrick v. Enron Oil & Gas Co., 296 S.W.3d 724 (Tex. App.—El Paso 2009, no pet.)

§ 112.052. Termination

A trust terminates if by its terms the trust is to continue only until the expiration of a certain period or until the happening of a certain event and the period of time has elapsed or the event has occurred. If an event of termination occurs, the trustee may continue to exercise the powers of the trustee for the reasonable period of time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. The continued exercise of the trustee’s powers after an event of termination does not affect the vested rights of beneficiaries of the trust.


Statutes in Context

§ 112.053

The settlor may provide for the disposition of trust property when the trust fails, terminates, or is revoked. Note that the settlor may also use a negative provision stating how trust property may not be distributed. If the settlor does not provide for the disposition of trust property, a resulting trust will arise for the benefit of the settlor, or if the settlor is deceased, the settlor’s successors in interest (heirs or beneficiaries). See Roberts v. Squyres, 4 S.W.3d 485 (Tex. App. — Beaumont 1999, pet. denied).
§ 112.053. Disposition of Trust Property on Failure of Trust

The settlor may provide in the trust instrument how property may or may not be disposed of in the event of failure, termination, or revocation of the trust.


Statutes in Context § 112.054

A court may be willing to permit the trustee to deviate from the settlor’s instructions as contained in the trust instrument if the court is convinced that the settlor would have consented to the change had the settlor anticipated the current situation. Deviation typically occurs if (1) the purposes of the trust have been fulfilled, (2) the purposes of the trust have become illegal, (3) the purposes of the trust are now impossible to fulfill, or (4) because of circumstances not known to or anticipated by the settlor, the deviation will further the purposes of the trust. The grounds for deviation were greatly expanded by the 2005 Legislature when subsections (a)(3)-(5) were added and (a)(2) liberalized.

Using its deviation powers, the court may authorize a wide array of administrative revisions such as (1) changing the trustee, (2) permitting the trustee to perform acts that are not authorized or are forbidden by the trust instrument, (3) prohibiting the trustee from performing acts that the settlor mandated in the trust instrument, (4) modifying the terms of the trust, and (5) terminating the trust.

The court will not authorize a deviation from the terms of a trust that is not clearly authorized by Property Code § 112.054 even if the beneficiaries agree to the change. See In re Willa Peters Hubbard Testamentary Trust, 432 S.W.3d 358 (Tex. App.—San Antonio 2014, no pet.).

The 2015 Legislature granted the court broad authority to reform a will in Estates Code §§ 255.451-255.455. The 2017 Legislature placed an equivalent provision in the Trust Code. A court may now reform a trust if necessary or appropriate to (1) prevent waste or impairment of the trust’s administration, (2) achieve tax objectives, (3) qualify a beneficiary for governmental benefits, and (4) correct a scrivener’s error, even if the trust is unambiguous, provided the settlor’s intent is established by clear and convincing evidence.

Although the trustee and the beneficiaries have standing to request deviation and reformation, the settlor lacks standing to do so.

The Supreme Court of Texas held that this section “does not confer a right to a jury trial in a judicial trust modification proceeding.” Matter of Troy S. Poe Trust, 646 S.W.3d 771 (Tex. 2022). But, the court did not address whether the Texas Constitution granted a right to a jury trial. On remand, the El Paso Court of Appeals held that the Texas Constitution did not provide a right to jury trial in trust modification actions. Matter of Troy S. Poe Trust, No. 08-18-00074-CV, 2023 WL 4846788 (Tex. App.—El Paso July 28, 2023, no pet. h.)

§ 112.054. Judicial Modification, Reformation, or Termination of Trusts

(a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:

(1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;
(2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;
(3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or avoid impairment of the trust’s administration;
(4) the order is necessary or appropriate to achieve the settlor’s tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor’s intentions; or
(5) subject to Subsection (d)
  (A) continuance of the trust is not necessary to achieve any material purpose of the trust; or
  (B) the order is not inconsistent with a material purpose of the trust.

(b) The court shall exercise its discretion to order a modification or termination under Subsection (a) or reformation under Subsection (b-1) in the manner that conforms as nearly as possible to the probable intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify, terminate, or reform, but the court is not precluded from exercising its discretion to modify, terminate, or reform solely because the trust is a spendthrift trust.

(b-1) On the petition of a trustee or a beneficiary, a court may order that the terms of the trust be reformed if:

(1) reformation of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust’s administration;
(2) reformation is necessary or appropriate to achieve the settlor’s tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor’s intentions; or
(3) reformation is necessary to correct a scrivener’s error in the governing document, even if
unambiguous, to conform the terms to the settlor’s intent.

(c) The court may direct that an order described by Subsection (a)(4) has retroactive effect. The reformation of a trust under an order described by Subsection (b-1) is effective as of the creation of the trust.

(d) The court may not take the action permitted by Subsection (a)(5) unless all beneficiaries of the trust have consented to the order or are deemed to have consented to the order. A minor, incapacitated, unborn, or unascertained beneficiary is deemed to have consented if a person representing the beneficiary’s interest under Section 115.014 consents on the beneficiary’s behalf.

(e) An order described by Subsection (b-1)(3) may be issued only if the settlor’s intent is established by clear and convincing evidence.

(f) Subsection (b-1) is not intended to state the exclusive basis for reformation of trusts, and the bases for reformation of trusts in equity or common law are not affected by this section.


Statutes in Context
§ 112.055

Section 112.055 provides that certain charitable trusts automatically have enumerated terms statutorily provided to assist these trusts in qualifying for favorable federal tax treatment. See also § 112.056.

§ 112.055. Amendment of Charitable Trusts by Operation of Law

(a) Except as provided by Section 112.056 and Subsection (b) of this section, the governing instrument of a trust that is a private foundation under Section 509, Internal Revenue Code, as amended,1 a nonexempt charitable trust that is treated as a private foundation under Section 4947(a)(1), Internal Revenue Code, as amended,2 or, to the extent that Section 508(e), Internal Revenue Code,3 is applicable to it, a nonexempt split-interest trust under Section 4947(a)(2), Internal Revenue Code, as amended,4 is considered to contain provisions stating that the trust:

1. shall make distributions at times and in a manner as not to subject the trust to tax under Section 4942, Internal Revenue Code;5

2. may not engage in an act of self-dealing that would subject it to tax under Section 4941, Internal Revenue Code;6

3. may not retain excess business holdings that would subject it to tax under Section 4943, Internal Revenue Code;7

4. may not make an investment that would subject it to tax under Section 4944, Internal Revenue Code;8 and

5. may not make a taxable expenditure that would subject it to tax under Section 4945, Internal Revenue Code.9

(b) If a trust was created before January 1, 1970, this section applies to it only for its taxable years that begin on or after January 1, 1972.

(c) This section applies regardless of any provision in a trust’s governing instrument and regardless of any other law of this state, including the provisions of this title.


§ 112.056. Permissive Amendment by Trustee of Charitable Trust

(a) If the settlor of a trust that is described under Subsection (a) of Section 112.055 is living and competent and consents, the trustee may, without judicial proceedings, amend the trust to expressly include or exclude the provisions required by Subsection (a) of Section 112.055.

(b) The amendment must be in writing, and it is effective when a duplicate original is filed with the attorney general’s office.


Statutes in Context
§ 112.057

Section 112.057 allows trustees to divide or merge trusts if the result does not impair the rights of any beneficiary or adversely affect the achievement of the purposes of the original trust. Prior to January 1, 2006, such an action was allowed only if it would achieve significant tax savings.

§ 112.057. Division and Combination of Trusts

(a) The trustee may, unless expressly prohibited by the terms of the instrument establishing the trust, divide a trust into two or more separate trusts without a judicial proceeding if the result does not impair the rights of any

1 26 U.S.C. § 509
2 26 U.S.C. § 4947(a)(1)
3 26 U.S.C. § 508(e)
4 26 U.S.C. § 4947(a)(2)
5 26 U.S.C. § 4942
6 26 U.S.C. § 4941
7 26 U.S.C. § 4943
8 26 U.S.C. § 4944
9 26 U.S.C. § 4945
beneficiary or adversely affect achievement of the purposes of the original trust. The trustee may make a division under this subsection by:

1. Giving written notice of the division, not later than the 30th day before the date of a division under this subsection, to each beneficiary who might then be entitled to receive distributions from the trust or may be entitled to receive distributions from the trust once it is funded; and
2. Executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate stating that the trust has been divided pursuant to this section and that the notice requirements of this subsection have been satisfied.

(b) A trustee, in the written instrument dividing a trust, shall allocate trust property among the separate trusts on a fractional basis, by identifying the assets and liabilities passing to each separate trust, or in any other reasonable manner. The trustee shall allocate undesignated trust property received after the trustee has divided the trust into separate trusts in the manner provided by the written instrument dividing the trust or, in the absence of a provision in the written instrument, in a manner determined by the trustee.

(c) The trustee may, unless expressly prohibited by the terms of the instrument establishing a trust, combine two or more trusts into a single trust without a judicial proceeding if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of one of the separate trusts. The trustee shall complete the trust combination by:

1. Giving a written notice of the combination, not later than the 30th day before the effective date of the combination, to each beneficiary who might then be entitled to receive distributions from the separate trusts being combined or to each beneficiary who might be entitled to receive distributions from the separate trusts once the trusts are funded; and
2. Executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate stating that the trust has been combined pursuant to this section and that the notice requirements of this subsection have been satisfied.

(d) The trustee may divide or combine a testamentary trust after the will establishing the trust has been admitted to probate, even if the will will not be funded until a later date. The trustee may divide or combine any other trust before it is funded.

(e) A beneficiary to whom written notice is required to be given under this section may waive the notice requirement in a writing delivered to the trustee. If all beneficiaries to whom notice would otherwise be required to be given under this section waive the notice requirement, notice is not required.

(f) Notice required under this section shall be given to a guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary. A guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary may waive the notice requirement in accordance with this section on behalf of the minor or incapacitated beneficiary.

§ 112.058. Conversion of Community Trust to Nonprofit Corporation

(a) In this section:

1. “Assets” means the assets of the component trust funds of a community trust.
2. “Community trust” means a community trust as described by 26 C.F.R. Section 1.170A-9 (2008), including subsequent amendments.

(b) A community trust with court approval may transfer the assets of the trust to a nonprofit corporation and terminate the trust as provided by this section.

(c) The community trust may transfer assets of the trust to a nonprofit corporation only if the nonprofit corporation is organized under the Texas Nonprofit Corporation Law, as described by Section 1.008(d), Business Organizations Code, [the Texas Nonprofit Corporation Act (Article 1396 1.01 et seq., Vernon's Texas Civil Statutes)] and organized for the same purpose as the community trust. The charter of the nonprofit corporation must describe the purpose of the corporation and the proposed use of the assets transferred using language substantially similar to the language used in the instrument creating the community trust.

(d) To transfer the assets of and terminate a community trust under this section, the governing body of the community trust must:

1. File a petition in a probate court, county court, or district court requesting:
   (A) the transfer of the assets of the trust to a nonprofit corporation established for the purpose of receiving and administering the assets of the trust; and
   (B) the termination of the trust;
2. Send by first class mail to each trust settlor and each trustee of each component trust of the community trust who can be located by the exercise of reasonable diligence a copy of the governing body’s petition and a notice specifying the time and place of the court-scheduled hearing on the petition; and
3. Publish once in a newspaper of general circulation in the county in which the proceeding is pending a notice that reads substantially similar to the following:

   (NAME OF COMMUNITY TRUST) HAS FILED A PETITION IN (NAME OF COURT) OF (NAME OF COUNTY), TEXAS, REQUESTING PERMISSION TO CONVERT TO A NONPROFIT CORPORATION. IF PERMITTED TO CONVERT:
   TO ALL INTERESTED PERSONS:
Texas Property Code

(1) The (name of community trust) will be terminated; and

(2) The assets of the trust will be:

(A) transferred to a nonprofit corporation with the same name and created for the same purpose as the (name of community trust); and

(B) held and administered by the corporation as provided by the Texas non-profit corporation law [Article 1396-1.01 ET SEQ., Vernon's Texas Civil Statutes]

The purpose of the conversion is to achieve savings and use the money saved to further the purposes for which the (name of community trust) was created.

A hearing on the petition is scheduled on (date and time) at (location of court).

For additional information, you may contact the governing body of the (name of community trust) at (address and telephone number) or the court.

(c) The court shall schedule a hearing on the petition to be held after the 10th day after the date the notices required by Subsection (d)(2) are deposited in the mail or the date the notice required by Subsection (d)(3) is published, whichever is later. The hearing must be held at the time and place stated in the notices unless the court, for good cause, postpones the hearing. If the hearing is postponed, a notice of the rescheduled hearing date and time must be posted at the courthouse where public notices are customarily posted.

(f) The court, on a request from the governing body of the community trust, may by order require approval from the Internal Revenue Service for an asset transfer. The notice required by this subsection must be filed on or before the first anniversary of the date the court’s order approving the asset transfer is signed. If the notice is not filed within the period prescribed by this subsection, the court’s order is dissolved.

(g) A court order transferring the assets of and terminating a community trust must provide that the duties of each trustee of each component trust fund of the community trust are terminated on the date the assets are transferred. This subsection does not affect the liability of a trustee for acts or omissions that occurred before the duties of the trustee are terminated.


§112.059. Termination of Uneconomic Trust

(a) After notice to beneficiaries who are distributees or permissible distributees of trust income or principal or who would be distributees or permissible distributees if the interests of the distributees or the trust were to terminate and no powers of appointment were exercised, the trustee of a trust consisting of trust property having a total value of less than $50,000 may terminate the trust if the trustee concludes after considering the purpose of the trust and the nature of the trust assets that the value of the trust property is insufficient to justify the continued cost of administration.

(b) On termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(c) A trustee may not exercise a power described by Subsection (a) if the trustee’s possession of the power would cause the assets of the trust to be included in the trustee’s estate for federal estate tax purposes.

(d) This section does not apply to an easement for conservation or preservation.


Subchapter D. Distribution of Trust Principal in Further Trust

Statutes in Context
Chapter 112, Subchapter D

In 2013, Texas joined the growing number of states which have statutes granting the trustee the power to decant, that is, to distribute trust principal to another trust for the benefit of one or more of the
beneficiaries of the original trust under specified circumstances.

The summary of these provisions below is adapted from William D. Pargaman, Out With the Old [Probate Code] and In With the New [Estates Code]: 2013 Texas Estate and Trust Legislative Update (Sept. 20, 2013), at 9-10.

This new subchapter adds statutory decanting provisions that supplement any similar provisions in a trust, unless the settlor expressly prohibits decanting. (A standard spendthrift clause is not considered such a prohibition.)

If a trustee has “full discretion” (i.e., a power that is not limited in any manner), that trustee may distribute principal to another trust for the benefit of one or more of the current beneficiaries of the first trust. If there is more than one trustee and less than all have full discretion, those trustees may exercise this power without the participation of any “limited” trustee.

If the trustee could have made an outright distribution to the beneficiary, then the trustee may give the beneficiary a power of appointment in the second trust in favor of one or more of the current beneficiaries of the first trust. The permissible appointees may be broader than the beneficiaries of the first trust.

If a trustee has “limited discretion” (i.e., a power that is limited in some way), that trustee may distribute principal to another trust so long as the current beneficiaries of both trusts are the same, and the successor and remainder beneficiaries of both trusts are the same. The distribution language of the second trust must be the same as the first trust. If a beneficiary of the first trust has a power of appointment, the beneficiary must be given the same power over the second trust. In other words, this provision really is limited to changing administrative provisions.

In either case, the trustee must act “in good faith, in accordance with the terms and purpose of the trust, and in the interests of the beneficiaries.”

Notice provisions include the attorney general if a charity is involved, and allow intervention by the attorney general.

A trustee may not exercise a decanting power if it would:

(1) reduce a beneficiary’s current right to a mandatory distribution or to withdraw a portion of the trust;
(2) materially impair the rights of any beneficiary;
(3) materially lessen a trustee’s fiduciary duty;
(4) decrease the trustee’s liability or indemnify or exonerate a trustee for failure to exercise reasonable care, diligence, and prudence;
(5) eliminate another person’s power to remove or replace the trustee; or
(6) modify the perpetuities period (unless the first trust expressly permits this modification).

The decanting power is reduced to the extent it would cause any intended tax benefits, such as the annual gift tax exclusion, the marital deduction, or the charitable deduction, to be lost.

A trustee may not exercise a decanting power without court approval solely to change the trustee compensation provisions. The trustee may, however, modify the compensation provisions in conjunction with other valid reasons for decanting if the change raises the trustee’s compensation to reasonable limits in accord with Texas law.

In no case is a trustee deemed to have a duty to decant.

If there are one or more current beneficiaries and one or more presumptive remainder beneficiaries who are not incapacitated, neither consent of the settlor nor court approval is required to exercise the decanting power if the trustee has sent written, descriptive notice to those beneficiaries.

A trustee may elect to petition a court to order the distribution. If a beneficiary timely objects, either the trustee or the beneficiary may petition to court to approve, modify, or deny the power.

§ 112.071. Definitions
In this subchapter:

(1) “Authorized trustee” means a person, other than the settlor, who has authority under the terms of a first trust to distribute the principal of the trust to or for the benefit of one or more current beneficiaries.
(2) “Charity” means a charitable entity or a charitable trust, as those terms are defined by Section 123.001.
(3) “Current beneficiary,” with respect to a particular date, means a person who is receiving or is eligible to receive a distribution of income or principal from a trust on that date.
(4) “First trust” means an existing irrevocable inter vivos or testamentary trust all or part of the principal of which is distributed in further trust under Section 112.072 or 112.073.
(5) “Full discretion” means a power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not a trust with limited discretion.
(6) “Limited discretion” means:
(A) a power to distribute principal according to mandatory distribution provisions under which the trustee has no discretion; or
(B) a power to distribute principal to or for the benefit of one or more beneficiaries of a trust that is limited by an ascertainable standard, including the health, education, support, or maintenance of the beneficiary.
(7) “Presumptive remainder beneficiary,” with respect to a particular date, means a beneficiary of a trust on that date who, in the absence of notice to the trustee of the exercise of the power of appointment and assuming that any other powers of appointment under the trust are not exercised, would be eligible to receive a distribution from the trust if:

(A) the trust terminated on that date; or

(B) the interests of all current beneficiaries ended on that date without causing the trust to terminate.

(8) “Principal” means property held in trust for distribution to a remainder beneficiary when the trust terminates and includes income of the trust that, at the time of the exercise of a power of distribution under Section 112.072 or 112.073, is not currently required to be distributed.

(9) “Second trust” means any irrevocable trust to which principal is distributed under Section 112.072 or 112.073.

(10) “Successor beneficiary” means a beneficiary other than a current or presumptive remainder beneficiary. The term does not include a potential appointee under a power of appointment held by a beneficiary.

§ 112.0715. Creation of Second Trust

(a) A second trust may be created by a distribution of principal under Section 112.072 or 112.073 to a second trust that retains the name used by the first trust. The second trust may retain, subject to applicable federal law, the tax identification number of the first trust [created under the same trust instrument as the first trust from which the principal is distributed or to a trust created under a different trust instrument].

(b) If a second trust is created by a distribution of principal under Section 112.072 or 112.073 to a trust that retains [created under] the name of [same trust instrument as] the first trust [from which the principal is distributed], the property is not required to be retilled.

(c) The legislature intends this section to be a codification of the common law of this state in effect immediately before September 1, 2019.

§ 112.072. Distribution to Second Trust: Trustee With Full Discretion

(a) An authorized trustee who has the full discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust for the benefit of one, more than one, or all of the current beneficiaries of the first trust and for the benefit of one, more than one, or all of the successor or presumptive remainder beneficiaries of the first trust.

(b) The authorized trustee may, in connection with the exercise of a power of distribution under this section, grant a power of appointment, including a currently exercisable power of appointment, in the second trust to one or more of the current beneficiaries of the first trust who, at the time the power of appointment is granted, is eligible to receive the principal outright under the terms of the first trust.

(c) If the authorized trustee grants a power of appointment to a beneficiary under Subsection (b), the class of permissible appointees in whose favor the beneficiary may appoint under that power may be broader or different than the current, successor, and presumptive remainder beneficiaries of the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust may include one or more persons who become members of that class after the distribution to the second trust.

(e) The authorized trustee shall exercise a power to distribute under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

§ 112.073. Distribution to Second Trust: Trustee With Limited Discretion

(a) An authorized trustee who has limited discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust as provided by this section.

(b) The current beneficiaries of the second trust must be the same as the current beneficiaries of the first trust, and the successor and presumptive remainder beneficiaries of the second trust must be the same as the successor and presumptive remainder beneficiaries of the first trust.

(c) The second trust must include the same language authorizing the trustee to distribute the income or principal of the trust that was included in the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust must include all persons who become members of that class after the distribution to the second trust.

(e) If the first trust grants a power of appointment to a beneficiary of the trust, the second trust must grant the power of appointment to the beneficiary in the second trust, and the class of permissible appointees under that power must be the same as the class of permissible appointees under the power granted by the first trust.

(f) The authorized trustee shall exercise a power of distribution under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

§ 112.074. Notice Required

(a) An authorized trustee may exercise a power of distribution under Section 112.072 or 112.073 without the consent of the settlor or beneficiaries of the first trust and
without court approval if the trustee provides to all of the current beneficiaries and presumptive remainder beneficiaries written notice of the trustee’s decision to exercise the power.

(b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice, a beneficiary is determined as of the date the notice is sent. A beneficiary includes a person entitled to receive property under the terms of the first trust.

(c) Except as provided by Subsection (e-1), in addition to the notice required under Subsection (a), the authorized trustee shall give written notice of the trustee’s decision to the attorney general if:

(1) a charity is entitled to notice;
(2) a charity entitled to notice is no longer in existence;
(3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
(4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(d) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor.

(e) The authorized trustee is not required to provide the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence;
(2) is not known to the trustee;
(3) waives the requirement of the notice under this section; or
(4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary’s ancestor have similar interests in the trust and no apparent conflict of interest exists between them.

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement in writing.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

(f) The notice required under Subsection (a) must:

(1) include a statement that:
   (A) the authorized trustee intends to exercise the power of distribution;
   (B) the beneficiary has the right to object to the exercise of the power; and
   (C) the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee’s power to make a distribution under this subchapter;
(2) describe the manner in which the trustee intends to exercise the power;
(3) specify the date the trustee proposes to distribute the first trust to the second trust;
(4) include the name and mailing address of the trustee;
(5) include copies of the agreements of the first trust and the proposed second trust;
(6) be given not later than the 30th day before the proposed date of distribution to the second trust; and
(7) be sent by registered or certified mail, return receipt requested, or delivered in person, unless the notice is waived in writing by the person to whom notice is required to be given.


§ 112.075. Written Instrument Required

A distribution under Section 112.072 or 112.073 must be made by a written instrument that is signed and acknowledged by the authorized trustee and filed with the records of the first trust and the second trust. Added by Acts 2013, 83rd Leg., ch. 699, § 3, eff. Sept. 1, 2013.

§ 112.076. Reference to Trust Terms

A reference to the governing instrument or terms of the governing instrument of a trust includes the terms of a second trust to which that trust’s principal was distributed under this subchapter. Added by Acts 2013, 83rd Leg., ch. 699, § 3, eff. Sept. 1, 2013.

§ 112.077. Settlor of Second Trust

(a) Except as provided by Subsection (b), the settlor of a first trust is considered to be the settlor of a second trust established under this subchapter.

(b) If a settlor of a first trust is not also the settlor of a second trust into which principal of that first trust is distributed, the settlor of the first trust is considered the settlor of the portion of the second trust distributed to the second trust from that first trust under this subchapter. Added by Acts 2013, 83rd Leg., ch. 699, § 3, eff. Sept. 1, 2013.

§ 112.078. Court-Ordered Distribution

(a) An authorized trustee may petition a court to order a distribution under this subchapter.

(b) If the authorized trustee receives a written objection to a distribution under this subchapter from a beneficiary before the proposed effective date of the distribution specified in the notice provided to the beneficiary under Section 112.074, the trustee or the beneficiary may petition a court to approve, modify, or...
deny the exercise of the trustee’s power to make a distribution under this subchapter.

(c) If the authorized trustee receives a written objection to the distribution from the attorney general not later than the 30th day after the date the notice required by Section 112.074 was received by the attorney general, the trustee may not make a distribution under Section 112.072 or 112.073 without petitioning a court to approve or modify the exercise of the trustee’s power to make a distribution under this subchapter.

(d) In a judicial proceeding under this section, the authorized trustee may present the trustee’s reasons for supporting or opposing a proposed distribution, including whether the trustee believes the distribution would enable the trustee to better carry out the purposes of the trust.

(e) The authorized trustee has the burden of proving that the proposed distribution furthers the purposes of the trust, is in accordance with the terms of the trust, and is in the interests of the beneficiaries.

(f) This section does not limit a beneficiary’s right to bring an action against a trustee for a breach of trust.

§ 112.079. Divided Discretion

If an authorized trustee has full discretion to distribute the principal of a trust and another trustee has limited discretion to distribute principal under the trust instrument, the authorized trustee having full discretion may exercise the power to distribute the trust’s principal under Section 112.072.

Added by Acts 2013, 83rd Leg., ch. 699, § 3, eff. Sept. 1, 2013.

§ 112.080. Later Discovered Assets

To the extent the authorized trustee does not provide otherwise:

(1) the distribution of all of the principal of a first trust to a second trust includes subsequently discovered assets otherwise belonging to the first trust and principal paid to or acquired by the first trust after the distribution of the first trust’s principal to the second trust; and

(2) the distribution of part of the principal of a first trust to a second trust does not include subsequently discovered assets belonging to the first trust or principal paid to or acquired by the first trust after the distribution of principal from the first trust to the second trust, and those assets or that principal remain the assets or principal of the first trust.

Added by Acts 2013, 83rd Leg., ch. 699, § 3, eff. Sept. 1, 2013.

§ 112.081. Other Authority to Distribute in Further Trust Not Limited

This subchapter may not be construed to limit the power of an authorized trustee to distribute property in further trust under the terms of the governing instrument of a trust, other law, or a court order.

Added by Acts 2013, 83rd Leg., ch. 699, § 3, eff. Sept. 1, 2013.

§ 112.082. Need for Distribution Not Required

An authorized trustee may exercise the power to distribute principal to a second trust under Section 112.072 or 112.073 regardless of whether there is a current need to distribute principal under the terms of the first trust.

Added by Acts 2013, 83rd Leg., ch. 699, § 3, eff. Sept. 1, 2013.

§ 112.083. Duties Not Covered

(a) This subchapter does not create or imply a duty for an authorized trustee to exercise a power to distribute principal, and impropriety may not be inferred as a result of the trustee not exercising a power conferred by Section 112.072 or 112.073.

(b) An authorized trustee does not have a duty to inform beneficiaries about the availability of the authority provided by this subchapter or a duty to review the trust to determine whether any action should be taken under this subchapter.

Added by Acts 2013, 83rd Leg., ch. 699, § 3, eff. Sept. 1, 2013.

§ 112.084. Certain Distributions Prohibited

(a) Except as provided by Subsection (b), an authorized trustee may not exercise a power to distribute principal of a trust otherwise provided by Section 112.072 or 112.073 if the distribution is expressly prohibited by the terms of the governing instrument of the trust.

(b) A general prohibition of the amendment or revocation of a trust or a provision that constitutes a spendthrift clause does not preclude the exercise of a power to distribute principal of a trust under Section 112.072 or 112.073.

Added by Acts 2013, 83rd Leg., ch. 699, § 3, eff. Sept. 1, 2013.

§ 112.085. Exceptions to Power of Distribution

An authorized trustee may not exercise a power to distribute principal of a trust under Section 112.072 or 112.073 to:

(1) reduce, limit, or modify a beneficiary’s current, vested right to:

(A) receive a mandatory distribution of income or principal;

(B) receive a mandatory annuity or unitrust interest;

(C) withdraw a percentage of the value of the trust; or

(D) withdraw a specified dollar amount from the trust;

(2) materially limit a trustee’s fiduciary duty:

(A) under the terms of the trust; or
§ 112.087. Compensation of Trustee

(a) Except as provided by Subsection (b) and unless a court, on application of the authorized trustee, directs otherwise, the trustee may not exercise a power under Section 112.072 or 112.073 solely to change trust provisions regarding the determination of the compensation of any trustee.

(b) An authorized trustee, in connection with the exercise of a power under Section 112.072 or 112.073 for another valid and reasonable purpose, may bring the trustee’s compensation into conformance with reasonable limits authorized by state law.

(c) The compensation payable to an authorized trustee of the first trust may continue to be paid to the trustee of the second trust during the term of the second trust and may be determined in the same manner as the compensation would have been determined in the first trust.

(d) An authorized trustee may not receive a commission or other compensation for the distribution of a particular asset from a first trust to a second trust under Section 112.072 or 112.073.

§ 112.086. Tax-Related Limitations

(a) The authorized trustee may not distribute the principal of a trust under Section 112.072 or 112.073 to a second trust regardless of whether the settlor is treated as the owner of either or both trusts under Sections 671-679, Internal Revenue Code of 1986.

(b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust if:

1. the settlor has a particular asset from a first trust to a second trust under Section 112.072 or 112.073;
2. the settlor created the trust;
3. the settlor authorized the distribution;
4. the settlor authorized the distribution in a written instrument;
5. the distribution would not be prohibited by any federal law.

§ 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

(a) Except as provided by Subsection (b) and unless a court, on application of the authorized trustee, directs otherwise, the trustee may not exercise a power under Section 112.072 or 112.073 solely to change trust provisions regarding the determination of the compensation of any trustee.

(b) An authorized trustee, in connection with the exercise of a power under Section 112.072 or 112.073 for another valid and reasonable purpose, may bring the trustee’s compensation into conformance with reasonable limits authorized by state law.

(c) The compensation payable to an authorized trustee of the first trust may continue to be paid to the trustee of the second trust during the term of the second trust and may be determined in the same manner as the compensation would have been determined in the first trust.

(d) An authorized trustee may not receive a commission or other compensation for the distribution of a particular asset from a first trust to a second trust under Section 112.072 or 112.073.

§ 112.086. Tax-Related Limitations

(a) The authorized trustee may not distribute the principal of a trust under Section 112.072 or 112.073 in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

1. the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;
2. a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;
3. the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;
4. direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or
5. any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

1. the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;
2. a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;
3. the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;
4. direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or
5. any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(c) If S corporation stock is held in trust, an authorized trustee may not distribute all or part of that stock under Section 112.072 or 112.073 to a second trust that is not a permitted shareholder under Section 1361(c)(2), Internal Revenue Code of 1986.

(d) If an interest in property that is subject to the minimum distribution rules of Section 401(a)(9), Internal Revenue Code of 1986, is held in trust, an authorized trustee may not distribute the trust’s interest in the property to a second trust under Section 112.072 or 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

§ 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

(a) The authorized trustee may not distribute the principal of a trust under Section 112.072 or 112.073 in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

1. the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;
2. a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;
3. the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;
4. direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or
5. any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

1. the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;
2. a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;
3. the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;
4. direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or
5. any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(c) If S corporation stock is held in trust, an authorized trustee may not distribute all or part of that stock under Section 112.072 or 112.073 to a second trust that is not a permitted shareholder under Section 1361(c)(2), Internal Revenue Code of 1986.

(d) If an interest in property that is subject to the minimum distribution rules of Section 401(a)(9), Internal Revenue Code of 1986, is held in trust, an authorized trustee may not distribute the trust’s interest in the property to a second trust under Section 112.072 or 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

§ 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

(a) The authorized trustee may not distribute the principal of a trust under Section 112.072 or 112.073 in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

1. the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;
2. a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;
3. the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;
4. direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or
5. any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

1. the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;
2. a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;
3. the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;
4. direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or
5. any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(c) If S corporation stock is held in trust, an authorized trustee may not distribute all or part of that stock under Section 112.072 or 112.073 to a second trust that is not a permitted shareholder under Section 1361(c)(2), Internal Revenue Code of 1986.

(d) If an interest in property that is subject to the minimum distribution rules of Section 401(a)(9), Internal Revenue Code of 1986, is held in trust, an authorized trustee may not distribute the trust’s interest in the property to a second trust under Section 112.072 or 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

§ 112.073 if the distribution would shorten the minimum distribution period applicable to the property.
Any property interest which is automatically revoked passes as if the ex-spouse executed a valid disclaimer of that interest under Texas law. If a fiduciary designation is automatically revoked, the trust instrument is read as if the ex-spouse died immediately before the dissolution of the marriage.

The automatic revocation of provisions in favor of the ex-spouse discussed above does not occur if one or more of the following instruments provides otherwise:

- A trust executed after the divorce,
- A court order,
- Express language in the trust, or
- Express language of a contract relating to the division of the marital estate entered into before, during, or after the marriage.

A bona fide purchaser from the ex-spouse of trust property or a person who receives a payment from the ex-spouse which is traceable to the trust, does not have to return the property or payment and is not liable for that property or payment.

If the ex-spouse receives property or a payment from a trust to which the ex-spouse is not entitled, the ex-spouse has a duty to return the property or payment and is personally liable to the person who is entitled to that property or payment.

---

§ 112.101. Definitions

In this subchapter:

(1) “Disposition or appointment of property” includes a transfer of property to or a provision of another benefit to a beneficiary under a trust instrument.

(2) “Divorced individual” means an individual whose marriage has been dissolved by divorce, annulment, or a declaration that the marriage is void.

(3) “Relative” means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, respectively.

(4) “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 or any relative of the individual’s spouse who is not a relative of the individual that is contained in a trust instrument executed by the individual before the dissolution of the individual’s marriage to the spouse and that the individual was solely empowered by law or by the trust instrument to revoke regardless of whether the individual had the capacity to exercise the power at that time.

Added by Acts 2019, 86th Leg., ch. 1112, § 5, eff. Sept. 1, 2019.

§ 112.102. Revocation of Certain Nontestamentary Transfers; Treatment of Former Spouse or Former Spouse’s Relative 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 as settlor before the divorced individual’s marriage was dissolved and that:

1. is a revocable disposition or appointment of property made to the divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual;
2. revocably confers a general or special power of appointment on the divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual; or
3. revocably nominates the divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:
   A. as a personal representative, trustee, conservator, agent, or guardian; or
   B. in another fiduciary or representative capacity.

(b) Subsection (a) does not apply if one of the following provides otherwise:

1. a court order;
2. the express terms of a trust instrument executed by the divorced individual before the individual’s marriage was dissolved; or
3. an express provision of a contract relating to the division of the marital estate entered into between the divorced individual and the individual’s former spouse before, during, or after the marriage.

(c) Sections 9.301 and 9.302, Family Code, govern the designation of a former spouse as a beneficiary of certain life insurance policies or as a beneficiary under certain retirement benefit plans or other financial plans.

Added by Acts 2019, 86th Leg., ch. 1112, § 5, eff. Sept. 1, 2019.

§ 112.103. Effect of Revocation

(a) An interest granted in a provision of a trust instrument that is revoked under Section 112.102(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) An interest granted in a provision of a trust instrument that is revoked under Section 112.102(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

Added by Acts 2019, 86th Leg., ch. 1112, § 5, eff. Sept. 1, 2019.

§ 112.104. Liability of Certain Purchasers or Recipients of Certain Payments, Benefits, or Property

A bona fide purchaser of property from a divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the
divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this subchapter to return the payment, benefit, or property; and

(2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

Added by Acts 2019, 86th Leg., ch. 1112, § 5, eff. Sept. 1, 2019.

§ 112.105. Liability of Former Spouse or Former Spouse’s Relative for Certain Payments, Benefits, or Property

A divorced individual’s former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections 112.102(a) and (b):

(1) shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this subchapter; or

(2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

Added by Acts 2019, 86th Leg., ch. 1112, § 5, eff. Sept. 1, 2019.

Statutes in Context
§ 112.106

If a married couple creates a joint revocable trust, divorce, and they do not divide the trust before the first spouse dies, the trust is divided into shares for each settlor based on each spouse’s contributions to the trust. Then, the provisions in favor of the ex-spouse and the ex-spouse’s relatives are rendered ineffective with regard to the share created for the deceased spouse unless a court order, express trust terms, or an applicable marital agreement provides otherwise.

§ 112.106. Certain Trusts with Divorced Individuals as Joint Settlors

(a) This section applies only to a trust created under a trust instrument that:

(1) was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved; and

(2) includes a provision described by Section 112.102(a).

(b) On the death of one of the divorced individuals who is a settlor of a trust to which this section applies, the trustee shall divide the trust into two trusts, each of which shall be composed of the property attributable to the contributions of only one of the divorced individuals.

(c) An action authorized in a trust instrument described by Subsection (a) that requires the actions of both divorced individuals may be taken with respect to a trust established in accordance with Subsection (b) from the surviving divorced individual’s contributions solely by that divorced individual.

(d) The provisions of this subchapter apply independently to each trust established in accordance with Subsection (b) as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument described by Subsection (a).

(e) This section 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 two divorced individuals before their marriage was dissolved; or

(3) an express provision of a contract relating to the division of the marital estate entered into between the two divorced individuals before, during, or after their marriage.

Added by Acts 2019, 86th Leg., ch. 1112, § 5, eff. Sept. 1, 2019.

Statutes in Context
Subchapter F

The 2023 Legislature added Subchapter F to authorize the creation of purpose trusts, that is, trusts without a human beneficiary and without a charitable purpose. Prior to this addition, the only purpose trust authorized in Texas was for the care of pet animals under Property Code § 112.037.

Subchapter F. Noncharitable Trust Without Ascertainable Beneficiary

§ 112.121. Validity of Trust; Applicability

(a) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary. A noncharitable purpose may include seeking economic or noneconomic benefits.

(b) This subchapter does not apply to a trust created under Section 112.037.

Added by Acts 2023, 88th Leg., ch. 975, § 2, eff. June 18, 2023.

§ 112.122. Enforcement of Trust

(a) A trust created under this subchapter must be enforced by one or more persons appointed in the terms of the trust to serve as a trust enforce.

(b) A trust enforce shall enforce the purpose and terms of the trust. The trust enforce is not a beneficiary of the trust, but has the rights of a beneficiary provided under this title and the common law of this state, or as otherwise provided by the terms of the trust.
(e) A trust enforcer shall exercise any authority granted under the terms of the trust or the provisions of this section as a fiduciary owing a duty to the trust and is entitled to reasonable compensation for serving as trust enforcer.

(d) A trust enforcer may consent to, waive, object to, or petition an appropriate court concerning any matter regarding the purpose or administration of the trust.

(e) Except as otherwise provided by the terms of the trust, if more than one person is acting as a trust enforcer, any action in that capacity must be decided by the majority vote of the persons acting as trust enforcers. If there are an even number of trust enforcers and a majority vote cannot be established, the decision of the trustee controls.

(f) The terms of the trust may provide for the succession of a trust enforcer or a process of appointing any successor trust enforcer.

(g) If no person is serving as a trust enforcer for a trust created under this subchapter, a court properly exercising jurisdiction shall appoint one or more persons to serve as the trust enforcer.

§ 113.001. Limitation of Powers

A power given to a trustee by this subchapter does not apply to a trust to the extent that the instrument creating the trust, a subsequent court order, or another provision of this subtitle conflicts with or limits the power.


§ 113.002. General Powers

A trustee may exercise any powers in addition to the powers authorized by this subchapter that are necessary or appropriate to carry out the purposes of the trust.


§ 113.003. Options

A trustee may:

1. grant an option involving a sale, lease, or other disposition of trust property, including an option exercisable beyond the duration of the trust; or
2. acquire and exercise an option for the acquisition of property, including an option exercisable beyond the duration of the trust.


§ 113.004. Additions to Trust Assets

A trustee may receive from any source additions to the assets of the trust.


§ 113.005. Acquisition of Undivided Interests

A trustee may acquire all or a portion of the remaining undivided interest in property in which the trust holds an undivided interest.


§ 113.006. General Authority to Manage and Invest Trust Property

Subject to the requirements of Chapter 117, a trustee may manage the trust property and invest and reinvest in property of any character on the conditions and for the lengths of time as the trustee considers proper, notwithstanding that the time may extend beyond the term of the trust.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2,

§ 113.007. Temporary Deposits of Funds
A trustee may deposit trust funds that are being held pending investment, distribution, or the payment of debts in a bank that is subject to supervision by state or federal authorities. However, a corporate trustee depositing funds with itself is subject to the requirements of Section 113.057 of this code.

§ 113.008. Business Entities
A trustee may invest in, continue, or participate in the operation of any business or other investment enterprise in any form, including a sole proprietorship, partnership, limited partnership, corporation, or association, and the trustee may effect any change in the organization of the business or enterprise.

§ 113.009. Real Property Management
A trustee may:
(1) exchange, subdivide, develop, improve, or partition real property;
(2) make or vacate public plats;
(3) adjust boundaries;
(4) adjust differences in valuation by giving or receiving value;
(5) dedicate real property to public use or, if the trustee considers it in the best interest of the trust, dedicate easements to public use without consideration;
(6) raze existing walls or buildings;
(7) erect new party walls or buildings alone or jointly with an owner of adjacent property;
(8) make repairs; and
(9) make extraordinary alterations or additions in structures as necessary to make property more productive.

§ 113.010. Sale of Property
A trustee may contract to sell, sell and convey, or grant an option to sell real or personal property at public auction or private sale for cash or for credit or for part cash and part credit, with or without security.

Statutes in Context
§ 113.011
Section 113.011(b) authorizes the trustee to enter into a long-term lease, that is, a lease which lasts beyond the term of the trust. Long-term leases restrict the ability of the remainder beneficiary to enjoy the property because it is encumbered by the lease. On the other hand, long-term leases may permit the trustee to earn more income from the property. For example, a company may not be willing to construct a large building on the property unless the company is assured of being able to use it for a long time.

§ 113.011. Leases
(a) A trustee may grant or take a lease of real or personal property for any term, with or without options to purchase and with or without covenants relating to erection of buildings or renewals, including the lease of a right or privilege above or below the surface of real property.
(b) A trustee may execute a lease containing terms or options that extend beyond the duration of the trust.

§ 113.012. Minerals
(a) A trustee may enter into mineral transactions, including:
(1) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest at any time forming a part of a trust;
(2) pooling and unitizing part or all of the land, mineral leasehold, mineral, royalty, or other interest of a trust estate with land, mineral leasehold, mineral, royalty, or other interest of one or more persons or entities for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;
(3) entering into contracts and agreements concerning the installation and operation of plans or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;
(4) conducting or contracting for the conducting of seismic evaluation operations;
(5) drilling or contracting for the drilling of wells for oil, gas, or other minerals;
(6) contracting for and making “dry hole” and “bottom hole” contributions of cash, leasehold interests, or other interests towards the drilling of wells;
(7) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;
(8) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation therein;
(9) entering into farmout contracts or agreements committing a trust estate to assign oil, gas, or other
§ 113.016. Management of Securities

A trustee may:

(1) pay calls, assessments, or other charges against or because of securities or other investments held by the trust;

(2) sell or exercise stock subscription or conversion rights;

(3) vote corporate stock, general or limited partnership interests, or other securities in person or by general or limited proxy;

(4) consent directly or through a committee or other agent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise; and

(5) participate in voting trusts and deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve; sell any stock or other securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights free of any restrictions upon sale otherwise contained in the trust instrument relative to the securities originally held; assent to corporate sales, leases, encumbrances, and other transactions.


§ 113.017. Corporate Stock or Other Securities Held in Name of Nominee

A trustee may:

(1) hold corporate stock or other securities in the name of a nominee;

(2) under Subchapter B, Chapter 161, or other law, employ a bank incorporated in this state or a national bank located in this state as custodian of any corporate stock or other securities held in trust; and

(3) under Subchapter C, Chapter 161, or other law, deposit or arrange for the deposit of securities with a Federal Reserve Bank or in a clearing corporation.

A settlor expects the trustee to administer the trust. The settlor selected the trustee because the settlor had confidence in that person’s judgment and ability to carry out the settlor’s instructions. The settlor did not want someone else to be managing the trust property. However, it would be too burdensome to force a trustee to personally perform all acts necessary in the administration of the trust.

The traditional rule regarding delegation of powers was that the trustee may delegate mere ministerial duties but may not delegate discretionary acts. Although easy to state, the application of the rule was not always easy. The extreme situations were relatively clear. The trustee could delegate ministerial acts such as secretarial and janitorial duties, record keeping, and the collection of income. But, discretionary acts such as selecting investments, deciding which beneficiary of a discretionary trust to pay and how much, and settling claims against the trust could not be delegated.

Section 113.018 adopts a different approach, that is, delegation is permissible if it is “reasonably necessary.” Accordingly, the trustee may delegate responsibilities to agents if a reasonably prudent owner of that type of property holding that property for similar reasons as those of the trust, would employ outside assistance.

Section 113.018 suffers from the problem that the 2003 Legislature did not amend it to be consistent with Chapter 117 (Uniform Prudent Investor Act); the term “investment agent” is a holdover from the prior (repealed) statute. The term is no longer defined. Section 113.018 should be viewed as the general section for the hiring of agents for non-discretionary decisions with § 117.011 governing agents but only for “investment and management functions.”

The 2017 Legislature expanded the ability of a trustee to delegate a wide variety of powers to an agent by providing a non-exclusive laundry list of powers so that an agent may deal with all aspects of a real property transaction. The trustee’s delegation must be in a writing which is properly acknowledged. The agent’s authority only lasts six months and will end sooner if the delegation contains an earlier date or the trustee dies, becomes incompetent, resigns, or is removed. The trustee remains responsible to the beneficiaries for all of the agent’s actions.

See also § 117.011 which permits the delegation of investment and management decisions under specified circumstances.

§ 113.018. Employment and Appointment of Agents

(a) A trustee may employ attorneys, accountants, agents, including investment agents, and brokers reasonably necessary in the administration of the trust estate.

(b) Without limiting the trustee’s discretion under Subsection (a), a trustee may grant an agent powers with respect to property of the trust to act for the trustee in any lawful manner for purposes of real property transactions.

(c) A trustee acting under Subsection (b) may delegate any or all of the duties and powers to:

(1) execute and deliver any legal instruments relating to the sale and conveyance of the property, including affidavits, notices, disclosures, waivers, or designations or general or special warranty deeds binding the trustee with vendor’s liens retained or disclaimed, as applicable, or transferred to a third-party lender;

(2) accept notes, deeds of trust, or other legal instruments;

(3) approve closing statements authorizing deductions from the sale price;

(4) receive trustee’s net sales proceeds by check payable to the trustee;

(5) indemnify and hold harmless any third party who accepts and acts under a power of attorney with respect to the sale;

(6) take any action, including signing any document, necessary or appropriate to sell the property and accomplish the delegated powers;

(7) contract to purchase the property for any price on any terms;

(8) execute, deliver, or accept any legal instruments relating to the purchase of the property or to any financing of the purchase, including deeds, notes, deeds of trust, guaranties, or closing statements;

(9) approve closing statements authorizing payment of prorations and expenses;

(10) pay the trustee’s net purchase price from funds provided by the trustee;

(11) indemnify and hold harmless any third party who accepts and acts under a power of attorney with respect to the purchase; or

(12) take any action, including signing any document, necessary or appropriate to purchase the property and accomplish the delegated powers.

(d) A trustee who delegates a power under Subsection (b) is liable to the beneficiaries or to the trust for an action of the agent to whom the power was delegated.

(e) A delegation by the trustee under Subsection (b) must be documented in a written instrument acknowledged by the trustee before an officer authorized under the law of this state or another state to take acknowledgments to deeds of conveyance and administer oaths. A signature on a delegation by a trustee for purposes of this subsection is presumed to be genuine if the trust acknowledges the signature in accordance with Chapter 121, Civil Practice and Remedies Code.

(f) A delegation to an agent under Subsection (b) terminates six months from the date of the acknowledgment of the written delegation unless terminated earlier by:

(1) the death or incapacity of the trustee;
(2) the resignation or removal of the trustee; or
(3) a date specified in the written delegation.

(g) A person who in good faith accepts a delegation under Subsection (b) without actual knowledge that the delegation is void, invalid, or terminated, that the purported agent’s authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent’s authority may rely on the delegation as if:
(1) the delegation were genuine, valid, and still in effect;
(2) the agent’s authority were genuine, valid, and still in effect; and
(3) the agent had not exceeded and had properly exercised the authority.

(h) A trustee may delegate powers under Subsection (b) if the governing instrument does not affirmatively permit the trustee to hire agents or expressly prohibit the trustee from hiring agents.


§ 113.019. Claims
A trustee may compromise, contest, arbitrate, or settle claims of or against the trust estate or the trustee.

§ 113.020. Burdensome or Worthless Property
A trustee may abandon property the trustee considers burdensome or worthless.

**Statutes in Context**

§ 113.021
The trustee should make trust distributions directly to the beneficiary if the beneficiary is a competent adult unless the settlor requires or authorizes the trustee in the trust instrument to make distributions in another manner. For example, the trust may permit the trustee to pay the beneficiary's college tuition by sending payments directly to the school.

If the beneficiary is a minor or is incapacitated and the trust does not provide distribution instructions, § 113.021(a) supplies the trustee with a variety of distribution options. Note that the trustee determines whether a beneficiary is incapacitated; neither a court nor medical determination of incapacity is necessary.

§ 113.021. Distribution to Minor or Incapacitated Beneficiary
(a) A trustee may make a distribution required or permitted to be made to any beneficiary in any of the following ways when the beneficiary is a minor or a person who in the judgment of the trustee is incapacitated by reason of legal incapacity or physical or mental illness or infirmity:
(1) to the beneficiary directly;
(2) to the guardian of the beneficiary’s person or estate;
(3) by utilizing the distribution, without the interposition of a guardian, for the health, support, maintenance, or education of the beneficiary; or
(4) to a custodian for the minor beneficiary under the Texas Uniform Transfers to Minors Act (Chapter 141) or a uniform gifts or transfers to minors act of another state;
(5) by reimbursing the person who is actually taking care of the beneficiary, even though the person is not the legal guardian, for expenditures made by the person for the benefit of the beneficiary; or
(6) by managing the distribution as a separate fund on the beneficiary’s behalf, subject to the beneficiary’s continuing right to withdraw the distribution.

(b) The written receipts of persons receiving distributions under Subsection (a) of this section are full and complete acquittances to the trustee.

**Statutes in Context**

§ 113.0211
The 2003 Texas Legislature enacted § 113.0211 which establishes a procedure for the trustee of a charitable trust to make adjustments between principal and income within certain parameters. The Legislature did not, however, correlate this section with the passage of the Uniform Principal and Income Act which also contains a procedure for making adjustments between principal and income. See Property Code § 116.005. Accordingly, it is unclear whether charitable trustees are restricted to § 113.0211 or whether they may use the Uniform Act procedure as well.

§ 113.0211. Adjustment of Charitable Trust
(a) In this section:
(1) “Charitable entity” has the meaning assigned by Section 123.001(1).
(2) “Charitable trust” means a trust:
   (A) the stated purpose of which is to benefit only one or more charitable entities; and
   (B) that qualifies as a charitable entity.

(b) The trustee of a charitable trust may acquire, exchange, sell, supervise, manage, or retain any type of investment, subject to restrictions and procedures established by the trustee and in an amount considered appropriate by the trustee, that a prudent investor, exercising reasonable skill, care, and caution, would acquire or retain in light of the purposes, terms,
distribution requirements, and other circumstances of the trust. The prudence of a trustee’s actions under this subsection is judged with reference to the investment of all of the trust assets rather than with reference to a single trust investment.

(c) The trustee of a charitable trust may make one or more adjustments between the principal and the income portions of a trust to the extent that the trustee considers the adjustments necessary:

(1) to comply with the terms of the trust, if any, that describe the amount that may or must be distributed to a charitable entity beneficiary by referring to the income portion of the trust; and

(2) to administer the trust in order to carry out the purposes of the charitable trust.

(d) The authority to make adjustments under Subsection (c) includes the authority to allocate all or part of a capital gain to trust income.

(e) In making adjustments under Subsection (c), the trustee shall consider:

(1) except to the extent that the terms of the trust clearly manifest an intention that the trustee shall or may favor one or more charitable entity beneficiaries, the needs of a charitable entity beneficiary, based on what is fair and reasonable to all other charitable entity beneficiaries of the trust, if any; and

(2) the need of the trust to maintain the purchasing power of the trust’s investments over time.


§ 113.022. Power to Provide Residence and Pay Funeral Expenses

A trustee of a trust that is not a charitable remainder unitrust, annuity trust, or pooled income fund that is intended to qualify for a federal tax deduction under Section 664, Internal Revenue Code, after giving consideration to the probable intention of the settlor and finding that the trustee’s action would be consistent with that probable intention, may:

(1) permit real estate held in trust to be occupied by a beneficiary who is currently eligible to receive distributions from the trust estate;

(2) if reasonably necessary for the maintenance of a beneficiary who is currently eligible to receive distributions from the trust estate, invest trust funds in real property to be used for a home by the beneficiary; and

(3) in the trustee’s discretion, pay funeral expenses of a beneficiary who at the time of the beneficiary’s death was eligible to receive distributions from the trust estate.


§ 113.023. Ancillary Trustee

(a) If trust property is situated outside this state, a Texas trustee may name in writing an individual or corporation qualified to act in the foreign jurisdiction in connection with trust property as ancillary trustee.

(b) Within the limits of the authority of the Texas trustee, the ancillary trustee has the rights, powers, discretions, and duties the Texas trustee delegates, subject to the limitations and directions of the Texas trustee specified in the instrument evidencing the appointment of the ancillary trustee.

(c) The Texas trustee may remove an ancillary trustee and appoint a successor at any time as to all or part of the trust assets.

(d) The Texas trustee may require security of the ancillary trustee, who is answerable to the Texas trustee for all trust property entrusted to or received by the ancillary trustee in connection with the administration of the trust.

(e) If the law of the foreign jurisdiction requires a certain procedure or a judicial order for the appointment of an ancillary trustee or to authorize an ancillary trustee to act, the Texas trustee and the ancillary trustee must satisfy the requirements.


Statutes in Context § 113.024

See Statutes in Context to § 113.002.

§ 113.024. Implied Powers

The powers, duties, and responsibilities under this subtitle do not exclude other implied powers, duties, or responsibilities that are not inconsistent with this subtitle.


Statutes in Context § 113.025

Section 113.025 permits the trustee to investigate trust property for potential environmental liability concerns even before accepting the trust property. This is helpful in protecting the trust and the trustee from liability under the Comprehensive Environmental Response, Compensation, and Liability Act. See 42 U.S.C. §§ 9601 et seq.

§ 113.025. Powers of Trustee Regarding Environmental Laws

(a) A trustee or a potential trustee may inspect, investigate, cause to be inspected, or cause to be investigated trust property, property that the trustee or potential trustee has been asked to hold, or property owned or operated by an entity in which the trustee or potential trustee holds or has been asked to hold any interest or for the purpose of determining the potential application of environmental law with respect to the property. This subsection does not grant any person the right of access to any property. The taking of any action
under this subsection with respect to a trust or an addition to a trust is not evidence that a person has accepted the trust or the addition to the trust.

(b) A trustee may take on behalf of the trust any action before or after the initiation of an enforcement action or other legal proceeding that the trustee reasonably believes will help to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee.


§ 113.026. Authority to Designate New Charitable Beneficiary

(a) In this section:

(1) “Charitable entity” has the meaning assigned by Section 123.001.

(2) “Failed charitable beneficiary” means a charitable entity that is named as a beneficiary of a trust and that:

(A) does not exist at the time the charitable entity’s interest in the trust becomes vested;

(B) ceases to exist during the term of the trust; or

(C) ceases to be a charitable entity during the term of the trust.

(b) This section applies only to an express written trust created by an individual with a charitable entity as a beneficiary. If the trust instrument provides a means for replacing a failed charitable beneficiary, the trust instrument governs the replacement of a failed charitable beneficiary, and this section does not apply.

(c) The trustee of a trust may select one or more replacement charitable beneficiaries for a failed charitable beneficiary in accordance with this section.

(d) Each replacement charitable beneficiary selected under this section by any person must:

(1) be a charitable entity and an entity described under Sections 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Internal Revenue Code of 1986, as amended; and

(2) have the same or similar charitable purpose as the failed charitable beneficiary.

(e) If the settlor of the trust is living and not incapacitated at the time a trustee is selecting a replacement charitable beneficiary, the trustee shall consult with the settlor concerning the selection of one or more replacement charitable beneficiaries.

(f) If the trustee and the settlor agree on the selection of one or more replacement charitable beneficiaries, the trustee shall send notice of the selection to the attorney general. If the attorney general determines that one or more replacement charitable beneficiaries do not have the same or similar charitable purpose as the failed charitable beneficiary, not later than the 21st day after the date the attorney general receives notice of the selection, the attorney general shall request in writing that a district court in the county in which the trust was created review the selection. If the court agrees with the attorney general’s determination, any remaining replacement charitable beneficiary agreed on by the trustee and the settlor is the replacement charitable beneficiary. If there is not a remaining replacement charitable beneficiary agreed on by the trustee and the settlor, the court shall select one or more replacement charitable beneficiaries. If the court finds that the attorney general’s request for a review is unreasonable, the replacement charitable beneficiary is the charitable beneficiary agreed on by the trustee and the settlor, and the court may require the attorney general to pay all court costs of the parties involved. Not later than the 30th day after the date the selection is final, the trustee shall provide to each replacement charitable beneficiary selected notice of the selection by certified mail, return receipt requested.

(g) If the trustee and the settlor cannot agree on the selection of a replacement charitable beneficiary, the trustee shall send notice of that fact to the attorney general not later than the 21st day after the date the trustee determines that an agreement cannot be reached. The attorney general shall refer the matter to a district court in the county in which the trust was created. The trustee and the settlor may each recommend to the court one or more replacement charitable beneficiaries. The court shall select a replacement charitable beneficiary and, not later than the 30th day after the date of the selection, provide to each charitable beneficiary selected notice of the selection by certified mail, return receipt requested.

Added by Acts 1999, 76th Leg., ch. 63, § 1, eff. Aug. 30, 1999.

§ 113.027. Distributions Generally

When distributing trust property or dividing or terminating a trust, a trustee may:
(1) make distributions in divided or undivided interests;
(2) allocate particular assets in proportionate or disproportionate shares;
(3) value the trust property for the purposes of acting under Subdivision (1) or (2); and
(4) adjust the distribution, division, or termination for resulting differences in valuation.


(a) A trustee may not prosecute or assert a claim for damages in a cause of action against a party who is not a beneficiary of the trust if each beneficiary of the trust provides written notice to the trustee of the beneficiary’s opposition to the trustee’s prosecuting or asserting the claim in the cause of action.

(b) This section does not apply to a cause of action that is prosecuted by a trustee in the trustee’s individual capacity.

(c) The trustee is not liable for failing to prosecute or assert a claim in a cause of action if prohibited by the beneficiaries under Subsection (a).


The 2009 Legislature added § 113.029(a) to codify the common law rule that regardless of the extent of discretion the settlor grants to a trustee, the trustee must always act “in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.” Thus, even if the settlor provides that the trustee’s discretion is “absolute” or “uncontrolled,” the trustee’s actions must still comport with fiduciary standards and are reviewable by the court.

Tax problems may result if a non-settlor beneficiary is also the trustee of a trust and is given the power to make self-distributions that are not limited by an ascertainable standard relating to health, education, support, or maintenance. A settlor may create this problem inadvertently by giving the trustee/beneficiary unrestricted discretion or may limit distributions to a standard that is not ascertainable such as for the trust/beneficiary’s comfort, benefit, welfare, or well-being.

To remedy this problem, the 2009 Legislature provided that in such situations, the trustee/beneficiary’s power to distribute is “cut back” to an ascertainable standard relating to health, education, support, or maintenance. Likewise, the trustee/beneficiary’s power to distribute is restricted so that distributions cannot be made to satisfy a legal obligation of support that the trustee/beneficiary personally owes to another person. § 113.029(b).

If there are other trustees besides the beneficiary, a majority of the remaining trustees may exercise the power to make discretionary distributions to the “limited” trustee/beneficiary without regard to the cut-back. If there is no trustee who is not free of restrictions, the court may appoint a special fiduciary with authority to exercise the power. § 113.029(c).

The automatic cut-back will not apply if one of the following circumstances exists:

The trust was created and became irrevocable before September 1, 2009. (If the trust was created before September 1, 2009 but did not become irrevocable until September 1, 2009 or thereafter, the cut-back will apply.)

The settlor is the beneficiary/trustee. § 113.029(b)(1)

The settlor expressly indicated that the cut-back provisions of this section do not apply. § 113.029(b).

The trustee/beneficiary is the settlor’s spouse and a marital deduction was previously allowed for the trust. § 113.029(d)(1).

The settlor may amend or revoke the trust. § 113.029(d)(2).

Contributions to the trust qualify for the gift tax annual exclusion. § 113.029(d)(3).

§ 113.029. Discretionary Powers; Tax Savings

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to Subsection (d), and unless the terms of the trust expressly indicate that a requirement provided by this subsection does not apply:

(1) a person, other than a settlor, who is a beneficiary and trustee, trustee affiliate, or discretionary power holder of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee’s, the trustee affiliate’s, or the discretionary power holder’s personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee’s, the trustee affiliate’s, or the discretionary power holder’s individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1), Internal Revenue Code of 1986; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power the exercise of which is limited or prohibited by Subsection (b) may be exercised by a
majority of the remaining trustees whose exercise of the power is not limited or prohibited by Subsection (b). If the power of all trustees is limited or prohibited by Subsection (b), the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) does not apply to:

(1) a power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction, as defined by Section 2056(b)(5) or 2523(e), Internal Revenue Code of 1986, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c), Internal Revenue Code of 1986.

(e) In this section, “discretionary power holder” means a person who has the sole power or power shared with another person to make discretionary decisions on behalf of a trustee with respect to distributions from a trust.


Statutes in Context
§ 113.030

The 2009 Legislature enacted this section to remedy the “orphan trust” problem as described in the analysis of S.B. 666 as follows:

The “orphan trust” or charitable foundations set up by donors who have no heirs or other family that they wish to carry out their wills, are often entrusted to lawyers or local banks who will keep the money invested in the local community. However, when an attorney retires or local banks are sold to multinational financial institutions, the foundations are no longer run by the people and banks familiar with the donors’ specific wishes. The corporate trustees have wide latitude to change the way the trust operates, and to decide which charities will receive grants and thus the danger of distorting or altogether ignoring the donor’s intent is increased with each transaction. Banks give fewer and smaller charitable gifts from the trusts they manage, all the while increasing administrative fees that the banks charge to the foundation’s assets, and increasing charitable funds being moved and used as assets and revenue streams for large financial institutions is that communities that stood to benefit from the philanthropy of their citizens are denied the good works and good will of the original donors.

The statute provides that the location of a charitable trust’s administration cannot be changed to an out-of-state location other than as (1) the settlor provided in the trust or (2) the court approves under the procedure set forth in the statute. § 113.030(b).

A trustor who wants to move the location out of Texas must first give proper notice. If the settlor is alive and competent, the trustor must consult with the trustor and submit the selection to the attorney general. § 113.030(c)(1). If the settlor is dead or incapacitated, then the trustor must propose a new location and submit the proposal to the attorney general. § 113.030(c)(2).

The trustor must then file an action in the appropriate court to get permission to move the trust administration out of the Texas. § 113.030(d). The court may not authorize a relocation unless it finds that the charitable purposes of the trust will not be impaired by the move. § 113.030(e).

The statute grants the attorney general the power to enforce this section. If a trustor does not comply with the statute, the court may remove the trustor and appoint a new trustor. The court may charge the costs of the removal, including reasonable attorney’s fees, against the removed trustor. § 113.030(f).

§ 113.030. Relocation of Administration of Charitable Trust

(a) In this section:

(1) “Charitable entity” has the meaning assigned by Section 123.001.

(2) “Charitable trust” means a trust:

(A) the stated purpose of which is to benefit only one or more charitable entities; and

(B) that qualifies as a charitable entity.

(3) “Trust administration” means the grant-making function of the trust.

(b) Except as provided by this section or specifically authorized by the terms of a trust, the trustor of a charitable trust may not change the location in which the trust administration takes place from a location in this state to a location outside this state.

(c) If the trustor decides to change the location in which the trust is administered from a location in this state to a location outside this state, the trustor shall:

(1) if the settlor is living and not incapacitated:

(A) consult the settlor concerning the selection of a new location for the administration of the trust; and

(B) submit the selection to the attorney general; or

(2) if the settlor is not living or is incapacitated:

(A) propose a new location; and
(B) submit the proposal to the attorney general.

(d) The trustee may file an action in the district court or statutory probate court in which the trust was created seeking a court order authorizing the trustee to change the location in which the trust is administered to a location outside this state. The court may exercise its equitable powers to effectuate the original purpose of the trust.

(e) Except as provided by Subsection (b), the location in which the administration of the trust takes place may not be changed to a location outside this state unless:

(1) the charitable purposes of the trust would not be impaired if the trust administration is moved; and

(2) a district court or statutory probate court authorizes the relocation.

(f) The attorney general may bring an action to enforce the provisions of this section. If a trustee of a charitable trust fails to comply with the provisions of this section, the district court or statutory probate court in the county in which the trust administration was originally located may remove the trustee and appoint a new trustee. Costs of a proceeding to remove a trustee, including reasonable attorney’s fees, may be assessed against the removed trustee. This provision is in addition to and does not supersede the provisions of Chapter 123.

(g) This section does not affect a trustee’s authority to sell real estate owned by a charitable trust.

(b) The trustee may access digital assets as provided by Chapter 2001, Estates Code.

Subchapter B. Duties of Trustee

Statutes in Context

§ 113.051

If the trust instrument and the Trust Code are both silent about a particular issue regarding trust administration, the common law rules still apply.

§ 113.051. General Duty

The trustee shall administer the trust in good faith according to its terms and this subtitle. In the absence of any contrary terms in the trust instrument or contrary provisions of this subtitle, in administering the trust the trustee shall perform all of the duties imposed on trustees by the common law.


Statutes in Context

§ 113.052

A trustee may not self-deal by borrowing property from the trust either for the trustee’s personal use or for the use of closely related or connected persons. However, the settlor may expressly authorize these loans in the trust instrument. For example, Grandparent may establish a trust for Grandchildren naming Child as the trustee and permit Child to make educational loans to Grandchildren from trust property.

See § 111.004(1) (defining “affiliate”) and § 111.004(13) (defining “relative” in a narrow fashion which excludes many close relatives, such as uncles, aunts, nephews, and nieces).

Corporate trustees are allowed to deposit trust funds with itself (that is, loan trust funds to itself) under the circumstances set forth in § 113.057.

§ 113.052. Loan of Trust Funds to Trustee

(a) Except as provided by Subsection (b) of this section, a trustee may not lend trust funds to:

(1) the trustee or an affiliate;

(2) a director, officer, or employee of the trustee or an affiliate;

(3) a relative of the trustee; or

(4) the trustee’s employer, employee, partner, or other business associate.

(b) This section does not prohibit:

(1) a loan by a trustee to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust; or

(2) a deposit by a corporate trustee with itself under Section 113.057.

§ 113.053. Purchase or Sale of Trust Property by Trustee

(a) Except as provided by Subsections (b), (c), (d), (e), (f), and (g), a trustee shall not directly or indirectly buy or sell trust property from or to:

(1) the trustee or an affiliate;

(2) a director, officer, or employee of the trustee or an affiliate;

(3) a relative of the trustee; or

(4) the trustee’s employer, partner, or other business associate.

(b) A national banking association or a state-chartered corporation with the right to exercise trust powers that is serving as executor, administrator, guardian, trustee, or receiver may sell shares of its own capital stock held by it for an estate to one or more of its officers or directors if a court:

(1) finds that the sale is in the best interest of the estate that owns the shares;

(2) fixes or approves the sales price of the shares and the other terms of the sale; and

(3) enters an order authorizing and directing the sale.

(c) If a corporate trustee, executor, administrator, or guardian is legally authorized to retain its own capital stock in trust, the trustee may exercise rights to purchase its own stock if increases in the stock are offered pro rata to shareholders.

(d) If the exercise of rights or the receipt of a stock dividend results in a fractional share holding and the acquisition meets the investment standard required by this subchapter, the trustee may purchase additional fractional shares to round out the holding to a full share.

(e) A trustee may:

(1) comply with the terms of a written executory contract signed by the settlor, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement; and

(2) sell the stock, bonds, obligations, or other securities of a corporation to the issuing corporation or to its corporate affiliate if the sale is made under an agreement described in Subdivision (1) or complies with the duties imposed by Chapter 117.

(f) A national banking association, a state-chartered corporation, including a state-chartered bank or trust company, a state or federal savings and loan association that has the right to exercise trust powers and that is serving as trustee, or such an institution that is serving as custodian with respect to an individual retirement account, as defined by Section 408, Internal Revenue Code, or an employee benefit plan, as defined by Section 3(3), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(3)), regardless of whether the custodial account is, or would otherwise be, considered a trust for purposes of this subtitle, may, subject to its fiduciary duties:

(1) employ an affiliate or division within a financial institution to provide brokerage, investment, administrative, custodial, or other account services for the trust or custodial account and charge the trust or custodial account for the services;

(2) unless the instrument governing the fiduciary relationship expressly prohibits the purchase or charge, purchase insurance underwritten or otherwise distributed by an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate and charge the trust or custodial account for the insurance premium, provided that:

(A) the person conducting the insurance transaction is appropriately licensed if required by applicable licensing and regulatory requirements administered by a functional regulatory agency of this state; and

(B) the insurance product and premium are the same or similar to a product and premium offered by organizations that are not an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate; and

(3) receive a fee or compensation, directly or indirectly, on account of the services performed or the insurance product sold by the affiliate, division within the financial institution, or syndicate or selling group that includes the financial institution or an affiliate, whether in the form of shared commissions, fees, or otherwise, provided that any amount charged by the affiliate, division, or syndicate or selling group that includes the financial institution or an affiliate for the services or insurance product is disclosed and does not exceed the customary or prevailing amount that is charged by the affiliate, division, or syndicate or selling group that includes the financial institution or an affiliate, or a comparable entity, for comparable services rendered or insurance provided to a person other than the trust.

(g) In addition to other investments authorized by law for the investment of funds held by a fiduciary or by the instrument governing the fiduciary relationship, and notwithstanding any other provision of law and subject to the standard contained in Chapter 117, a bank or trust company acting as a fiduciary, agent, or otherwise, in the exercise of its investment discretion or at the direction of another person authorized to direct the investment of funds held by the bank or trust company as fiduciary, may invest and reinvest in the securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.) if the portfolio of the investment company or investment trust consists substantially of investments that are not prohibited by the governing instrument. The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company or investment trust, such as those of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and receives compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities if
the compensation is disclosed by prospectus, account statement, or otherwise. An executor or administrator of an estate under a dependent administration or a guardian of an estate shall not so invest or reinvest unless specifically authorized by the court in which such estate or guardianship is pending.


Statutes in Context

§ 113.054

A trustee may not sell property to another trust for which the trustee is also serving as the trustee. A conflict of interest arises if the trustee invests in the same securities as both a trustee and an individual. This would place the trustee in a position of making decisions for both the trustee as an individual and the trust. The best choice for the trustee may not be the best option for the beneficiaries of the trust. Accordingly, § 113.055 prohibits a trustee from being in this conflict of interest situation. Note that although a trustee may not purchase for the trust stock in corporations in which the trustee individually holds shares, a trustee may retain stock in the trust which the trust already owns when the trustee becomes the trustee as long as it is prudent to do so.

This duty may be waived by the settlor or the beneficiaries for all types of trustees. See §§ 111.0035 and 114.005(a).

§ 113.055. Purchase of Trustee’s Securities

(a) Except as provided by Subsection (b) of this section, a corporate trustee may not purchase for the trust the stock, bonds, obligations, or other securities of the trustee or an affiliate, and a noncorporate trustee may not purchase for the trust the stock, bonds, obligations, or other securities of a corporation with which the trustee is connected as director, owner, manager, or any other executive capacity.

(b) A trustee may:

(1) retain stock already owned by the trust unless the retention does not satisfy the requirements prescribed by Chapter 117; and

(2) exercise stock rights or purchase fractional shares under Section 113.053.


§ 113.056. Authorization to Make Certain Investments

(a) Unless the terms of the trust instrument provide otherwise, and subject to the investment standards provided by this subtitle and any investment standards provided by the trust instrument, the trustee may invest all or part of the trust assets in an investment vehicle authorized for the collective investment of trust funds pursuant to Part 9, Title 12, of the Code of Federal Regulations.

(b) (Repealed)

(c) (Repealed)

(d) Subject to any investment standards provided by this chapter, Chapter 117, or the trust instrument, whenever the instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the trustee may invest in and hold such obligations either directly or in the form of interests in an open-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., or in an investment vehicle authorized for the collective investment of trust funds pursuant to Part 9, Title 12 of the Code of Federal Regulations, so long as the portfolio of such investment company, investment trust, or collective investment vehicle is limited to such obligations and to repurchase agreements fully collateralized by such obligations.

The operation of § 113.057 is demonstrated by the following example. Assume that Octopus National Bank (ONB) is serving as the trustee of a trust. ONB keeps $60,000 in one of its certificates of deposit which is earning a competitive rate of interest. In addition, ONB maintains a checking account for the trust which it uses to pay expenses and make distributions to beneficiaries. Both accounts are fully insured by the federal government.

Technically, both of these accounts violate ONB's duty of loyalty. In ONB's capacity as a trustee, it is a lender, while in its capacity as a bank, it is a borrower. Thus, ONB has actually lent funds to itself. (See § 113.052.) Because it would be inefficient to force ONB to use another financial institution for banking services, § 113.057 permits certain self-deposits. The certificate of deposit is a long-term investment and thus the transaction has a significant self-dealing aspect and it would not be a great burden on ONB to search elsewhere for this type of investment. However, if the settlor authorized this type of investment, ONB may properly open the CD. (If the trust was created before January 1, 1988, a beneficiary may provide the necessary consent.) With regard to the checking account, the benefit to the trust of having fast and convenient access to trust funds outweighs the self-dealing nature of the deposit. Accordingly, § 113.057 permits self-deposits pending investment, distribution, or payment of debts under the statutorily mandated conditions.

§ 113.057. Deposits by Corporate Trustee with Itself

(a) A corporate trustee may deposit trust funds with itself as a permanent investment if authorized by the settlor in the instrument creating the trust or if authorized in a writing delivered to the trustee by a beneficiary currently eligible to receive distributions from a trust created before January 1, 1988.

(b) A corporate trustee may deposit with itself trust funds that are being held pending investment, distribution, or payment of debts if, except as provided by Subsection (d) of this section:

(1) it maintains under control of its trust department as security for the deposit a separate fund of securities legal for trust investments;

(2) the total market value of the security is at all times at least equal to the amount of the deposit; and

(3) the separate fund is marked as such.

(c) The trustee may make periodic withdrawals from or additions to the securities fund required by Subsection (b) of this section as long as the required value is maintained. Income from securities in the fund belongs to the trustee.

(d) Security for a deposit under this section is not required for a deposit under Subsection (a) or under Subsection (b) of this section to the extent the deposit is insured or otherwise secured under state or federal law.


§ 113.058. Bond

(a) A corporate trustee is not required to provide a bond to secure performance of its duties as trustee.

(b) Unless the instrument creating the trust provides otherwise, a noncorporate trustee must give bond:

(1) payable to the trust estate of the trust, the registry of the court, or each person interested in the trust, as their interests may appear; and

(2) conditioned on the faithful performance of the trustee's duties.

(c) The bond must be in an amount and with the sureties required by order of a court in a proceeding brought for this determination.

(d) Any interested person may bring an action to increase or decrease the amount of a bond, require a bond, or substitute or add sureties. Notwithstanding Subsection (b), for cause shown, a court may require a bond even if the instrument creating the trust provides otherwise.

(e) The trustee shall deposit the bond with the clerk of the court that issued the order requiring the bond. A suit on the bond may be maintained on a certified copy. Appropriate proof of a recovery on a bond reduces the liability of the sureties pro tanto.

(f) Failure to comply with this section does not make void or voidable or otherwise affect an act or transaction of a trustee with any third person.

§ 113.060. Informing Beneficiaries

The trustee shall keep the beneficiaries of the trust reasonably informed concerning:

(1) the administration of the trust; and
(2) the material facts necessary for the beneficiaries to protect the beneficiaries’ interests.


The enactment of Section 113.060, Property Code, by Chapter 148, Acts of the 79th Legislature, Regular Session, 2005, was not intended to repeal any common-law duty to keep a beneficiary of a trust informed, and the repeal by this Act of Section 113.060, Property Code, does not repeal any common-law duty to keep a beneficiary informed. The common-law duty to keep a beneficiary informed that existed immediately before January 1, 2006, is continued in effect. Acts 2007, 80th Leg., ch. 451, § 24(b).

Subchapter C. Resignation or Removal of Trustee, and Authority of Multiple and Successor Trustees

§ 113.081. Resignation of Trustee

A trustee is not stuck with serving as a trustee until the trust ends or the trustee dies. The trustee may resign either by (1) following the terms of the trust or (2) petitioning the court for permission to resign. The trustee cannot just “walk away” from the job.


§ 113.082. Removal of Trustee

(a) A trustee may be removed in accordance with the terms of the trust instrument, or, on the petition of an interested person and after hearing, a court may, in its discretion, remove a trustee and deny part or all of the trustee’s compensation if:

(1) the trustee materially violated or attempted to violate the terms of the trust and the violation or attempted violation results in a material financial loss to the trust;
(2) the trustee becomes incapacitated or insolvent;
(3) the trustee fails to make an accounting that is required by law or by the terms of the trust; or
(4) the court finds other cause for removal.

(b) A beneficiary, cotrustee, or successor trustee may treat a violation resulting in removal as a breach of trust.
(c) A trustee of a charitable trust may not be removed solely on the grounds that the trustee exercised the...
trustee's power to adjust between principal and income under Section 113.0211.


**Statutes in Context**

§ 113.083

If no trustee remains (e.g., the sole or surviving trustee dies), a replacement trustee is selected by (1) the method specified in the trust instrument, (2) the court on its own motion, or (3) the court upon petition of an interested party. If at least one trustee remains, however, the court will not fill a vacancy. However, the majority of the trustees of a charitable (not private) trust may by majority vote to fill the vacancy if they so desire.

See also Finance Code §§ 274.001-274.203 (the Substitute Fiduciary Act).

§ 113.084. Powers of Successor Trustee

Unless otherwise provided in the trust instrument or by order of the court appointing a successor trustee, the successor trustee has the rights, powers, authority, discretion, and title to trust property conferred on the trustee.


§ 113.085. Exercise of Powers by Multiple Trustees

(a) Cotrustees may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee:

1. is unavailable to perform the function because of absence, illness, suspension under this code or other law, disqualification, if any, under this code, disqualification under other law, or other temporary incapacity; or

2. has delegated the performance of the function to another trustee in accordance with the terms of the trust or applicable law, has communicated the delegation to all other cotrustees, and has filed the delegation in the records of the trust.

(d) If a cotrustee is unavailable to participate in the performance of a trustee’s function for a reason described by Subsection (c)(1) and prompt action is necessary to achieve the efficient administration or purposes of the trust or to avoid injury to the trust property or a beneficiary, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a trustee's function unless the settlor specifically directs that the function be performed jointly. Unless a cotrustee's delegation under this subsection is irrevocable, the cotrustee making the delegation may revoke the delegation.


**Subchapter E. Accounting by Trustee**

Statutes in Context

§ 113.151

The trustee has a duty to keep accurate records

Electronic copy available at: https://ssrn.com/abstract=4537861
of all transactions involving trust property and to provide accountings to the beneficiaries. This information helps the beneficiaries to determine whether the trustee is doing an acceptable job of administering the trust. Unlike some states, Texas does not require the trustee to render periodic accountings. Instead, § 113.151 provides that a trustee must account only if (1) a beneficiary makes a written demand, or (2) an interested party obtains a court order. The settlor may not waive the trustee’s responsibility to provide these accountings. See Hollenbeck v. Hanna, 802 S.W.2d 412 (Tex. App. — San Antonio 1991, no writ).

The trustee must provide the accounting on or before the 90th day after the trustee receives the demand unless a court order provides for a longer period.

If the beneficiary is successful in a suit to compel an accounting, the court has the discretion to award all or part of the court costs and all the beneficiary’s reasonable and necessary attorney’s fees against the trustee in either the trustee’s individual or representative capacity. Note that the section does not seem to permit the court to award only a part of the attorney’s fees; it appears to be an “all or nothing” situation unlike with regard to court costs where the court has the discretion to award “all or part.”

Many good reasons exist for a trustee to render an annual accounting even though not required to do so by law or under the trust. The trustee will have an easier time preparing the accounting when the transactions are fresh in the trustee’s mind. The trustee may have a difficult time recalling trust events years or decades later. Accountings also have a good psychological impact on the beneficiaries. Beneficiaries like to know what is going on and voluntarily submitted annual accountings may reflect highly on the trustee’s conscientiousness and candor.

§ 113.151. Demand for Accounting

(a) A beneficiary by written demand may request the trustee to deliver to each beneficiary of the trust a written statement of accounts covering all transactions since the last accounting or since the creation of the trust, whichever is later. If the trustee fails or refuses to deliver the statement on or before the 90th day after the date the trustee receives the demand or after a longer period ordered by a court, any beneficiary of the trust may file suit to compel the trustee to deliver the statement to all beneficiaries of the trust. The court may require the trustee to deliver a written statement of account to all beneficiaries on finding that the nature of the beneficiary’s interest in the trust or the effect of the administration of the trust on the beneficiary’s interest is sufficient to require an accounting by the trustee. However, the trustee is not obligated or required to account to the beneficiaries of a trust more frequently than once every 12 months unless a more frequent accounting is required by the court. If a beneficiary is successful in the suit to compel a statement under this section, the court may, in its discretion, award all or part of the costs of the court and all of the suing beneficiary’s reasonable and necessary attorney’s fees and costs against the trustee in the trustee’s individual capacity or in the trustee’s capacity as trustee.

(b) An interested person may file suit to compel the trustee to account to the interested person. The court may require the trustee to deliver a written statement of account to the interested person on finding that the nature of the interest in the trust of, the claim against the trust by, or the effect of the administration of the trust on the interested person is sufficient to require an accounting by the trustee.


Statutes in Context
§ 113.152

Section 113.152 enumerates the items required in a trustee’s accounting. A trustee may find it convenient to keep records in this format from the beginning to make it a relatively easy task to render an accounting.

§ 113.152. Contents of Accounting

A written statement of accounts shall show:

(1) all trust property that has come to the trustee’s knowledge or into the trustee’s possession and that has not been previously listed or inventoried as property of the trust;

(2) a complete account of receipts, disbursements, and other transactions regarding the trust property for the period covered by the account, including their source and nature, with receipts of principal and income shown separately;

(3) a listing of all property being administered, with an adequate description of each asset;

(4) the cash balance on hand and the name and location of the depository where the balance is kept; and

(5) all known liabilities owed by the trust.


Subchapter F. Common Trust Funds

Statutes in Context
§ 113.171 & § 113.172

Sections 113.171 and 113.172 permit corporate trustees to commingle the property from several trusts into common trust funds. These funds permit
trustees to diversify, lower transaction costs, and better leverage the trust property. Individual trustees do not have the option of commingling the property of different trusts. However, they can secure the same benefits by investing in regular commercial mutual funds.

§ 113.171. Common Trust Funds
(a) A bank or trust company qualified to act as a fiduciary in this state may establish common trust funds to provide investments to itself as a fiduciary, including as a custodian under the Texas Uniform Transfers to Minors Act (Chapter 141) or a uniform gifts or transfers to minors act of another state or to itself and others as cofiduciaries.
(b) The fiduciary or cofiduciary may place investment funds in interests in common trust funds if:
(1) the investment is not prohibited by the instrument or order creating the fiduciary relationship; and
(2) if there are cofiduciaries, the cofiduciaries consent to the investment.
(c) A common trust fund includes a fund:
(1) qualified for exemption from federal income taxation as a common trust fund and maintained exclusively for eligible fiduciary accounts; and
(2) consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other employees’ trusts that are exempt from federal income taxation.


§ 113.172. Affiliated Institutions
A bank or trust company that is a member of an affiliated group under Section 1504, Internal Revenue Code of 1954 (26 U.S.C. § 1504), with a bank or trust company maintaining common trust funds may participate in one or more of the funds.


Chapter 114. Liabilities, Rights, and Remedies of Trustees, Beneficiaries, and Third Persons

Subchapter A. Liability of Trustee

Statutes in Context
§ 114.001
A trustee is accountable for any profit made by the trustee through or arising out of the administration of the trust even though the profit does not result from a breach of trust. See § 114.001(a). For example, if the trustee obtains knowledge of a good investment while working for the trust and then makes the investment for the trustee individually, the trustee will be responsible for any profit the trustee makes. In all other cases, however, the trustee must breach the trust before liability attaches. See § 114.001(b). The available remedies include:

1. Lost Value. The court may award the loss or depreciation in value to the trust property caused by the breach. The plaintiff must be able to demonstrate that the trustee’s breach caused the loss but does not need to show that the trustee personally benefited from the loss. See § 114.001(c)(1).

2. Profit Made by Trustee. The trustee is responsible for any profit the trustee gained by being a trustee, except for the trustee’s compensation. The trustee is liable for the profit even if the trust did not suffer a loss because of the breach. See § 114.001(c)(2).

3. Lost Profits. The court may hold the trustee liable for the profits the trust would have earned had the trustee not breached the trustee’s fiduciary duties. These damages are more difficult to prove because of their speculative nature. See § 114.001(c)(3).

4. Punitive Damages. An intentional breach of duty by the trustee is considered a tort. Consequently, the court may be able to justify an award of punitive damages. See Interfirst Bank Dallas, N.A. v. Risser, 739 S.W.2d 882 (Tex. App. — Texarkana 1987, no writ).

The statute of limitations does not begin to run against the beneficiary until the beneficiary has notice that the trustee has repudiated the trust. The beneficiary does not have a duty to investigate until the beneficiary has knowledge of facts which are sufficient to trigger a reasonable person to inquire. In other words, the statute of limitations does not run from the date of the trustee’s breach but rather from when that breach is, or should have been, discovered. See Courseview, Inc. v. Phillips Petroleum Co., 312 S.W.2d 197 (Tex. 1957).

§ 114.001. Liability of Trustee to Beneficiary
(a) The trustee is accountable to a beneficiary for the trust property and for any profit made by the trustee through or arising out of the administration of the trust, even though the profit does not result from a breach of trust; provided, however, that the trustee is not required to return to a beneficiary the trustee’s compensation as provided by this subtitle, by the terms of the trust instrument, or by a writing delivered to the trustee and signed by all beneficiaries of the trust who have full legal capacity.
(b) The trustee is not liable to the beneficiary for a loss or depreciation in value of the trust property or for a failure to make a profit that does not result from a failure to perform the duties set forth in this subtitle or from any other breach of trust.
§ 114.002. Liability of Successor Trustee for Breach of Trust by Predecessor

A successor trustee is liable for a breach of trust of a predecessor only if he knows or should know of a situation constituting a breach of trust committed by the predecessor and the successor trustee:

(1) improperly permits it to continue;
(2) fails to make a reasonable effort to compel the predecessor trustee to deliver the trust property; or
(3) fails to make a reasonable effort to compel a redress of a breach of trust committed by the predecessor trustee.


§ 114.003. Powers to Direct: Charitable Trusts

(a) In this section, “charitable trust” has the meaning assigned by Section 123.001.

(a-1) The terms of a charitable trust may give a trustee or other person a power to direct the modification or termination of the trust.

(b) If the terms of a charitable trust give a person the power to direct certain actions of the trustee, the trustee shall act in accordance with the person’s direction unless:

(1) the direction is manifestly contrary to the terms of the trust; or
(2) the trustee knows the direction would constitute a serious breach of a fiduciary duty that the person holding the power to direct owes to the beneficiaries of the trust.

(c) A person, other than a beneficiary, who holds a power to direct with respect to a charitable trust is liable for any loss that results from a breach of the person’s fiduciary duty.


Statutes in Context
§ 114.003

Section 114.003 permits a settlor of a charitable trust to name a trust protector who has the ability to direct the trustees to take (or not take) certain actions. Normally, the trustee must follow the trust protector’s directives unless the trustee recognizes that to do so would be manifestly contrary to the terms of the trust or is a serious breach of the protector’s duties. A trust protector of a charitable trust is presumed to be a fiduciary and must act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. Liability will attach if the trust protector breaches a fiduciary duty.

Section 114.0031 deals with trust protectors in private trusts providing less restrictive rules.

§ 114.0031. Powers to Direct: Charitable Trusts

(a) In this section, “charitable trust” has the meaning assigned by Section 123.001.

(a-1) The terms of a charitable trust may give a trust protector a power to direct the modification or termination of the trust.

(b) If the terms of a charitable trust give a trust protector a power to direct certain actions of the trustee, the trustee shall act in accordance with the trust protector’s directives unless:

(1) the direction is manifestly contrary to the terms of the trust; or
(2) the trustee knows the direction would constitute a serious breach of a fiduciary duty that the person holding the power to direct owes to the beneficiaries of the trust.

(c) A trust protector of a charitable trust who has the ability to direct the trustees to take (or not take) certain actions may direct the trustees to take (or not take) those actions.

provided the advisor does not use the power to appoint the advisor’s self. However, the protector may exercise a power in a nonfiduciary capacity as required by the Internal Revenue Code for a grantor or other person to be treated as the owner of any portion of the trust for federal income tax purposes.

The trustee is liable for following the directions of a trust protector only if the trustee’s conduct constitutes willful misconduct.

If the settlor requires the trustee to obtain the consent of a trust protector before acting, the trustee is not liable for any act taken or not taken as a result of the protector’s failure to provide the required consent after being requested to do so unless the trustee’s actions constitute willful misconduct or gross negligence.

Unless the settlor provided otherwise, the trustee has no duty to monitor the protector’s conduct, to provide advice to or consult with the protector, or tell the beneficiaries that that the trustee would have acted differently from how the protector directed.

The trustee’s actions in carrying out the protector’s directions are deemed to be merely administrative actions and are not considered to be the trustee monitoring or participating in actions within the scope of the protector’s authority unless there is clear and convincing evidence to the contrary.

Section 114.003 deals with trust protectors in charitable trusts providing more restrictive rules.

§ 114.0031. Directed Trusts; Advisors

(a) In this section:
(1) “Advisor” includes protector.
(2) “Investment decision” means, with respect to any investment, the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of the investment or rights in the investment and, with respect to a nonpublicly traded investment, the valuation of the investment.
(b) This section does not apply to a charitable trust as defined by Section 123.001.
(c) For purposes of this section, an advisor with authority with respect to investment decisions is an investment advisor.
(d) A protector has all the power and authority granted to the protector by the trust terms, which may include:
(1) the power to remove and appoint trustees, advisors, trust committee members, and other protectors;
(2) the power to modify or amend the trust terms to achieve favorable tax status or to facilitate the efficient administration of the trust; and
(3) the power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust terms.
(e) If the terms of a trust give a person the authority to direct, consent to, or disapprove a trustee’s actual or proposed investment decisions, distribution decisions, or other decisions, the person is an advisor. An advisor is a fiduciary regardless of trust terms to the contrary except that the trust terms may provide that an advisor acts in a nonfiduciary capacity if:
(1) the advisor’s only power is to remove and appoint trustees, advisors, trust committee members, or other protectors; and
(2) the advisor does not exercise that power to appoint the advisor’s self to a position described by Subdivision (1).
(e-1) Subsection (e) does not prohibit the exercise of a power in a nonfiduciary capacity as required by the Internal Revenue Code for a grantor or other person to be treated as the owner of any portion of the trust for federal income tax purposes.
(f) A trustee who acts in accordance with the direction of an advisor, as prescribed by the trust terms, is not liable, except in cases of willful misconduct on the part of the trustee, for any loss resulting directly or indirectly from that act.
(g) If the trust terms provide that a trustee must make decisions with the consent of an advisor, the trustee is not liable, except in cases of willful misconduct or gross negligence on the part of the trustee, for any loss resulting directly or indirectly from any act taken or not taken as a result of the advisor’s failure to provide the required consent after having been requested to do so by the trustee.
(h) If the trust terms provide that a trustee must act in accordance with the direction of an advisor with respect to investment decisions, distribution decisions, or other decisions of the trustee, the trustee does not, except to the extent the trust terms provide otherwise, have the duty to:
(1) monitor the conduct of the advisor;
(2) provide advice to the advisor or consult with the advisor; or
(3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee’s own discretion in a manner different from the manner directed by the advisor.
(i) Absent clear and convincing evidence to the contrary, the actions of a trustee pertaining to matters within the scope of the advisor’s authority, such as confirming that the advisor’s directions have been carried out and recording and reporting actions taken at the advisor’s direction, are presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee under the trust terms, and such administrative actions are not considered to constitute an undertaking by the trustee to monitor the advisor or otherwise participate in actions within the scope of the advisor’s authority.

Statutes in Context § 114.004

Trustees are generally under an absolute and unqualified duty to make trust distributions to the correct persons. A trustee who makes an improper distribution is liable even though the trustee exercised reasonable care and made the mistake in good faith. This duty is stricter than the standard applicable to other aspects of trust management because the beneficiary is the owner of the equitable title and is thus entitled to the trust distributions according to the terms of the trust.

Section 114.004, however, provides protection for a trustee who makes a distribution without actual knowledge or written notice of a fact impacting distribution such as the beneficiary’s marriage, divorce, attainment of a certain age, or the performance of educational requirements. The trustee still has a duty to seek recovery of the mistaken payment and the beneficiary who received the mistaken payment has a duty to repay it. See § 114.031.

§ 114.004. Actions Taken Prior to Knowledge or Notice of Facts

A trustee is not liable for a mistake of fact made before the trustee has actual knowledge or receives written notice of the happening of any event that determines or affects the distribution of the income or principal of the trust, including marriage, divorce, attainment of a certain age, performance of education requirements, or death.

Statutes in Context § 114.005

A beneficiary may give prior approval to the trustee for actions that would otherwise be in breach of trust. Likewise, the beneficiary may ratify breaches of trust which have already occurred. Section 114.005 provides the requirements for a release.

§ 114.005. Release of Liability by Beneficiary

(a) A beneficiary who has full legal capacity and is acting on full information may relieve a trustee from any duty, responsibility, restriction, or liability as to the beneficiary that would otherwise be imposed on the trustee by this subtitle, including liability for past violations.

(b) The release must be in writing and delivered to the trustee.

Statutes in Context § 114.006

Generally, co-trustees are jointly and severally liable to the beneficiaries. Section 114.006 explains how a dissenting trustee may attempt to be protected from liability for the acts of the majority.

§ 114.006. Liability of Cotrustees for Acts of Other

(a) A trustee who does not join in an action of a cotrustee is not liable for the cotrustee’s action, unless the trustee does not exercise reasonable care as provided by Subsection (b).

(b) Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

(c) Subject to Subsection (b), a dissenting trustee who joins in an action at the direction of the majority of the trustees and who has notified any cotrustee of the dissent in writing at or before the time of the action is not liable for the action.

Subchapter B. Liability of Beneficiary

Statutes in Context § 114.007

The settlor is, for the most part, the master of the trust and thus may provide for things to be handled differently than the Trust Code indicates. The terms of the trust trump the Trust Code except as provided in § 111.0035.

The settlor may include an exculpatory clause to excuse breaches of the standard of care or to permit transactions that would otherwise be self-dealing or create a conflict of interest.

The 2003 and 2005 Texas Legislatures codified the rules regarding the enforceability of exculpatory clauses in trusts. A settlor is prohibited from relieving a trustee of liability for a breach of trust committed (1) in bad faith, (2) intentionally, or (3) with reckless indifference to the interest of the beneficiary. In addition, the settlor may not permit the trustee to retain any profit derived from a breach of trust. An exculpatory clause is ineffective to the extent the provision was included in the trust because of an abuse by the trustee of a fiduciary duty to or confidential relationship with the settlor.

Note, however, that exculpatory provisions in Chapter 142 management trusts (Property Code §§ 142.001–142.009) and management trusts...
(Estates Code Chapter 1301) will be enforceable only if the following two requirements are satisfied.

The exculpatory provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust.

The court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the exculpatory provision is in the best interests of the beneficiary of the trust.

This requirement was a reaction to the Texas Supreme Court opinion in *Texas Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240 (Tex. 2002), in which the court enforced a boilerplate exculpatory clause in a Chapter 142 trust.

§ 114.007. Exculpation of Trustee

(a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that the term relieves a trustee of liability for:

(1) a breach of trust committed:
   (A) in bad faith;
   (B) intentionally; or
   (C) with reckless indifference to the interest of a beneficiary; or

(2) any profit derived by the trustee from a breach of trust.

(b) A term in a trust instrument relieving the trustee of liability for a breach of trust is ineffective to the extent that the term is inserted in the trust instrument as a result of an abuse by the trustee of a fiduciary duty to or confidential relationship with the settlor.

(c) This section applies only to a term of a trust that may otherwise relieve a trustee from liability for a breach of trust. Except as provided in Section 111.0035, this section does not prohibit the settlor, by the terms of the trust, from expressly:

(1) relieving the trustee from a duty or restriction imposed by this subtitle or by common law; or

(2) directing or permitting the trustee to do or not to do an action that would otherwise violate a duty or restriction imposed by this subtitle or by common law.


Statutes in Context

§ 114.031

A beneficiary is generally not in a position to breach the trust and is not liable for breaches of trust committed by the trustee. Under the circumstances listed in § 114.031, however, a beneficiary may be liable for a loss to the trust.

§ 114.031. Liability of Beneficiary to Trustee

(a) A beneficiary is liable for loss to the trust if the beneficiary has:

(1) misappropriated or otherwise wrongfully dealt with the trust property;

(2) expressly consented to, participated in, or agreed with the trustee to be liable for a breach of trust committed by the trustee;

(3) failed to repay an advance or loan of trust funds;

(4) failed to repay a distribution or disbursement from the trust in excess of that to which the beneficiary is entitled; or

(5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust.

(b) Unless the terms of the trust provide otherwise, the trustee is authorized to offset a liability of the beneficiary to the trust estate against the beneficiary’s interest in the

*Statutes in Context*

§ 114.008

Section 114.008 was added by the 2005 Legislature to provide a non-exclusive listing of possible remedies for a breach of trust.

§ 114.008. Remedies for Breach of Trust

(a) To remedy a breach of trust that has occurred or might occur, the court may:

(1) compel the trustee to perform the trustee’s duty or duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust, including compelling the trustee to pay money or to restore property;

(4) order a trustee to account;

(5) appoint a receiver to take possession of the trust property and administer the trust;

(6) suspend the trustee;

(7) remove the trustee as provided under Section 113.082;

(8) reduce or deny compensation to the trustee;

(9) subject to Subsection (b), void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property of which the trustee wrongfully disposed and recover the property or the proceeds from the property; or

(10) order any other appropriate relief.

(b) Notwithstanding Subsection (a)(9), a person other than a beneficiary who, without knowledge that a trustee is exceeding or improperly exercising the trustee’s powers, in good faith assists a trustee or in good faith and for value deals with a trustee is protected from liability as if the trustee had or properly exercised the power exercised by the trustee.

trust estate, regardless of a spendthrift provision in the trust.

Section 114.032 provides for limited virtual representation so that a release may bind beneficiaries who did not actually agree because, for example, they are minors, unborn, or unascertained. Note that this provision may not be used to modify or terminate the trust. See § 115.013 (judicial virtual representation).

§ 114.032. Liability for Written Agreements

(a) A written agreement between a trustee and a beneficiary, including a release, consent, or other agreement relating to a trustee’s duty, power, responsibility, restriction, or liability, is final and binding on the beneficiary and any person represented by a beneficiary as provided by this section if:

(1) the instrument is signed by the beneficiary;
(2) the beneficiary has legal capacity to sign the instrument; and
(3) the beneficiary has full knowledge of the circumstances surrounding the agreement.

(b) A written agreement signed by a beneficiary who has the power to revoke the trust or the power to appoint, including the power to appoint through a power of amendment, the income or principal of the trust to or for the benefit of the beneficiary, the beneficiary’s creditors, the beneficiary’s estate, or the creditors of the beneficiary’s estate is final and binding on any person who takes under the power of appointment or who takes in default if the power of appointment is not executed.

(c) A written instrument is final and binding on a beneficiary who is a minor if:

(1) the minor’s parent, including a parent who is also a trust beneficiary, signs the instrument on behalf of the minor;
(2) no conflict of interest exists; and
(3) no guardian, including a guardian ad litem, has been appointed to act on behalf of the minor.

(d) A written instrument is final and binding on an unborn or unascertained beneficiary if a beneficiary who has an interest substantially identical to the interest of the unborn or unascertained beneficiary signs the instrument. For purposes of this subsection, an unborn or unascertained beneficiary has a substantially identical interest only with a trust beneficiary from whom the unborn or unascertained beneficiary descends.

c This section does not apply to a written instrument that modifies or terminates a trust in whole or in part unless the instrument is otherwise permitted by law.

Statutes in Context
§ 114.062

§ 114.062. Exoneration or Reimbursement for Tort

(a) Except as provided in Subsection (b) of this section, a trustee who incurs personal liability for a tort

Electronic copy available at: https://ssrn.com/abstract=4537861
committed in the administration of the trust is entitled to exoneration from the trust property if the trustee has not paid the claim or to reimbursement from the trust property if the trustee has paid the claim, if:

(1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;

(2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence or intentional misconduct in incurring the liability; or

(3) the tort increased the value of the trust property.

(b) A trustee who is entitled to exoneration or reimbursement under Subdivision (3) of Subsection (a) is entitled to exoneration or reimbursement only to the extent of the increase in the value of the trust property.


Statutes in Context
§ 114.063
Section 114.063 codifies the trustee’s reimbursement rights.

§ 114.063. General Right to Reimbursement
(a) A trustee may discharge or reimburse himself from trust principal or income or partly from both for:

(1) advances made for the convenience, benefit, or protection of the trust or its property;

(2) expenses incurred while administering or protecting the trust or because of the trustee’s holding or owning any of the trust property; and

(3) expenses incurred for any action taken under Section 113.025.

(b) The trustee has a lien against trust property to secure reimbursement under Subsection (a).

(c) A potential trustee is entitled to reimbursement from trust principal or income or partly from both for reasonable expenses incurred for any action taken under Section 113.025(a) if:

(1) a court orders reimbursement or the potential trustee has entered into a written agreement providing for reimbursement with the personal representative of the estate, the trustee of the trust, the settlor, the settlor’s attorney-in-fact, the settlor’s personal representative, or the person or entity designated in the trust instrument or will to appoint a trustee; and

(2) the potential trustee has been appointed trustee under the terms of the trust instrument or will or has received a written request to accept the trust from the settlor, the settlor’s attorney-in-fact, the settlor’s personal representative, or the person or entity designated in the trust instrument or will to appoint a trustee.


Statutes in Context
§ 114.064
The court may award costs and attorneys’ fees to any party in a trust action. Thus, all parties should request fees so the court may make an equitable and just award.

§ 114.064. Costs
(a) In any proceeding under this code the court may make such award of costs and reasonable and necessary attorney’s fees as may seem equitable and just.

Added by Acts 1985, 69th Leg., ch. 149, § 4, eff. May 24, 1985.

Subchapter D. Third Persons

Statutes in Context
§§ 114.081–114.082
Section 114.081, along with § 114.082, explains when a person who deals with a trustee may obtain protection akin to that of a bona fide purchaser.

§ 114.081. Protection of Person Dealing with Trustee
(a) A person who deals with a trustee in good faith and for fair value actually received by the trust is not liable to the trustee or the beneficiaries of the trust if the trustee has exceeded the trustee’s authority in dealing with the person.

(b) A person other than a beneficiary is not required to inquire into the extent of the trustee’s powers or the propriety of the exercise of those powers if the person:

(1) deals with the trustee in good faith; and

(2) obtains:

(A) a certification of trust described by Section 114.086; or

(B) a copy of the trust instrument.

(c) A person who in good faith delivers money or other assets to a trustee is not required to ensure the proper application of the money or other assets.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.


10 As in enrolled bill; there is no (b).
§ 114.082. Conveyance by Trustee

If property is conveyed or transferred to a trustee in trust but the conveyance or transfer does not identify the trust or disclose the names of the beneficiaries, the trustee may convey, transfer, or encumber the title of the property without subsequent question by a person who claims to be a beneficiary under the trust or who claims by, through, or under an undisclosed beneficiary.


§ 114.0821. Liability of Trust Property

Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee.


§ 114.083. Rights and Liabilities for Committing Torts

(a) A personal liability of a trustee or a predecessor trustee for a tort committed in the course of the administration of the trust may be collected from the trust property if the trustee is sued in a representative capacity and the court finds that:

(1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;

(2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence or intentional misconduct in incurring the liability; or

(3) the tort increased the value of the trust property.

(b) A trust that is liable for the trustee’s tort under Subdivision (3) of Subsection (a) is liable only to the extent of the permanent increase in value of the trust property.

(c) A plaintiff in an action against the trustee as the representative of the trust does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim.

(d) Subject to the rights of exoneration or reimbursement under Section 114.062, the trustee is personally liable for a tort committed by the trustee or by the trustee’s agents or employees in the course of their employment.

personally liable for any breach of contract. See § 114.084(a). To recoup damages paid to a contract claimant, the trustee must prove that the trustee properly entered into the contract for the benefit of the trust and then seek reimbursement from the trust property. See § 114.063. The trustee would be stuck with any loss that results if the trust does not have adequate property to make a complete reimbursement.

At common law, a contract plaintiff could not sue the trustee in the trustee’s representative capacity and could not recover directly against trust property. The common law courts did not take notice of the trust relationship and thus did not recognize the trustee as an individual as being a separate entity from the trustee in a representative capacity. Section 114.063, however, permits contract plaintiffs to reach the trust property directly by proceeding against the trustee in the trustee’s fiduciary capacity.

A trustee will usually want to take steps to prevent the trustee’s exposure to personal liability on contracts entered into for the benefit of the trust. The trustee should include a provision in the contract which expressly excludes the trustee’s personal liability. See § 114.084(a). Instead, if the trustee only signs in a representative capacity (e.g., “as trustee”), the trustee may still be personally liable but the signature acts as prima facie evidence of an intent to exclude the trustee from personal liability. See § 114.084(b).

§ 114.084. Contracts of Trustee

(a) If a trustee or a predecessor trustee makes a contract that is within his power as trustee and a cause of action arises on the contract, the plaintiff may sue the trustee in his representative capacity, and a judgment rendered in favor of the plaintiff is collectible by execution against the trust property. The plaintiff may sue the trustee individually if the trustee made the contract and the contract does not exclude the trustee’s personal liability.

(b) The addition of “trustee” or “as trustee” after the signature of a trustee who is party to a contract is prima facie evidence of an intent to exclude the trustee from personal liability.

(c) In an action on a contract against a trustee in the trustee’s representative capacity the plaintiff does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim.


§ 114.085. Partnerships

(a) To the extent allowed by law, a trustee who takes the place of a deceased partner in a general partnership in accordance with the articles of partnership is liable to third persons only to the extent of the:

(1) deceased partner’s capital in the partnership; and

(2) trust funds held by the trustee.

(b) A trustee who contracts to enter a general partnership in its capacity as trustee shall limit, to the extent allowed by law, the trust’s liability to:

(1) the trust assets contributed to the partnership; and

(2) other assets of the trust under the management of the contracting trustee.

(c) If another provision of this subtitle conflicts with this section, this section controls. This section does not exonerate a trustee from liability for negligence.


§ 114.086. Certification of Trust

(a) As an alternative to providing a copy of the trust instrument to a person other than a beneficiary, the trustee may provide to the person a certification of trust containing the following information:

(1) a statement that the trust exists and the date the trust instrument was executed;

(2) the identity of the settlor;

(3) the identity and mailing address of the currently acting trustee;

(4) one or more powers of the trustee or a statement that the trust powers include at least all the powers granted a trustee by Subchapter A, Chapter 113;

(5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all of the cotrustees are required in order to exercise powers of the trustee; and

(7) the manner in which title to trust property should be taken.

(b) A certification of trust may be signed or otherwise authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification to be incorrect.

(d) A certification of trust:

(1) is not required to contain the dispositive terms of a trust; and

(2) may contain information in addition to the information required by Subsection (a).

(e) A recipient of a certification of trust may require the trustee to furnish copies of the excerpts from the original trust instrument and later amendments to the trust instrument that designate the trustee and confer on the trustee the power to act in the pending transaction.

(f) A person who acts in reliance on a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for the action and may assume without inquiry the existence of the facts contained in the certification.
(g) If a person has actual knowledge that the trustee is acting outside the scope of the trust, and the actual knowledge was acquired by the person before the person entered into the transaction with the trustee or made a binding commitment to enter into the transaction, the transaction is not enforceable against the trust.

(h) A person who in good faith enters into a transaction relying on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification are correct. This section does not create an implication that a person is liable for acting in reliance on a certification of trust that fails to contain all the information required by Subsection (a). A person’s failure to demand a certification of trust does not:

(1) affect the protection provided to the person by Section 114.081; or
(2) create an inference as to whether the person has acted in good faith.

(i) A person making a demand for the trust instrument in addition to a certification of trust or excerpts as described by Subsection (e) is liable for damages if the court determines that the person did not act in good faith in making the demand.

(j) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(k) This section does not limit the rights of a beneficiary of the trust against the trustee.


§ 114.087. Instrument Naming Trust as Party

An arbitration clause in a trust requiring the beneficiaries to arbitrate any dispute with the trustees is enforceable. Rachal v. Reitz, 403 S.W.3d 840 (Tex. 2013).

§ 115.001. Jurisdiction

(a) Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to:

(1) construe a trust instrument;
(2) determine the law applicable to a trust instrument;
(3) appoint or remove a trustee;
§ 115.002. Venue

(a) The venue of an action under Section 115.001 is determined according to this section.

(b) If there is a single, noncorporate trustee, an action shall be brought in the county in which:

(1) the trustee resides or has resided at any time during the four-year period preceding the date the action is filed; or

(2) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed.

(b-1) If there are multiple trustees none of whom is a corporate trustee and the trustees maintain a principal office in this state, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) the trustees maintain the principal office.

(b-2) If there are multiple trustees none of whom is a corporate trustee and the trustees do not maintain a principal office in this state, an action shall be brought in the county in which:

(1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or

(2) any corporate trustee maintains its principal office in this state.

(c-1) Notwithstanding Subsections (b), (b-1), (b-2), and (c), if the settlor is deceased and an administration of the settlor’s estate is pending in this state, an action involving the interpretation and administration of an inter vivos trust created by the settlor or a testamentary trust created by the settlor’s will may be brought:

(1) in a county in which venue is proper under Subsection (b), (b-1), (b-2), or (c); or

(2) in the county in which the administration of the settlor’s estate is pending.

(d) For just and reasonable cause, including the location of the records and the convenience of the parties and witnesses, the court may transfer an action from a county of proper venue under this section to another county of proper venue:

(1) on motion of a defendant or joined party, filed concurrently with or before the filing of the answer or other initial responsive pleading, and served in accordance with law; or

Statutes in Context
§ 115.002

Proper venue for a trust action is determined by § 115.002. Different rules apply if there is (1) a single noncorporate trust, (2) multiple individual trustees, (3) any trustee is a corporation, or (4) the settlor is deceased and an administration of the settlor’s estate is pending.
(2) on motion of an intervening party, filed not later than the 20th day after the court signs the order allowing the intervention, and served in accordance with law.

(c) Notwithstanding any other provision of this section, on agreement by all parties the court may transfer an action from a county of proper venue under this section to any other county.

(5) For the purposes of this section:

(1) “Corporate trustee” means an entity organized as a financial institution or a corporation with the authority to act in a fiduciary capacity.

(2) “Principal office” means:

(A) if there are one or more corporate trustees, an office of a corporate trustee in this state where the decision makers for the corporate trustee within this state conduct the daily affairs of the corporate trustee; or

(B) if there are multiple trustees, none of which is a corporate trustee, an office in this state that is not maintained within the personal residence of any trustee, and in which one or more trustees conducts the daily affairs of the trustees.

(2-a) The mere presence of an agent or representative of a trustee does not establish a principal office as defined by Subdivision (2). The principal office of a corporate trustee or the principal office maintained by multiple noncorporate trustees may also be but is not necessarily the same as the situs of administration of the trust.

(3) “Situs of administration” means the location in this state where the trustee maintains the office that is primarily responsible for dealing with the settlor and beneficiaries of the trust. The situs of administration may also be but is not necessarily the same as the principal office of a corporate trustee or the principal office maintained by multiple noncorporate trustees.


Subchapter B. Parties, Procedure, and Judgments

§ 115.011. Parties

(a) Any interested person may bring an action under Section 115.001.

(b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001. The only necessary parties to such an action are:

(1) a beneficiary of the trust on whose act or obligation the action is predicated;

(2) a beneficiary of the trust designated by name,

(3) a person who is actually receiving distributions from the trust estate at the time the action is filed; and

(4) the trustee, if a trustee is serving at the time the action is filed.

(c) The attorney general shall be given notice of any proceeding involving a charitable trust as provided by Chapter 123 of this code.

(d) A beneficiary of a trust may intervene and contest the right of the plaintiff to recover in an action against the trustee as representative of the trust for a tort committed in the course of the trustee’s administration or on a contract executed by the trustee.


§ 115.012. Rules of Procedure

Except as otherwise provided, all actions instituted under this subtitle are governed by the Texas Rules of Civil Procedure and the other statutes and rules that are applicable to civil actions generally.


Statutes in Context

§ 115.011

An interested person has standing to bring a trust action. See § 111.004(7) (defining "interested person"). A beneficiary has standing even if the beneficiary’s interest is remote or subject to defeasement by a trust revocation or modification. See Mayfield v. Peek, 546 S.W.3d 253 (Tex. App.—El Paso 2017, no pet.).

Section 115.011(b) enumerates the parties who are necessary to a trust action.

Subsection (c) references the requirement that the attorney general be notified of any action involving a charitable trust. See Statutes in Context to § 123.001.

A trust beneficiary has the right to intervene in an action against a trustee in contract or tort. See § 115.015 (requiring tort and contract plaintiffs to give notice to beneficiaries).

§ 115.013. Statutes in Context

Section 115.013 provides for virtual representation under specified circumstances so that
Texas Property Code

§ 115.013. Pleadings and Judgments

(a) Actions and proceedings involving trusts are governed by this section.

(b) An affected interest shall be described in pleadings that give reasonable information to an owner by name or class, by reference to the instrument creating the interest, or in other appropriate manner.

(c) A person is bound by an order binding another in the following cases:

1. An order binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests, as objects, takers in default, or otherwise are subject to the power;

2. To the extent there is no conflict of interest between them or among persons represented:

   (A) an order binding a guardian of the estate or a guardian ad litem binds the ward; and

   (B) an order binding a trustee binds beneficiaries of the trust in proceedings to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties;

3. If there is no conflict of interest and no guardian of the estate or guardian ad litem has been appointed, a parent may represent his minor child as guardian ad litem or as next friend; and

4. An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(d) Notice under Section 115.015 shall be given either to a person who will be bound by the judgment or to one who can bind that person under this section, and notice may be given to both. Notice may be given to unborn or unascertained persons who are not represented under Subdivision (1) or (2) of Subsection (c) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.


Statutes in Context

§ 115.014. Guardian or Attorney Ad Litem

(a) At any point in a proceeding a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If there is not a conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.

(b) At any point in a proceeding a court may appoint an attorney ad litem to represent any interest that the court considers necessary, including an attorney ad litem to defend an action under Section 114.083 for a beneficiary of the trust who is a minor or who has been adjudged incompetent, if the court determines that representation of the interest otherwise would be inadequate.

(c) A guardian ad litem may consider general benefit accruing to the living members of a person’s family.

(d) A guardian ad litem is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding.

(e) An attorney ad litem is entitled to reasonable compensation for services in the amount set by the court in the manner provided by Section 114.064.


Statutes in Context

§ 115.015

Contract and tort plaintiffs have an obligation to notify the beneficiary before being entitled to a judgment against the trustee. Section 115.015 explains the timing of the notice and how the plaintiff may obtain a list of beneficiaries and their addresses from the trustee. The purpose of the notice is to alert the beneficiary that something may be “wrong” with the trust administration. Once notified, the beneficiary may decide to exercise the right to intervene under § 115.011(d).

Note that § 115.015(a)(2) requires that the attorney general be given notice only in contract cases, not tort cases. This anomaly is traceable to Texas Trust Act § 21 which was written before Texas abolished charitable immunity. See Howie v. Camp Amon Carter, 470 S.W.2d 629 (Tex. 1971) (abolishing charitable immunity as of March 9, 1968); but see Charitable Immunity and Liability Act, Civil Practice & Remedies Code, ch. 84. The attorney general may nonetheless be entitled to notice under Property Code ch. 123.

The court may appoint a guardian and/or an attorney ad litem to represent the interests of a minor, incapacitated, unborn, unascertained, etc., beneficiary.

556

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 115.015. Notice to Beneficiaries of Tort or Contract Proceeding

(a) A court may not render judgment in favor of a plaintiff in an action on a contract executed by the trustee or in an action against the trustee as representative of the trust for a tort committed in the course of the trustee’s administration unless the plaintiff proves that before the 31st day after the date the action began or within any other period fixed by the court that is more than 30 days before the date of the judgment, the plaintiff gave notice of the existence and nature of the action to:

(1) each beneficiary known to the trustee who then had a present or contingent interest; or

(2) in an action on a contract involving a charitable trust, the attorney general and any corporation that is a beneficiary or agency in the performance of the trust.

(b) The plaintiff shall give the notice required by Subsection (a) of this section by registered mail or by certified mail, return receipt requested, addressed to the party to be notified at the party’s last known address. The trustee shall give the plaintiff a list of the beneficiaries or persons having an interest in the trust estate and their addresses, if known to the trustee, before the 11th day after the date the plaintiff makes a written request for the information.

(c) The plaintiff satisfies the notice requirements of this section by notifying the persons on the list provided by the trustee.


§ 115.016. Notice

(a) If notice of hearing on a motion or other proceeding is required, the notice may be given in the manner prescribed by law or the Texas Rules of Civil Procedure, or, alternatively, notice may be given to any party or to his attorney if the party has appeared by attorney or requested that notice be sent to his attorney.

(b) If the address or identity of a party is not known and cannot be ascertained with reasonable diligence, on order of the court notice may be given by publishing a copy of the notice at least three times in a newspaper having general circulation in the county where the hearing is to be held. The first publication of the notice must be at least 10 days before the time set for the hearing. If there is no newspaper of general circulation in the county where the hearing is to be held, the publication shall be made in a newspaper of general circulation in an adjoining county.


§ 115.017. Waiver of Notice

A person, including a guardian of the estate, a guardian ad litem, or other fiduciary, may waive notice by a writing signed by the person or his attorney and filed in the proceedings.


Chapter 116. Uniform Principal and Income Act

Statutes in Context
§ Chapter 116

The settlor may grant certain beneficiaries the right to trust income (income beneficiaries) and other beneficiaries the right to the principal when the trust terminates (remainder beneficiaries). This arrangement places these two types of beneficiaries in conflict. The income beneficiaries want the trust corpus invested in property which generates high rates of return such as corporate bonds and mutual funds. On the other hand, remainder beneficiaries want the trustee to invest in property which appreciates in value such as real property and growth stocks. Many investments that are good for one type of beneficiary will not benefit another. For example, assume that the trustee invested in a government insured certificate of deposit earning 7 percent interest. The income beneficiaries will be elated because the rate of return is relatively high and the investment is extremely safe. However, the remainder beneficiaries will be furious. The CD will not grow in value because the trustee will get back the same amount the trustee invested when the CD matures. In addition, because of inflation, the buying power of the proceeds will shrink to less than the amount invested so the remainder beneficiaries will actually incur a loss. To resolve this problem, a trustee either selects investments that earn both income and appreciate in value, such as rental real property and certain types of stock, or diversifies trust investments to balance investments that earn income and investments which increase in value.

A trustee also needs to know how to categorize property received from the trust assets to carry out the trustee’s duty to be fair and impartial to both the income and remainder beneficiaries. Likewise, the trustee must determine whether to reduce income or principal when the trustee pays trust expenses. The trustee has three ways to determine how to allocate receipts and expenses between income and principal. First, the settlor may have provided instructions in the trust instrument. These instructions may state specific allocation rules or may merely give the trustee discretion to make the allocation. See § 116.004(a)(1)-(2). Second, if the instrument is silent, the trustee must follow the rules in Chapter 116 which is the Texas adoption of the 1997 version of the Uniform Principal and Income Act. See § 116.004(a)(3). Third, if neither the instrument nor the statute specifies the proper method of allocation, the trustee must allocate to principal. See § 116.004(a)(4).

The Texas adoption of the 1997 UPIA took effect on January 1, 2004. Prior to this time, Texas
followed the 1962 version. Many of the provisions of the 1997 version are significantly different from prior law. Perhaps the most controversial change is the trustee’s ability to adjust between principal and income under § 116.005.

Subchapter A. Definitions, Fiduciary Duties, and Other Miscellaneous Provisions

§ 116.001. Short Title
This chapter may be cited as the Uniform Principal and Income Act.

Statutes in Context
§ 116.002
Section 116.002 provides definitions used throughout Chapter 116. Note that these definitions do not apply to other Trust Code chapters.

§ 116.002. Definitions
In this chapter:
(1) “Accounting period” means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.
(2) “Beneficiary” includes, in the case of a decedent’s estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.
(3) “Fiduciary” means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.
(4) “Income” means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Subchapter D.
(5) “Income beneficiary” means a person to whom net income of a trust is or may be payable.
(6) “Income interest” means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee’s discretion.
(7) “Mandatory income interest” means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.
(8) “Net income” means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.
(9) “Person” has the meaning assigned by Section 111.004.
(10) “Principal” means property held in trust for distribution to a remainder beneficiary when the trust terminates.
(11) “Remainder beneficiary” means a person entitled to receive principal when an income interest ends.
(12) “Terms of a trust” means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.
(13) “Trustee” has the meaning assigned by Section 111.004.

§ 116.003. Uniformity of Application and Construction
In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Statutes in Context
§ 116.004
The trustee has three ways to determine how to allocate receipts and expenses between income and principal. First, the settlor may have provided instructions in the trust instrument. These instructions may state specific allocation rules or may merely give the trustee discretion to make the allocation. See § 116.004(a)(1)-(2). Second, if the instrument is silent, the trustee must apply the rules in Chapter 116. See § 116.004(a)(3). Third, if neither the instrument nor the statute specifies the proper method of allocation, the trustee must allocate to principal. See § 116.004(a)(4). Note that this last rule is a significant departure from prior law which provided that the trustee must allocate in a “reasonable and equitable” manner if both the instrument and statute were silent.

An allocation in accordance with the UPIA’s rules by a trustee who has discretionary authority is presumed to be fair and reasonable to all beneficiaries. See § 116.004(b).

§ 116.004. Fiduciary Duties; General Principles
(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Subchapters B and C, a fiduciary:
(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

(3) shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under Section 116.005(a) or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.


§ 116.005. Trustee’s Power to Adjust

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust’s income, and the trustee determines, after applying the rules in Section 116.004(a), that the trustee is unable to comply with Section 116.004(b). The power to adjust conferred by this subsection includes the power to allocate all or part of a capital gain to trust income.

(b) In deciding whether and to what extent to exercise the power conferred by Subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) the nature, purpose, and expected duration of the trust;

(2) the intent of the settlor;

(3) the identity and circumstances of the beneficiaries;

(4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) the net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) the actual and anticipated effect of economic conditions on principal and income and effects of

Statutes in Context

§ 116.005

Section 116.005 is the most innovative provision of the 1997 UPIA. Consider the following example: Settlor created a testamentary trust requiring trust income to be paid to Daughter for life with the remainder to Granddaughter. The trust corpus consists primarily of real estate which is appreciating in value at about 15 percent per year due to its proximity to the edge of a growing city. The land is still subject to a multiple-year lease which Settlor signed with Tenant many years ago. The rent Tenant pays is significantly below market value and is insufficient to support Daughter as Settlor intended. May Trustee sell part of the land and allocate a portion of the profits to income?

Under traditional trust rules, Trustee could not allocate any of the profits from the sale of the real estate to income. Granddaughter has a right to the principal and appreciation belongs to the principal. However, § 116.005 grants the trustee the power to adjust between principal and income under specified circumstances. The adjustment power section is quite lengthy and requires Trustee to consider a variety of factors such as the settlor's intent and the identity and circumstances of the beneficiaries. In this example, it appears that Settlor established the trust to provide for Daughter and Settlor’s intent would be frustrated if Trustee did not allocate some of the profits to income to provide Daughter with an appropriate level of support.

The adjustment power has proven to be an extremely controversial aspect of the 1997 Act because of its tremendous departure from traditional law, the fear that trustees may abuse the power, and the potential of a beneficiary suing a trustee if the trustee does not exercise the adjustment power in the beneficiary’s favor. Accordingly, many of the states enacting the 1997 version of the Act have omitted the adjustment provisions or have altered or restricted them in some way.
Inflation and deflation; and

(9) the anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(2) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(3) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(4) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(5) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(6) if the trustee is a beneficiary of the trust; or

(7) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(d) If Subsection (c)(4), (5), (6), or (7) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by Subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in Subsections (c)(1)-(5) or Subsection (c)(7) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in Subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by Subsection (a).


§ 116.006. Judicial Control of Discretionary Power

(a) The court may not order a trustee to change a decision to exercise or not to exercise a discretionary power conferred by Section 116.005 of this chapter unless the court determines that the decision was an abuse of the trustee’s discretion. A trustee’s decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which Subsection (a) applies include:

(1) a decision under Section 116.005(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal; and

(2) a decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors in deciding whether and to what extent an amount should be transferred from principal to income or from income to principal to be given to those factors in deciding whether and to what extent an amount should be transferred from principal to income or from income to principal.

(c) If the court determines that a trustee has abused the trustee’s discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(1) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary or in a distribution that is too small, the court shall order the trustee to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary’s appropriate position;

(2) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the trustee to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust; and

(3) to the extent that the court is unable, after applying Subdivisions (1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the trustee to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.
(d) If the trustee of a trust reasonably believes that one or more beneficiaries of such trust will object to the manner in which the trustee intends to exercise or not exercise a discretionary power conferred by Section 116.005, the trustee may petition the court having jurisdiction over the trust, and the court shall determine whether the proposed exercise or nonexercise by the trustee of such discretionary power will result in an abuse of the trustee’s discretion. The trustee shall state in such petition the basis for its belief that a beneficiary would object. The failure or refusal of a beneficiary to sign a waiver or release is not reasonable grounds for a trustee to believe the beneficiary will object. The court may appoint one or more guardians ad litem or attorneys ad litem pursuant to Section 115.014. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the trustee relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion. The trustee shall advance from the trust principal all costs incident to the judicial determination, including the reasonable attorney’s fees and costs of the trustee, any beneficiary or beneficiaries who are parties to the action and who retain counsel, any guardian ad litem, and any attorney ad litem. At the conclusion of the proceeding, the court may award costs and reasonable and necessary attorney’s fees as provided in Section 114.064, including, if the court considers it appropriate, awarding part or all of such costs against the trust principal or income, awarding part or all of such costs against one or more beneficiaries or such beneficiary’s or beneficiaries’ share of the trust, or awarding part or all of such costs against the trustee in the trustee’s individual capacity, if the court determines that the trustee’s exercise or nonexercise of discretionary power would have resulted in an abuse of discretion or that the trustee did not have reasonable grounds for believing one or more beneficiaries would object to the proposed exercise or nonexercise of the discretionary power.


§ 116.007. Provisions Regarding Noncharitable Unitrusts

(a) This section does not apply to a charitable remainder unitrust as defined by Section 664(d), Internal Revenue Code of 1986 (26 U.S.C. Section 664), as amended.

(b) In this section:

(1) “Unitrust” means a trust the terms of which require distribution of a unitrust amount.

(2) “Unitrust amount” means a distribution mandated by the terms of a trust in an amount equal to a fixed percentage of not less than three or more than five percent per year of the net fair market value of the trust’s assets, valued at least annually. The unitrust amount may be determined by reference to the net fair market value of the trust’s assets in one year or more than one year.

(c) Distribution of the unitrust amount is considered a distribution of all of the income of the unitrust and shall not be considered a fundamental departure from applicable state law. A distribution of the unitrust amount reasonably apportions the total return of a unitrust.

(d) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount shall be treated as first being made from the following sources in order of priority:

(1) from net accounting income determined as if the trust were not a unitrust;

(2) from ordinary accounting income not allocable to net accounting income;

(3) from net realized short-term capital gains;

(4) from net realized long-term capital gains; and

Provide: “Trustee shall distribute 5 percent of the value of the trust property to Current Beneficiary on January 10 of every year. Trustee has the discretion to make additional distributions to Current Beneficiary for Current Beneficiary’s health, education, and support. Upon Current Beneficiary’s death, Trustee shall deliver all remaining trust property to Remainder Beneficiary.”

Under a unitrust, both beneficiaries have the same goal — they want the value of the property in the trust to increase. It does not matter to them whether the increase in value is due to receipts traditionally nominated income (e.g., interest or rent) or principal (i.e., appreciation). All increases inure to the benefit of all beneficiaries. Likewise, all beneficiaries share in the expenses regardless of their usual characterization.

Because of the enhanced ability of trustees to make productive investments when they are concerned only about total return rather than balancing the interests of income and principal beneficiaries, the use of unitrusts is seen by courts and legislatures as desirable. Section 116.007 applies only to noncharitable unitrusts and is included primarily for tax purposes. The UPIA does not contain an equivalent provision.
Subchapter B. Decedent’s Estate or Terminating Income Interest

§ 116.051. Determination and Distribution of Net Income

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Subchapters C, D, and E which apply to trustees and the rules in Subdivision (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent’s estate or a terminating income interest under the rules in Subchapters C, D, and E which apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary’s discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent’s estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under Subdivision (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will. Unless otherwise provided by the will or the terms of the trust, a beneficiary who receives a pecuniary amount, regardless of whether in trust, shall be paid interest on the pecuniary amount at the legal rate of interest as provided by Section 302.002, Finance Code. Interest on the pecuniary amount is payable:

(A) under a will, beginning on the first anniversary of the date of the decedent’s death; or

(B) under a trust, beginning on the first anniversary of the date on which an income interest ends.

(4) A fiduciary shall distribute the net income remaining after distributions required by Subdivision (3) in the manner described in Section 116.052 to all other beneficiaries even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in Subdivision (1) because of a payment described in Section 116.201 or 116.202 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent’s death or an income interest’s terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

(6) A fiduciary, without reduction for taxes, shall pay to a charitable organization that is entitled to receive income under Subdivision (4) any amount allowed as a tax deduction to the estate or trust for income payable to the charitable organization.

§ 116.052. Distribution to Residuary and Remainder Beneficiaries

(a) Each beneficiary described in Section 116.051(4) is entitled to receive a portion of the net income equal to the beneficiary’s fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary’s share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary’s fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary’s fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary obligations.

(3) The beneficiary’s fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.


Subchapter C. Apportionment at Beginning and End of Income Interest

§ 116.101. When Right to Income Begins and Ends

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor’s life;

(2) on the date of a testator’s death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator’s estate; or

(3) on the date of an individual’s death in the case of an asset that is transferred to a fiduciary by a third party because of the individual’s death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under Subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.


§ 116.102. Apportionment of Receipts and Disbursements when Decedent Dies or Income Interest Begins

(a) A trustee shall allocate an income receipt or disbursement other than one to which Section 116.051(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The
portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which Section 116.151 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

\[\text{Added by Acts 2003, 78th Leg., ch. 659, \S 1, eff. Jan. 1, 2004.}\]

\section*{Subchapter D. Allocation of Receipts During Administration of Trust}

\section*{Part 1. Receipts from Entities}

\subsection*{Statutes in Context}

\section*{\S 116.151}

Section 116.151 explains the allocation of distributions from corporations, partnerships, and other entities. Generally, cash dividends belong to income while stock dividends go to principal. The logic behind the latter rule is that the trust owns the same proportion of the corporation both before and after the stock dividend. The trust may own a greater number of shares but because all other stockholders also own proportionately the same number of additional shares, the stock dividend did not improve the trust's position. Consequently, it would be unfair to allocate stock dividends to income.

\[\text{\S 116.151. Character of Receipts}\]

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which Section 116.152 applies, a business or activity to which Section 116.153 applies, or an asset-backed security to which Section 116.178 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) property other than money;

(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) money received in total or partial liquidation of the entity; and

(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under Subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

\[\text{Added by Acts 2003, 78th Leg., ch. 659, \S 1, eff. Jan. 1, 2004.}\]
§ 116.152. Distribution from Trust or Estate

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, Section 116.151 or 116.178 applies to a receipt from the trust.


Statutes in Context
§ 116.153

A trustee may maintain separate accounting records to determine the income of trust property which is held as a business or farm under § 116.153. Instead of using the UPIA rules, the trustee computes income in accordance with generally accepted accounting principles (GAAP). The trustee may wish to hire an accountant or CPA to assist in this process. See § 113.018.

§ 116.153. Business and Other Activities Conducted by Trustee

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust’s general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust’s general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust’s general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) retail, manufacturing, service, and other traditional business activities;
(2) farming;
(3) raising and selling livestock and other animals;
(4) management of rental properties;
(5) extraction of minerals and other natural resources;
(6) timber operations; and
(7) activities to which Section 116.177 applies.


Part 2. Receipts Not Normally Apportioned

Statutes in Context
§ 116.161

Section 116.161 enumerates the receipts which are considered principal. Note that when the trustee sells an asset, both the return of the investment and the profit (capital gain) are allocated to principal. See § 116.161(2).

§ 116.161. Principal Receipts

A trustee shall allocate to principal:

(1) to the extent not allocated to income under this chapter, assets received from a transferor during the transferor’s lifetime, a decedent’s estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;
(2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subchapter;
(3) amounts recovered from third parties to reimburse the trust because of disbursements described in Section 116.202(a)(7) or for other reasons to the extent not based on the loss of income;
(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;
(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and
(6) other receipts as provided in Part 3.


Statutes in Context
§ 116.162

Generally, receipts from rental real or personal property are income under § 116.162. The section also explains that certain receipts are principal, such as a refundable security deposit.

§ 116.162. Rental Property

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods,
must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee’s contractual obligations have been satisfied with respect to that amount.


Statutes in Context
§ 116.163

The trustee should allocate interest received on money lent (e.g., a certificate of deposit) to income under § 116.163. In a change from prior law, a trustee no longer may allot to income the increase in value of a bond which pays no interest but appreciates in value (e.g., U.S. Series E savings bonds and other zero-coupon bonds) unless its maturity date is within one year after acquisition.

§ 116.163. Obligation to Pay Money

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which Section 116.172, 116.173, 116.174, 116.175, 116.177, or 116.178 applies.


Statutes in Context
§ 116.164

Section 116.164 provides that life insurance proceeds are generally allocated to principal.

§ 116.164. Insurance Policies and Similar Contracts

(a) Except as otherwise provided in Subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to Section 116.153, loss of profits from a business.

(c) This section does not apply to a contract to which Section 116.172 applies.


Part 3. Receipts Normally Apportioned

Statutes in Context
§ 116.171

Under many circumstances, § 116.171 frees the trustee from the obligation of allocating insubstantial amounts. Instead, the entire amount is allocated to principal. The section, however, does not define "insubstantial." Thus, a $1,000 receipt could be substantial for some trusts but insubstantial for others depending on the size of the trust corpus.

§ 116.171. Insubstantial Allocations Not Required

If a trustee determines that an allocation between principal and income required by Section 116.172, 116.173, 116.174, 116.175, or 116.178 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in Section 116.005(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in Section 116.005(d) and may be released for the reasons and in the manner described in Section 116.005(e).


Statutes in Context
§ 116.172

Section § 116.172 provides guidance for a trustee when allocating receipts from deferred compensation plans, annuities, and similar arrangements such as IRAs. Generally, each year, receipts are allocated to income until they total 4 percent of the asset’s fair market value. Amounts in excess of 4 percent are allocated to principal. This plan, however, is problematic given Rev. Ruling 2006-26 which indicates that if this type of provision controls, the qualified plan or IRA may not qualify for marital deduction treatment. Accordingly, the 2009 Legislature amended § 116.172 to include a marital deduction savings clause which, in summary, requires the trustee to determine the internal income of these assets which qualify for the marital deduction.

§ 116.172. Deferred Compensation, Annuities, and Similar Payments

(a) In this section:

(1) “Future payment asset” means the asset from which a payment is derived.
 Execution of a Right of Withdrawal

(2) “Payment” means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer’s general assets or from a separate fund created by the payer.

(3) “Separate fund” includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that the payer characterizes a payment as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income the part of the payment that does not exceed an amount equal to:

(1) four percent of the fair market value of the future payment asset on the date specified in Subsection (d); less

(2) the total amount that the trustee has allocated to income for all previous payments received from the separate fund during the same accounting period in which the payment is made.

(d) For purposes of Subsection (c)(1), the determination of the fair market value of a future payment asset is made on the later of:

(1) the date on which the future payment asset first becomes subject to the trust; or

(2) the last day of the accounting period of the trust that immediately precedes the accounting period during which the payment is received.

(e) For each accounting period a payment is received, the amount determined under Subsection (c)(1) must be prorated on a daily basis unless the determination of the fair market value of a future payment asset is made under Subsection (d)(2) and is for an accounting period of 365 days or more.

(f) A trustee shall allocate to principal the part of the payment described by Subsection (c) that is not allocated to income.

(g) If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of Subsection (c) and this subsection, a payment is not “required to be made” to the extent that it is made only because the trustee exercises a right of withdrawal.

(h) Subsections (j) and (k) apply and Subsections (b) and (c) do not apply in determining the allocation of a payment made from a separate fund to:

(1) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7), Internal Revenue Code of 1986, has been made; or

(2) a trust that qualifies for the marital deduction under Section 2056(b)(5), Internal Revenue Code of 1986.

(i) Subsections (h), (j), and (k) do not apply if and to the extent that a series of payments would, without the application of Subsection (h), qualify for the marital deduction under Section 2056(b)(7)(C), Internal Revenue Code of 1986.

(j) The trustee shall determine the internal income of the separate fund for the accounting period as if the separate fund were a trust subject to this code. On request of the surviving spouse, the trustee shall demand of the person administering the separate fund that this internal income be distributed to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund, and the balance to the principal. On request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made to the trust during the accounting period from the separate fund.

(k) If the trustee cannot determine the internal income of the separate fund but can determine the value of the separate fund, the internal income of the separate fund shall be four percent of the fund’s value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund’s value, the internal income of the fund shall be the product of the interest rate and the present value of the expected future payments, as determined under Section 7520, Internal Revenue Code of 1986, for the month preceding the accounting period for which the computation is made.


Statutes in Context
§ 116.173

A liquidating or wasting asset is one which goes down in value as it is used to produce income beyond what would be considered mere depreciation from normal use and age. For example, the patent on the 8-track tape was very valuable in the 1970s but has little value today. Likewise, a royalty interest in today’s blockbuster motion picture may have little value 50 years from now. The trustee needs to allocate a portion of the proceeds from liquidating assets to principal to compensate for the depletion of the principal which occurs as the proceeds are generated. Section 116.173 governs assets such as
leaseholds, patents, copyrights, and royalties. The
trustee must allocate 10 percent of each receipt to
income and the remaining 90 percent to principal.
This allocation is significantly different from prior
Texas law which provided that receipts up to 5
percent of the asset's value each year were income
with any excess being principal.

§ 116.174. Minerals, Water, and Other Natural
Resources
(a) To the extent that a trustee accounts for receipts
from an interest in minerals or other natural resources
pursuant to this section, the trustee shall allocate them as
follows:

(1) If received as delay rental or annual rent on a
lease, a receipt must be allocated to income.

(2) If received from a production payment, a
receipt must be allocated to income if and to the
extent that the agreement creating the production
payment provides a factor for interest or its
equivalent. The balance must be allocated to
principal.

(3) If received as a royalty, shut-in-well payment,
take-or-pay payment, or bonus, the trustee shall
allocate the receipt equitably.

(4) If an amount is received from a working
interest or any other interest not provided for in
Subdivision (1), (2), or (3), the trustee must allocate
the receipt equitably.

(b) A trustee may allocate a receipt from any
interest in minerals, water, or other natural
resources before the interest became subject to the trust.

(c) This chapter applies whether or not a decedent or
donor was extracting minerals, water, or other natural
resources before the interest became subject to the trust.

(d) The trustee may allocate a receipt from any
interest in minerals, water, or other natural resources the
trust owns on January 1, 2004, in the manner provided by this
chapter or in any lawful manner used by the trustee before January 1, 2004,
to make the same allocation.

Added by Acts 2003, 78th Leg., ch. 659, § 1, eff. Jan. 1,
2004.

Statutes in Context
§ 116.174

Traditionally under Texas law, oil and gas
royalties were allocated 72.5 percent to income
and 27.5 percent to principal. These percentages were
based on former federal income tax rules which
used these percentages for depletion allowances.
The UPIA gives only 10 percent to income and the
remaining 90 percent to principal. (Note how unfair
this would be to a beneficiary who is receiving 72.5
percent and then discovers that the new law cuts the
percentage way down to 10 percent.) Texas
deviates from the UPIA in § 116.174 by requiring the
trustee to allocate these receipts “equitably.” In
addition, the trustee may use the prior allocation
percentages if the trust owned the natural resource

It is irrelevant whether or not any natural
resources were being taken from the land at the time
the property was placed in trust. In other words, the
open mine doctrine is not followed in a trust context.
See § 116.174(c).

§ 116.173. Liquidating Asset

(a) In this section, “liquidating asset” means an asset
whose value will diminish or terminate because the asset
is expected to produce receipts for a period of limited
duration. The term includes a leasehold, patent, copyright,
royalty right, and right to receive payments during a
period of more than one year under an arrangement that
does not provide for the payment of interest on the unpaid
balance. The term does not include a payment subject to
Section 116.172, resources subject to Section 116.174,
timber subject to Section 116.175, an activity subject to
Section 116.177, an asset subject to Section 116.178, or
any asset for which the trustee establishes a reserve for
depreciation under Section 116.203.

(b) A trustee shall allocate to income 10 percent of the
receipts from a liquidating asset and the balance to
principal.

(c) The trustee may allocate a receipt from any
interest in a liquidating asset the trust owns on January 1,
2004, in the manner provided by this chapter or in any
lawful manner used by the trustee before January 1, 2004,
to make the same allocation.

Added by Acts 2003, 78th Leg., ch. 659, § 1, eff. Jan. 1,
2004.

Statutes in Context
§ 116.175

Timber is unlike other natural resources because
it is renewable; the trees will grow back. The time it
will take the trees to regrow, however, depends on
the type of trees. For example, some varieties of
pine trees may be ready to harvest in 20 years while
other trees such as redwoods may take over a
century. Consequently, it is difficult to create a
precise allocation rule. Section 116.175 explains that
receipts are income if the timber removed does not
exceed the rate of new growth but receipts become
§ 116.175. Timber
(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in Subdivisions (1) and (2); or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to Subdivision (1), (2), or (3).

(b) In determining net receipts to be allocated pursuant to Subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2004, the trustee may allocate a net receipt from the sale of timber and related products in the manner provided by this chapter or in any lawful manner used by the trustee before January 1, 2004, to make the same allocation. If the trust acquires an interest in timberland after January 1, 2004, the trustee shall allocate net receipts from the sale of timber and related products in the manner provided by this chapter.


§ 116.176. Property Not Productive of Income
(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under Section 116.005 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by Section 116.005(a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by Subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.


§ 116.177. Derivatives and Options
(a) In this section, “derivative” means a contract or financial instrument that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under Section 116.153 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is
exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.


§ 116.178. Asset-Backed Securities

(a) In this section, “asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which Section 116.151 or 116.172 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust’s entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust’s interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.


Subchapter E. Allocation of Disbursements During Administration of Trust

Statutes in Context
§ 116.201

Section 116.201 enumerates disbursements which are deducted from income. The 2013 Legislature made a significant change with respect to the allocation of trustee compensation. Rather than being required to allocate trustee compensation equally between income and principal, the trustee may now allocate in any manner as long as it is consistent with the trustee’s fiduciary duties, the trustee determines that a different portion, none, or all of the compensation should be allocated to income;

(2) one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.


Statutes in Context
§ 116.202

Section 116.202 enumerates the expenditures which the trustee must charge against the principal of the trust.

§ 116.202. Disbursements from Principal

(a) A trustee shall make the following disbursements from principal:

(1) one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(2) premiums paid on a policy of insurance not described in Section 116.201(4) of which the trust is the owner and beneficiary;

(3) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of

Electronic copy available at: https://ssrn.com/abstract=4537861
those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.


Statutes in Context
§ 116.203
A trustee may make transfers from income to principal to compensate for the depreciation of the principal. Under prior law, however, a trustee was required to make a reasonable allowance for depreciation.

§ 116.203. Transfers from Income to Principal for Depreciation
(a) In this section, “depreciation” means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent’s estate; or

(3) under this section if the trustee is accounting under Section 116.153 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.


§ 116.204. Transfers from Income to Reimburse Principal
(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which Subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker’s commissions;

(4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) disbursements described in Section 116.202(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in Subsection (a).


Statutes in Context
§ 116.205
Section 116.205 governs whether taxes are paid by income or principal. For example, regular income taxes are charged against income while a capital gains tax, although called an income tax, is charged against principal.

§ 116.205. Income Taxes
(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust’s share of an entity’s taxable income must be paid:

(1) from income to the extent that receipts from the entity are allocated only to income;

(2) from principal to the extent that receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both principal and income; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying the other provisions of this section, the trustee shall adjust income or principal receipts to the extent that the trust’s taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

§ 116.206. Adjustments Between Principal and Income Because of Taxes

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) elections and decisions, other than those described in Subsection (b), that the fiduciary makes from time to time regarding tax matters;

(2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.


Chapter 117. Uniform Prudent Investor Act

§ 117.001. Short Title

This chapter may be cited as the “Uniform Prudent Investor Act.”


§ 117.002. Uniformity of Application and Construction

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.


Statutes in Context

§ 117.003

The prudent investor rule is the default standard of care for trustees under § 117.003(a). However, § 117.003(b) authorizes the settlor to provide for a higher or lower standard of care.
§ 117.003. Prudent Investor Rule

(a) Except as otherwise provided in Subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary for the loss of principal if the trustee reasonably determined that the risk or return objectives reasonably suited to the trust or its beneficiaries were better served without diversifying.

§ 117.004. Standard of Care; Portfolio Strategy; Risk and Return Objectives

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;
(2) the possible effect of inflation or deflation;
(3) the expected tax consequences of investment decisions or strategies;
(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
(5) the expected total return from income and the appreciation of capital;
(6) other resources of the beneficiaries;
(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
(8) an asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) Except as otherwise provided by and subject to this subtitle, a trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

§ 117.005. Diversification

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.
§ 117.006. Duties at Inception of Trusteeship

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.


Statutes in Context
§ 117.007

Section 117.007 codifies the principle that the trustee’s loyalty is to the beneficiaries. Accordingly, social investing may be problematic, especially if the returns from a “politically correct” investment are lower than from other investments. Social investment refers to the consideration of factors other than the monetary safety of the investments and their potential to earn income and appreciate. Examples of these types of factors include a company’s handling of environmental matters, whether a company does business with countries with policies that do not protect human rights, whether a company employs and pays substandard wages to workers in foreign countries, and the political party affiliation of the company’s leadership.

§ 117.007. Loyalty

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.


Statutes in Context
§ 117.008

The trustee must act impartially and not favor one beneficiary over another under § 117.008. This is especially important in the context of income and principal allocations under Chapter 116.

§ 117.008. Impartiality

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.


Statutes in Context
§ 117.009

The trustee must minimize investment costs under § 117.009.

§ 117.009. Investment Costs

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.


Statutes in Context
§ 117.010

A trustee’s compliance with the prudent investor rule is measured by the facts and circumstances existing at the time of the trustee’s action under § 117.010. In other words, a trustee’s conduct is not judged with the benefit of hindsight (no “Monday morning quarterbacking”).

§ 117.010. Reviewing Compliance

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee’s decision or action and not by hindsight.


Statutes in Context
§ 117.011

The traditional rule regarding delegation of powers is that the trustee may delegate mere ministerial duties but may not delegate discretionary acts. Investment of trust property was deemed a discretionary act and thus was not subject to delegation.

In 1999, Texas altered this rule and allowed the trustee to delegate investment decisions to an investment agent. The statute required the trustee to send written notice to the beneficiaries at least 30 days before entering into an agreement to delegate investment decisions to an investment agent. Generally, the trustee remained responsible for the agent’s investment decisions. However, the trustee could have avoided liability for the investment agent’s decisions if all of the relatively strenuous criteria specified in the statute were satisfied.

Section 117.011 takes a very different approach. The trustee may delegate any investment or management decision provided a prudent trustee of similar skills could properly delegate under the same circumstances. Of course, the trustee must exercise reasonable care, skill, and caution in selecting and reviewing the agent’s actions. In the usual case, the trustee is not liable to the beneficiaries or the trust for the decisions or actions of the agent. See § 117.011(c).
§ 117.011. Delegation of Investment and Management Functions
(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;
(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
(3) periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of Subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated, unless:

(1) the agent is an affiliate of the trustee; or
(2) under the terms of the delegation:
   (A) the trustee or a beneficiary of the trust is required to arbitrate disputes with the agent; or
   (B) the period for bringing an action by the trustee or a beneficiary of the trust with respect to an agent’s actions is shortened from that which is applicable to trustees under the law of this state.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.


Statutes in Context

§ 117.012

Section 117.012 indicates that certain phrases in trust instruments are deemed to trigger the prudent investor standard. Note that some of these phrases which invoke the prudent investor standard appear to invoke a much different standard (e.g., “prudent person rule”).

§ 117.012. Language Invoking Standard of Chapter

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: “investments permissible by law for investment of trust funds,” “legal investments,” “authorized investments,” “prudent man rule,” “prudent trustee rule,” “prudent person rule,” and “prudent investor rule.”


Subtitle C. Miscellaneous Trusts

Chapter 121. Employees’ Trusts

Statutes in Context

Chapter 121 sets forth the special rules which govern pension trusts and death benefits payable under employees’ trusts.

Subchapter A. Pension Trusts

§ 121.001. Pension Trusts
(a) For the purposes of this subchapter, a pension trust is an express trust:

(1) containing or relating to property;
(2) created by an employer as part of a stock-bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan for the benefit of some or all of the employer’s employees;
(3) to which contributions are made by the employer, by some or all of the employees, or by both; and
(4) created for the principal purpose of distributing to the employees, or the successor to their beneficial interest in the trust, the principal or income, or both, of the property held in trust.

(b) This subchapter applies to a pension trust regardless of when the trust was created.


§ 121.002. Employees of Controlled Corporations

For the purposes of this subchapter, the relationship of employer and employee exists between a corporation and its own employees, and between a corporation and the employees of each other corporation that it controls, by which it is controlled, or with which it is under common control through the exercise by one or more persons of a majority of voting rights in one or more corporations.


§ 121.002. Employees of Controlled Corporations

For the purposes of this subchapter, the relationship of employer and employee exists between a corporation and its own employees, and between a corporation and the employees of each other corporation that it controls, by which it is controlled, or with which it is under common control through the exercise by one or more persons of a majority of voting rights in one or more corporations.


§ 121.003. Application of Texas Trust Code [Act]

The Texas Trust Code (Chapters 111 through 117) applies to a pension trust.


575
§ 121.004. Rule Against Perpetuities
A pension trust may continue for as long as is necessary to accomplish the purposes of the trust and is not invalid under the rule against perpetuities or any other law restricting or limiting the duration of a trust.

§ 121.005. Accumulation of Income
Notwithstanding any law limiting the time during which trust income may be accumulated, the income of a pension trust may be accumulated under the terms of the trust for as long as is necessary to accomplish the purposes of the trust.

Subchapter B. Death Benefits Under Employees’ Trusts

§ 121.051. Definitions
(a) In this subchapter:
   (1) “Death benefit” means a benefit of any kind, including the proceeds of a life insurance policy or any other payment, in cash or property, under an employees’ trust or a retirement account, a contract purchased by an employees’ trust or a retirement account, or a retirement-annuity contract that is payable because of an employee’s, participant’s, or beneficiary’s death to or for the benefit of the employee’s, participant’s, or beneficiary’s beneficiary.
   (2) “Employee” means a person covered by an employees’ trust or a retirement account that provides a death benefit or a person whose interest in an employees’ trust or a retirement account has not been fully distributed.
   (3) “Employees’ trust” means:
      (A) a trust forming 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; 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.
   (4) “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)).
   (5) “Participant” means a person covered by an employees’ trust or a retirement account that provides a death benefit or a person whose interest in an employees’ trust or a retirement account has not been fully distributed.
(6) “Retirement account” means a retirement-annuity contract, an individual retirement account, a simplified employee pension, or any other retirement savings arrangement.
(7) “Retirement-annuity contract” means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 403 (1986)).
(8) “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)).
(9) “Trust” and “trustee” have the meanings assigned by the Texas Trust Code (Chapters 111 through 115), except that “trust” includes any trust, regardless of when it is created.
(b) References to specific provisions of the Internal Revenue Code of 1954 (26 U.S.C.A.) include corresponding provisions of any subsequent federal tax laws.

Statutes in Context
§ 121.052
Section 121.052 permits the employee to pour over the death benefits to a trust. The result is similar to a pour-over will provision under Estates Code § 254.001 although there are some significant differences. For example, the benefits are governed by the terms of the trust as they exist on the date of the employee’s death while testamentary pour-overs are governed by the terms of the trust including amendments made after the testator’s death.

§ 121.052. Payment of Death Benefit to Trustee
(a) A death benefit is payable to a trustee of a trust evidenced by a written instrument or declaration existing on the date of an employee’s or participant’s death, or to a trustee named or to be named as trustee of a trust created under an employee’s or participant’s will, if the trustee is designated as beneficiary under the plan containing the employees’ trust or under the retirement account.
(b) A trustee of a testamentary trust may be designated under Subsection (a) prior to the execution of the will.
(c) A death benefit under a will is not payable until the will is probated.
(d) The trustee shall hold, administer, and dispose of a death benefit payable under this section in accordance with the terms of the trust on the date of the employee’s death.
(e) A death benefit is payable to a trustee of a trust created by the will of a person other than the employee if:
   (1) the will has been probated at the time of the employee’s death; and

Electronic copy available at: https://ssrn.com/abstract=4537861
(2) the death benefit is payable to the trustee to be held, administered, and disposed of in accordance with the terms of the testamentary trust.


§ 121.053. Validity of Trust Declaration

The validity of a trust agreement or declaration is not affected by:

(1) the absence of a corpus other than the right of the trustee to receive a death benefit as beneficiary;
(2) the employee’s reservation of the right to designate another beneficiary of the death benefit; or
(3) the existence of authority to amend, modify, revoke, or terminate the agreement or declaration.


§ 121.054. Unclaimed Benefits

If a trustee does not claim a death benefit on or before the first anniversary of the employee’s or participant’s death or if satisfactory evidence is provided to a trustee, custodian, other fiduciary, or other obligor of the employees’ trust, contract purchased by the employees’ trust, or the retirement account before the first anniversary of the employee’s or participant’s death that there is or will be no trustee to receive the death benefit, the death benefit shall be paid:

(1) according to the beneficiary designation under the plan, trust, contract, or arrangement providing the death benefit under the employees’ trust or retirement account; or
(2) if there is no designation in the employees’ trust or retirement account, to the personal representative of the deceased employee’s or participant’s estate.


§ 121.055. Exemption from Taxes and Debts

Unless the trust agreement, declaration of trust, or will provides otherwise, a death benefit payable to a trustee under this subchapter is not:

(1) part of the deceased employee’s estate;
(2) subject to the debts of the deceased employee or the employee’s estate, or to other charges enforceable against the estate; or
(3) subject to the payment of taxes enforceable against the deceased employee’s estate to a greater extent than if the death benefit is payable, free of trust, to a beneficiary other than the executor or administrator of the estate of the employee.


§ 121.056. Commingling of Assets

A trustee who receives a death benefit under this subchapter may commingle the property with other assets accepted by the trustee and held in trust, either before or after the death benefit is received.


§ 121.057. Prior Designations Not Affected

This subchapter does not affect the validity of a beneficiary designation made by an employee before April 3, 1975, that names a trustee as beneficiary of a death benefit.


§ 121.058. Construction

(a) This subchapter is intended to be declaratory of the common law of this state.
(b) A court shall liberally construe this subchapter to effect the intent that a death benefit received by a trustee under this subchapter is not subject to the obligations of the employee or the employee’s estate unless the trust receiving the benefit expressly provides otherwise.
(c) A death benefit shall not be included in property administered as part of a testator’s estate or in an inventory filed with the county court because of a reference in a will to the death benefit or because of the naming of the trustee of a testamentary trust.


Chapter 123. Attorney General Participation in Proceedings Involving Charitable Trusts

Statutes in Context
Chapter 123

The attorney general of Texas has standing to enforce charitable trusts. To increase the likelihood that the attorney general is aware of lawsuits involving charitable trusts, Chapter 123 requires that the party initiating the action give notice to the attorney general. This notice is by certified or registered mail within 30 days of filing but not less than 25 days before a hearing and must include a copy of the petition. See § 123.003. Section 123.001(3) provides an extensive list of proceedings to which the attorney general is entitled to notice.

If the attorney general does not receive notice, any judgment or settlement is voidable. In other words, the attorney general may set aside any judgment or settlement at any time. No grounds are required other than the fact that the attorney general did not receive notice. See § 123.004.
It is significant to note the broad definition given to the term “charitable trust” in § 123.001(2). The term encompasses any inter vivos or testamentary gift to a charitable entity in addition to traditional charitable trusts. An attorney perusing the statutes might read the caption to Chapter 123 which contains the term “charitable trusts” and not realize that the chapter applies to all charitable gifts, whether they be in trust or outright. Likewise, the term “charitable trusts” includes any charitable entity, even if not run as a trust.

§ 123.001. Definitions

In this chapter:

(1) “Charitable entity” means a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)).

(2) “Charitable trust” means a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.

(3) “Proceeding involving a charitable trust” means a suit or other judicial proceeding the object of which is to:

(A) terminate a charitable trust or distribute its assets to other than charitable donees;

(B) depart from the objects of the charitable trust stated in the instrument creating the trust, including a proceeding in which the doctrine of cy-pres is invoked;

(C) construe, nullify, or impair the provisions of a testamentary or other instrument creating or affecting a charitable trust;

(D) contest or set aside the probate of an alleged will;

(E) allow a charitable trust to contest or set aside the probate of an alleged will;

(F) determine matters relating to the probate and administration of an estate involving a charitable trust;

(G) obtain a declaratory judgment involving a charitable trust.

(4) “Fiduciary or managerial agent” means an individual, corporation, or other entity acting either as a trustee, a member of the board of directors, an officer, an executor, or an administrator for a charitable trust.


§ 123.002. Attorney General’s Participation

For and on behalf of the interest of the general public of this state in charitable trusts, the attorney general is a proper party and may intervene in a proceeding involving a charitable trust. The attorney general may join and enter into a compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust.

Added by Acts 1987, 70th Leg., ch. 147, § 4, eff. Sept. 1, 1987.

§ 123.003. Notice

(a) Any party initiating a proceeding involving a charitable trust shall give notice of the proceeding to the attorney general by sending to the attorney general, by registered or certified mail, a true copy of the petition or other instrument initiating the proceeding involving a charitable trust within 30 days of the filing of such petition or other instrument, but no less than 25 days prior to a hearing in such a proceeding. This subsection does not apply to a proceeding that is initiated by an application that exclusively seeks the admission of a will to probate, regardless of whether the application seeks the appointment of a personal representative, if the application:

(1) is uncontested; and

(2) is not subject to Subchapter C, Chapter 256, Estates Code.

(b) Notice shall be given to the attorney general of any pleading which adds new causes of action or additional parties to a proceeding involving a charitable trust in which the attorney general has previously waived participation or in which the attorney general has otherwise failed to intervene. Notice shall be given by sending to the attorney general by registered or certified mail a true copy of the pleading within 30 days of the filing of the pleading, but no less than 25 days prior to a hearing in the proceeding.

(c) The party or the party’s attorney shall execute and file in the proceeding an affidavit stating the facts of the notice and shall attach to the affidavit the customary postal receipts signed by the attorney general or an assistant attorney general.


§ 123.004. Voidable Judgment or Agreement

(a) A judgment in a proceeding involving a charitable trust is voidable if the attorney general is not given notice of the proceeding as required by this chapter. On motion of the attorney general after the judgment is rendered, the judgment shall be set aside.

(b) A compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust is voidable on motion of the attorney general if the attorney general is not given notice as required by this chapter unless the attorney general has:
§ 123.005. Breach of Fiduciary Duty; Venue; Jurisdiction

(a) Venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust shall be a court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office. To the extent of a conflict between this subsection and any provision of the Estates Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, this subsection controls.

(b) A statutory probate court of Travis County has concurrent jurisdiction with any other court on which jurisdiction is conferred by Section 32.001, Estates Code, in a proceeding brought by the attorney general alleging breach of a fiduciary duty with respect to a charitable trust created by a will that has been admitted to probate.


§ 123.006. Attorney’s Fees

(a) In a proceeding subject to Section 123.005, the attorney general, if successful in the proceeding, is entitled to recover from the charitable entity or fiduciary or managerial agent of the charitable trust actual costs incurred in bringing the suit and may recover reasonable attorney’s fees.

(b) In a proceeding in which the attorney general intervenes under this chapter, other than a proceeding subject to Section 123.005, a court may award the attorney general court costs and reasonable and necessary attorney’s fees as may seem equitable and just.


Chapter 124. Partition of Mineral Interests of Charitable Trust

§ 124.001. Definitions

In this chapter:

(1) “Charitable entity” means a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3), Internal Revenue Code of 1986.

(2) “Charitable trust” means a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.

(3) “Mineral interest” means an interest in oil, gas, or other mineral substance in place or that otherwise constitutes real property without regard to the depth at which such mineral substance is found.

Added by Acts 2013, 83rd Leg., ch. 480, § 1, eff. Sept. 1, 2013.

Title 10. Miscellaneous Beneficial Property Interests

Subtitle A. Persons Under Disability

Chapter 141. Transfers to Minors

Statutes in Context

Chapter 141

Individuals who wish to make gifts or other transfers to minors need to select the method used to transfer the property. Transferees have several techniques available to them. First, the transferor could simply make the transfer directly to the minor. In many circumstances, direct transfers will necessitate the appointment of a guardian of the minor’s estate. An estate guardianship requires extensive court involvement and thus is costly and time-consuming. In addition, the minor will receive the property outright at age 18, possibly before the young adult has acquired the maturity to handle the property prudently. Second, the transfer could be placed in trust for the benefit of the minor. A trust will avoid the necessity of a guardianship and will give the transferor the ability to designate how the property is to be managed and distributed. Significant transaction costs may be incurred, however, such as attorneys’ fees to draft the trust and trustees’ fees to manage the trust. In addition, certain transferees, such as creditors, are not able to
take advantage of this technique. Third, the transferor may transfer the property to a custodian for the minor. Although not achieving all the benefits of a trust, transfers to a custodian are cost-effective, relatively simple to make, and are available to a wide range of transferors.

Until September 1, 1995, transfers to a custodian for a minor were governed by the Texas Uniform Gifts to Minors Act (TUGMA) and its various amendments. The 1995 Texas Legislature enacted the Texas Uniform Transfers to Minors Act (TUTMA) as a replacement for the outdated TUGMA.

§ 141.001. Short Title
This chapter may be cited as the Texas Uniform Transfers to Minors Act.


Statutes in Context
§ 141.002
The transferee must be a minor at the time of the transfer. The age at which minority status is lost is 21, not 18 as under the TUGMA. See § 141.002(11). There is no requirement that the minor and the transferor be related.

§ 141.002. Definitions
In this chapter:
(1) “Adult” means an individual who is at least 21 years of age.
(2) “Benefit plan” means a retirement plan, including an interest described by Sections 111.004(19)-(23).
(3) “Broker” means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person’s own account or for the account of another.
(4) “Court” means a court with original probate jurisdiction.
(5) “Custodial property” means:
(A) any interest in property transferred to a custodian under this chapter; and
(B) the income from and proceeds of that interest in property.
(6) “Custodian” means a person designated as a custodian under Section 141.010 or a successor or substitute custodian designated under Section 141.019.
(7) “Financial institution” means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.
(8) “Guardian” means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor’s property or a person legally authorized to perform substantially the same functions.
(9) “Legal representative” means an executor, independent executor, administrator or independent administrator of a decedent’s estate, an obligor under a benefit plan or other governing instrument, a successor legal representative, or a person legally authorized to perform substantially the same functions.
(10) “Member of the minor’s family” means the minor’s parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of whole or half blood or by adoption.
(11) “Minor” means an individual who is younger than 21 years of age.
(12) “Transfer” means a transaction that creates custodial property under Section 141.010.
(12-a) “Qualified minor’s trust” means a trust to which a gift is considered a present interest under Section 2503(c), Internal Revenue Code of 1986.
(13) “Transferor” means a person who makes a transfer under this chapter.
(14) “Trust company” means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.


§ 141.003. Scope and Jurisdiction
(a) This chapter applies to a transfer that refers to the Texas Uniform Transfers to Minors Act in the designation under Section 141.010(a) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship created under Section 141.010 remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian or the removal of custodial property from this state.
(b) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.
(c) A transfer that purports to be made and that is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.


580
Statutes in Context
§ 141.004

A person who has the right to designate the recipient of property which is transferable when a future event occurs (e.g., the death of the person) may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of that event. Examples of prospective transfer arrangements included in the scope of this section are wills, trusts, deeds, life insurance policies, annuity contracts, retirement plans, trust accounts, and P.O.D. accounts. This type of designation does not actually create a custodianship relationship until the nominating instrument becomes irrevocable or the transfer to the nominated custodian occurs.

§ 141.006. Transfer Authorized by Will or Trust

(a) A legal representative or trustee may make an irrevocable transfer under Section 141.010 to a custodian for a minor’s benefit as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under Section 141.004 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under Section 4, or all persons nominated as custodians under Section 4, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the legal representative or the trustee shall designate the custodian from among those persons eligible to serve as custodian for property of that kind under Section 141.010(a).


Statutes in Context
§ 141.005

The donor of an outright irrevocable inter vivos gift may transfer the gifted property to a custodian for a minor donee. The donee of a power of appointment may exercise it irrevocably in favor of a custodian for the benefit of a minor appointee.

Statutes in Context
§ 141.007

Under certain circumstances, fiduciaries may make transfers to a custodian for a minor’s benefit even without express authorization from the original owner of the property. These fiduciaries include the administrator of an intestate, the executor of a will, the trustee of a trust, and the guardian of a ward. See also § 113.021(a)(4).
§ 141.007. Other Transfer by Fiduciary
(a) Subject to Subsections (b) and (c), a guardian, legal representative, or trustee may make an irrevocable transfer to another adult or trust company as custodian for a minor’s benefit under Section 141.010 in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) With the approval of the court supervising the guardianship, a guardian may make an irrevocable transfer to another adult or trust company as custodian for the minor’s benefit under Section 141.010.

(c) A transfer under Subsection (a) or (b) may be made only if:
   (1) the legal representative or trustee considers the transfer to be in the best interest of the minor;
   (2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and
   (3) the transfer is authorized by the court if it exceeds $25,000 in value.


§ 141.009. Receipt for Custodial Property
A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under this chapter.

§ 141.010. Manner of Creating Custodial Property and Effecting Transfer; Designation of Initial Custodian; Control
(a) Custodial property is created and a transfer is made when:
   (1) an uncertificated security or a certificated security in registered form is:
      (A) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act”;
      (B) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act”;
   (2) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act”;
   (3) the ownership of a life or endowment insurance policy or annuity contract is:
      (A) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act”;
      (B) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: “as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act”;
   (4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written...
§ 141.011. Single Custodianship

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.


§ 141.012. Validity and Effect of Transfer

(a) The validity of a transfer made in a manner prescribed by this chapter is not affected by the:

(1) transferor’s failure to comply with Section 141.010(c) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Section 141.010(a); or

(3) death or incapacity of a person nominated under Section 141.004 or designated under Section 141.010 as custodian or the disclaimer of the office by that person.

(b) A transfer made under Section 141.010 is irrevocable, and the custodial property is indefeasibly vested in the minor. The custodian has all the rights, powers, duties, and authority provided in this chapter, and the minor or the minor’s legal representative does not have any right, power, duty, or authority with respect to the custodial property except as provided by this chapter.

(c) By making a transfer, the transferor incorporates all the provisions of this chapter in the disposition and grants to the custodian, or to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided by this chapter.

§ 141.013. Care of Custodial Property

(a) A custodian shall:
(1) take control of custodial property;
(2) register or record title to custodial property if appropriate; and
(3) collect, hold, manage, sell, convey, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian’s discretion and without liability to the minor or the minor’s estate, may retain any custodial property received from a transferor.

(c) A custodian may invest or pay premiums on life insurance or endowment policies on the life of:
(1) the minor only if the minor or the minor’s estate is the sole beneficiary; or
(2) another person in whom the minor has an insurable interest only to the extent that the minor, the minor’s estate, or the custodian in the capacity of the custodian is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor’s interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is registered, or held in an account designated, in the name of the custodian followed in substance by the words: “as custodian for (name of minor) under the Texas Uniform Transfers to Minors Act.”

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor’s tax returns, and shall make the records available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor is at least 14 years of age.


§ 141.014. Powers of Custodian

(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over the custodial property that an unmarried adult owner has over his or her own property. The custodian may exercise these rights, powers, and authority only in a custodial capacity.

(b) This section does not relieve a custodian from liability for breach of Section 141.013.


§ 141.015. Use of Custodial Property

(a) A custodian may deliver or pay custodial property directly to the minor and (2) expend custodial property for the minor’s benefit. The custodian is not limited by any standard (e.g., support, education, or medical care) in making distributions as long as the distribution is for the use or benefit of the minor. The custodian need not obtain a court order before making distributions. In addition, the custodian may use custodial property for the minor even if (1) the custodian personally has a duty or the ability to support the minor, (2) another person has a duty or the ability to support the minor, and (3) the minor has other income or property which could be used instead.

A minor who is at least 14 years old and any interested person may petition to the court to force the custodian to distribute custodial property. The court may order distribution of as much of the property as the court considers advisable for the use and benefit of the minor.

Distributions of custodial property are in addition to, not in substitution for, and do not affect any obligation which a person may have to support the minor.


§ 141.016. Consent

(a) A person over the age of majority has the right to consent to an act with respect to custodial property.

(b) A custodian may deliver custodial property to a person over the age of majority if the custodian has received written consent to such delivery and the minor is at least 14 years old.

(c) A custodian may deliver custodial property to a minor if the custodian has received written consent to such delivery and the minor is at least 14 years old.

(b) On petition of an interested person or the minor if the minor is at least 14 years of age, the court may order the custodian to deliver or pay to the minor or expend for the minor’s benefit as much of the custodial property as the court considers advisable for the use and benefit of the minor.

(b-1) A custodian may, without a court order, transfer all or part of the custodial property to a qualified minor’s trust. A transfer of property under this subsection terminates the custodianship to the extent of the property transferred.

(c) A custodian is not required to give a bond.

§ 141.016. Custodian’s Expenses, Compensation, and Bond

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian’s duties.

(b) Except for one who is a transferor under Section 141.005, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed by the custodian during that year.

(c) A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses. A custodian who was the donor of an irrevocable gift or who exercised a power of lapses.

(d) Except as provided by Section 141.019(f), a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed by the custodian during that year.

(e) Except as provided by Section 141.019(f), a custodian is not required to give a bond.

§ 141.017. Exemption of Third Person from Liability

A third person, in good faith and without court order, may act on the instructions of or otherwise deal with any person purporting to make a transfer or act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining the:

(1) validity of the purported custodian’s designation;
(2) propriety of, or the authority under this chapter for, any act of the purported custodian;
(3) validity or propriety under this chapter of any instrument or instructions executed or given by the person purporting to make a transfer or by the purported custodian; or
(4) propriety of the application of the minor’s property delivered to the purported custodian.

§ 141.018. Liability to Third Person

(a) A claim based on a contract entered into by a custodian acting in a custodial capacity, an obligation arising from the ownership or control of custodial property, or a tort committed during the custodianship may be asserted against the custodial property by proceeding against the custodian in the custodian’s custodial capacity, whether or not the custodian or the minor is personally liable for the claim.

(b) A custodian is not personally liable:

(1) on a contract properly entered into in the custodian’s custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or
(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

§ 141.019. Renunciation, Resignation, Death, or Removal of Custodian; Designation of Successor Custodian

(a) A person nominated to serve as a custodian under Section 141.004 or designated to serve as a custodian under Section 141.010 may decline to serve as custodian by delivering written notice to the person who made the nomination or to the transferor’s legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian who is able, willing, and eligible to serve was nominated under Section 4, the person who made the nomination may nominate a substitute custodian under Section 4; otherwise the transferor or the transferor’s legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Section 141.010(a). A substitute custodian designated under this section has the rights of a successor custodian.

(b) A custodian at any time may designate as successor custodian a trust company or an adult other than a transferor under Section 141.005 by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the custodian’s resignation, the designation of the successor custodian;
§ 141.020. Accounting by and Determination of Liability

(a) A minor who is at least 14 years of age, the minor’s guardian of the person or legal representative, an adult member of the minor’s family, a transferor, or a transferor’s legal representative may petition the court for:

(1) an accounting by the custodian or the custodian’s legal representative; or

(2) a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 141.018 to which the minor or the minor’s estate is a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian’s legal representative to account.

(d) If a custodian is removed under Section 141.019(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

§ 141.021. Termination of Custodianship

The custodianship terminates and the custodian must transfer the custodial property to the minor or to the minor’s estate when the first of the following events occurs: (1) the minor reaches age 21, if the property was transferred by gift, exercise of power of appointment, will, or trust (if the custodianship was created before September 1, 1995, it will still terminate when the minor reaches age 18); (2) the minor reaches age 18, if the property was transferred by a fiduciary or an obligor; or (3) the minor dies.
§ 141.023. Effect on Existing Custodianships

(a) Any transfer of custodial property under this chapter made before September 1, 1995, is validated notwithstanding that there was no specific authority in this chapter for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) Sections 141.002 and 141.021, with respect to the age of a minor for whom custodial property is held under this chapter, do not apply to custodial property held in a custodianship that terminated because the minor attained the age of 18 after August 26, 1973, and before September 1, 1995.


§ 141.024. Uniformity of Application and Construction

This chapter shall be applied and construed to effect its general purpose, to make uniform the law with respect to the subject of this chapter among states enacting that law.


§ 141.025. Additional Transfers to Custodianships in Existence Before Effective Date of Act

(a) This section applies only to a transfer within the scope of Section 141.003 made before September 1, 1995, to a custodian of a custodianship established before September 1, 1995, under the Texas Uniform Gifts to Minors Act.

(b) This chapter does not prevent a person from making additional transfers to a custodianship described by Subsection (a). On the direction of the transferor or custodian, custodial property that is transferred to the custodianship shall be commingled with the custodial property of the custodianship established under the Texas Uniform Gifts to Minors Act. The additional transfers to the custodianship shall be administered and distributed on termination of the custodianship, as prescribed by this chapter, except that for purposes of Section 141.021, the custodian shall transfer the custodial property to:

(1) the beneficiary on the date the beneficiary attains 18 years of age or an earlier date as prescribed by Section 141.021; or

(2) the beneficiary’s estate if the individual dies before the date prescribed by Subdivision (1).


Guardian Ad Litem

Chapter 142 provides for the management of property recovered on behalf of a minor or incapacitated person by a next friend or guardian ad litem. Of particular importance is § 142.005 which allows for the court to create a trust to manage the property.

§ 142.001. Management by Decree

(a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court, on application and hearing, may provide by decree for the investment of funds accruing to the minor or other person under the judgment in the suit.

(b) If the decree is made during vacation, it must be recorded in the minutes of the succeeding term of the court.


§ 142.002. Management by Bonded Manager

(a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court in which a judgment is rendered may by an order entered of record authorize the next friend, the guardian ad litem, or another person to take possession of money or other personal property recovered under the judgment for the minor or other person represented.

(b) The next friend, guardian ad litem, or other person may not take possession of the property until the person has executed a bond as principal that:

(1) is in an amount at least double the value of the property or, if a surety on the bond is a solvent surety company authorized under the law of this state to execute the bond, is in an amount at least equal to the value of the property;

(2) is payable to the county judge; and

(3) is conditioned on the obligation of the next friend, guardian ad litem, or other person to use the property under the direction of the court for the benefit of its owner and to return the property, with interest or other increase, to the person entitled to receive the property when ordered by the court to do so.


§ 142.003. Compensation and Duties of Managers

(a) A person who manages property under Section

Chapter 142. Management of Property Recovered in Suit by a Next Friend or
or an appointed guardian ad litem, any money recovered who has no legal guardian is represented by a next friend § 142.004. Investment of Funds

1984.

chapter, may be invested:

by the plaintiff, if not otherwise managed under this

withdrawn, the court may:

makes the investment is not required to execute a bond

order of the court, a next friend or guardian ad litem who

be withdrawn from the financial institution without an


§ 142.004. Investment of Funds

(a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, any money recovered by the plaintiff, if not otherwise managed under this chapter, may be invested:

(1) by the next friend or guardian ad litem in:

(A) a higher education savings plan established under Subchapter G, Chapter 54, Education Code, or a prepaid tuition program established under Subchapter H, Chapter 54, Education Code; or

(B) interest-bearing time deposits in a financial institution doing business in this state and insured by the Federal Deposit Insurance Corporation; or

(2) by the clerk of the court, on written order of the court of proper jurisdiction, in:

(A) a higher education savings plan established under Subchapter G, Chapter 54, Education Code, or a prepaid tuition program established under Subchapter H, Chapter 54, Education Code;

(B) interest-bearing deposits in a financial institution doing business in this state and insured by the Federal Deposit Insurance Corporation;

(c) United States treasury bills;

(D) an eligible interlocal investment pool that meets the requirements of Sections 2256.016, 2256.017, and 2256.019, Government Code; or

(E) a no-load money market mutual fund, if the fund:

(i) is regulated by the Securities and Exchange Commission;

(ii) has a dollar weighted average stated maturity of 90 days or fewer; and

(iii) includes in its investment objectives the maintenance of a stable net asset value of $1 for each share

(b) If the money invested under this section may not be withdrawn from the financial institution without an order of the court, a next friend or guardian ad litem who makes the investment is not required to execute a bond with respect to the money.

(c) When money invested under this section is withdrawn, the court may:

(1) on a finding that the person entitled to receive the money is no longer under the disability, order the funds turned over to the person; or

(2) order management of the funds under another provision of this chapter.

(d) Interest earned on an account invested by the clerk of the court shall be paid in the same manner as interest earned on an account under Chapter 117, Local Government Code.

(e) If money is invested under Subsection (a)(2)(E), the court may waive any bonding requirement.


Statutes in Context

§ 142.005

Section 142.005 permits the court to create a trust to manage the property of a minor or incapacitated person recovered by a guardian ad litem or next friend. Only a trust company or bank may serve as the trustee. The trust must contain the provisions listed in this section. Note that a trust created on behalf of a minor may continue past age 18 but must end no later than the minor’s twenty-fifth birthday. A trust for an incapacitated individual ends when the individual regains capacity.

The court may include provisions to have the trust qualify as a special needs trust under 42 U.S.C. § 1396(d)(4)(A) so the trust will not prevent the beneficiary from qualifying for Medicaid.

The 2003 Texas Legislature added § 142.005(j) to provide that an exculpatory provision in a Chapter 142 management trust will be enforceable only if both of the following two requirements are satisfied:

- The exculpatory provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust.
- The court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the exculpatory provision is in the best interests of the beneficiary of the trust.

This requirement is a reaction to the Texas Supreme Court opinion in Texas Commerce Bank, N.A. v. Grizzle, 96 S.W.3d 240 (Tex. 2002), in which the court enforced a boilerplate exculpatory clause in a Chapter 142 trust.

§ 142.005. Trust for Property

(a) Any court of record with jurisdiction to hear a suit involving a beneficiary may, on application and on a finding that the creation of a trust would be in the best interests of the beneficiary, enter a decree in the record directing the clerk to deliver any funds accruing to the beneficiary under the judgment to a financial institution, except as provided by Subsections (m) and (n).
(b) The decree shall provide for the creation of a trust for the management of the funds for the benefit of the beneficiary and for terms, conditions, and limitations of the trust, as determined by the court, that are not in conflict with the following mandatory provisions:

(1) The beneficiary shall be the sole beneficiary of the trust.

(2) The trustee may disburse amounts of the trust’s principal, income, or both as the trustee in the trustee’s sole discretion determines to be reasonably necessary for the health, education, support, or maintenance of the beneficiary. The trustee may conclusively presume that medicine or treatments approved by a licensed physician are appropriate for the health of the beneficiary.

(3) The income of the trust not disbursed under Subdivision (2) shall be added to the principal of the trust.

(4) If the beneficiary is a minor who is not considered disabled for purposes of 42 U.S.C. Chapter 7, Subchapter XVI, the trust shall terminate on the death of the beneficiary, on the beneficiary’s attaining an age stated in the trust, or on the 25th birthday of the beneficiary, whichever occurs first.

(4-a) If the court finds that a minor beneficiary is considered disabled for purposes of 42 U.S.C. Chapter 7, Subchapter XVI, the trust shall terminate on the death of the beneficiary.

(4-b) If the beneficiary is an incapacitated person, the trust shall terminate on the death of the beneficiary or when the beneficiary regains capacity.

(5) A trustee that is a financial institution shall serve without bond.

(6) The trustee shall receive reasonable compensation paid from trust’s income, principal, or both on application to and approval of the court.

(7) The first page of the trust instrument shall contain the following notice:

NOTICE: THE BENEFICIARY AND CERTAIN PERSONS INTERESTED IN THE WELFARE OF THE BENEFICIARY MAY HAVE REMEDIES UNDER SECTION 114.008 OR 142.005, TEXAS PROPERTY CODE.

(c) A trust established under this section may provide that:

(1) distributions of the trust principal before the termination of the trust may be made from time to time as the beneficiary attains designated ages and at designated percentages of the principal; and

(2) distributions, payments, uses, and applications of all trust funds may be made to the legal or natural guardian of the beneficiary or to the person having custody of the beneficiary or may be made directly to or expended for the benefit, support, or maintenance of the beneficiary without the intervention of any legal guardian or other legal representative of the beneficiary.

(d) A court that creates a trust under this section has continuing jurisdiction and supervisory power over the trust, including the power to construe, amend, revoke, modify, or terminate the trust. A trust created under this section is not subject to revocation by the beneficiary or a guardian of the beneficiary’s estate. If the trust is revoked by the court before the beneficiary is 18 years old, the court may provide for the management of the trust principal and any undistributed income as authorized by this chapter. If the trust is revoked by the court after the beneficiary is 18 years old, the trust principal and any undistributed income shall be delivered to the beneficiary after the payment of all proper and necessary expenses.

(e) On the termination of the trust under its terms or on the death of the beneficiary, the trust principal and any undistributed income shall be paid to the beneficiary or to the representative of the estate of the deceased beneficiary.

(f) A trust established under this section prevails over any other law concerning minors, incapacitated persons, or their property, and the trust continues in force and effect until terminated or revoked, notwithstanding the appointment of a guardian of the estate of the minor or incapacitated person, or the attainment of the age of majority by the minor.

(g) Notwithstanding any other provision of this chapter, if the court finds that it would be in the best interests of the beneficiary for whom a trust is established under this section, the court may omit or modify any terms required by Subsection (b) if the court determines that the omission or modification is necessary or appropriate to allow the beneficiary to be eligible to receive public benefits or assistance under a state or federal program. This section does not require a distribution from a trust if the distribution is discretionary under the terms of the trust.

(h) A trust created under this section is subject to Subtitle B, Title 9.

(i) Notwithstanding Subsection (h), this section prevails over a provision in Subtitle B, Title 9, that is in conflict or inconsistent with this section.

(j) A provision in a trust created under this section that relieves a trustee from a duty, responsibility, or liability imposed by this section or Subtitle B, Title 9, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

(k) In addition to ordering other appropriate remedies and grounds, the court may appoint a guardian ad litem to investigate and report to the court whether the trustee should be removed for failing or refusing to make distributions for the health, education, support, or maintenance of the beneficiary required under the terms of the trust if the court is petitioned by:

(1) a parent of the beneficiary;

(2) a next friend of the beneficiary;

(3) a guardian of the beneficiary;

(4) a conservator of the beneficiary;
§ 142.007. Structured Settlement

(a) In a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, the court, on a motion from the parties, may provide for a structured settlement that:

(1) provides for periodic payments; and

(2) is funded by:

(A) an obligation guaranteed by the United States government; or

(B) an annuity contract that meets the requirements of Section 142.009.

(b) The person obligated to fund a structured settlement shall provide to the court:

(1) a copy of the instrument that provides funding for the structured settlement; or

(2) an affidavit from an independent financial consultant that specifies the present value of the structured settlement and the method by which the value is calculated.

(c) A structured settlement provided for under this section is solely for the benefit of the beneficiary of the structured settlement and is not subject to the interest payment calculations contained in Section 117.054, Local Government Code.


§ 142.009. Annuity Contract Requirements for Structured Settlement

(a) An insurance company providing an annuity contract for a structured settlement as provided by Section 142.008 must:

(1) be licensed to write annuity contracts in this state;

(2) have a minimum of $1 million of capital and surplus; and

(3) be approved by the court and comply with any requirements imposed by the court to ensure funding to satisfy periodic settlement payments.

(b) In approving an insurance company under Subsection (a)(3), the court may consider whether the company:

(1) holds an issuer credit rating equivalent to a National Association of Insurance Commissioners NAIC 1 designation from a national or international rating agency that:

(A) has registered with the Securities and Exchange Commission;

(B) is designated as a nationally recognized statistical rating organization; and

(C) is on the list of Credit Rating Providers by the Securities Valuation Office of the National Association of Insurance Commissioners.

(2) is an affiliate, as that term is defined by Article 21.49-1, Insurance Code, of a liability insurance carrier involved in the suit for which the structured settlement is created; or

(3) is connected in any way to person obligated to fund the structured settlement.


§ 142.010. Transfer of Trust Property to a Pooled Trust Subaccount

(a) In this section, “management trust” means a trust created for a beneficiary in accordance with Section 142.005.

(b) If the court with continuing jurisdiction over a management trust determines that it is in the best interests of the beneficiary for whom the management trust is created, the court may order the transfer of all property in the management trust to a pooled trust subaccount established in accordance with Chapter 143.

(c) For purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of a management trust beneficiary who has a physical disability and is not an incapacitated person. The attorney ad litem or the guardian ad litem is entitled to a reasonable fee and reimbursement of expenses to be paid from the management trust property.

(d) The transfer of property from the management trust to the pooled trust subaccount shall be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C) or otherwise for purposes of the management trust beneficiary’s eligibility for medical assistance under Chapter 32, Human Resources Code.

(e) The court may not allow termination of the management trust from which property is transferred under this section until all of the property in the management trust has been transferred to the pooled trust subaccount.

Added by Acts 2019, 86th Leg., ch. 1112, § 7, eff. Sept. 1, 2019.

Chapter 143. Pooled Trust Subaccounts

§ 143.001. Definitions

In this chapter:

(1) “Beneficiary” means a person for whose benefit a subaccount is established.

(2) “Incapacitated person” has the meaning assigned by Section 142.007.

(3) “Medical assistance” means benefits and services under the medical assistance program administered under Chapter 32, Human Resources Code.

(4) “Pooled trust” means a trust that meets the requirements of 42 U.S.C. Section 1396p(d)(4)(C) for purposes of exempting the trust from the applicability of 42 U.S.C. Section 1396p(d) in determining the eligibility of a person who is disabled for medical assistance.

(5) “Subaccount” means an account in a pooled trust established under this chapter.

Added by Acts 2019, 86th Leg., ch. 1112, § 8, eff. Sept. 1, 2019.

§ 143.002. Application to Establish Subaccount

The following persons may apply to the court having jurisdiction under Section 142.005 for the establishment of a subaccount solely for the benefit of a proposed beneficiary who is a person for whom a management trust has been or could be established for the person’s benefit under Section 142.005:

(1) the trustee of a management trust established under Section 142.005 for the benefit of the proposed beneficiary of the subaccount;

(2) the guardian of the person or estate, or both, of the proposed beneficiary of the subaccount;

(3) a person who has filed an application for the appointment of a guardian of the person or estate, or both, for the proposed beneficiary of the subaccount;

(4) an attorney ad litem or guardian ad litem appointed to represent the proposed beneficiary of the subaccount;

(5) the proposed beneficiary, if the proposed beneficiary is not a minor or incapacitated person.

Added by Acts 2019, 86th Leg., ch. 1112, § 8, eff. Sept. 1, 2019.

§ 143.003. Appointment of Attorney ad Litem

(a) The court shall appoint an attorney ad litem for a person who is a minor or an incapacitated person and who is the subject of an application under Section 143.002.

(b) The attorney ad litem is entitled to a reasonable fee and reimbursement of expenses to be paid from the person’s property.

Added by Acts 2019, 86th Leg., ch. 1112, § 8, eff. Sept. 1, 2019.

§ 143.004. Establishment of Subaccount

If the court finds that it is in the best interests of a person who is the subject of an application under Section 143.002, the court may order:

(1) the establishment of a subaccount of which the person is the beneficiary; and

(2) the transfer to the subaccount of any of the person’s property on hand or accruing to the person.

Added by Acts 2019, 86th Leg., ch. 1112, § 8, eff. Sept. 1, 2019.

§ 143.005. Terms of Subaccount

Unless the court orders otherwise, the terms governing the subaccount must provide that:

(1) the subaccount terminates on the earliest of the date of:

(A) the beneficiary’s 18th birthday, if the beneficiary:

(i) is not found by the court to be
considered disabled for purposes of 42 U.S.C. Chapter 7, Subchapter XVI; and
(ii) is a minor at the time the subaccount is established;
(B) the beneficiary’s death; or
(C) a court order terminating the subaccount; and
(2) on termination, any property remaining in the beneficiary’s subaccount after making any required payments to satisfy the amounts of medical assistance reimbursement claims for medical assistance provided to the beneficiary under this state’s medical assistance program and other states’ medical assistance programs shall be distributed to:
(A) the beneficiary, if on the date of termination the beneficiary is living and is not a minor or incapacitated person;
(B) the beneficiary’s guardian of the estate, if on the date of termination the beneficiary is living and is a minor or incapacitated person; or
(C) the personal representative of the beneficiary’s estate, if on the date of termination the beneficiary is deceased.

Added by Acts 2019, 86th Leg., ch. 1112, § 8, eff. Sept. 1, 2019.

§ 143.006. Fees and Reporting

(a) The manager or trustee of a pooled trust may:
(1) assess fees against a subaccount of that pooled trust that is established under this chapter, in accordance with the manager’s or trustee’s standard fee structure; and
(2) pay fees assessed under Subdivision (1) from the subaccount.
(b) If required by the court, the manager or trustee of the pooled trust shall file a copy of the annual report of account with the court clerk.

Added by Acts 2019, 86th Leg., ch. 1112, § 8, eff. Sept. 1, 2019.

§ 143.007. Jurisdiction Exclusive

Notwithstanding any other law, the court that orders the establishment of a subaccount for a beneficiary has exclusive jurisdiction of a subsequent proceeding or action that relates to both the beneficiary and the subaccount, and the proceeding or action may be brought only in that court.

Added by Acts 2019, 86th Leg., ch. 1112, § 8, eff. Sept. 1, 2019.

Subtitle B. Fiduciaries

Chapter 163. Management, Investment, and Expenditure of Institutional Funds

Statutes in Context
Chapter 163

The 2007 Legislature enacted the Uniform Prudent Management of Institutional Funds Act (UPMIFA) replacing the Uniform Management of Institutional Funds Act passed in 1989. UPMIFA provides statutory guidelines for the management, investment, and expenditure of endowment funds held by charitable institutions. It expressly provides for diversification of assets, pooling of assets, and total return investment to implement whole portfolio management. This brings the law governing charitable institutions in line with modern investment and expenditure practice as is done in the trust context by the Uniform Prudent Investor Act (see Statutes in Context to Chapter 117).

§ 163.001. Short Title

This chapter may be cited as the Uniform Prudent Management of Institutional Funds Act.


§ 163.002. Legislative Findings and Purpose

(a) The legislature finds that:
(1) institutions organized and operated exclusively for a charitable purpose perform essential and needed services in the state;
(2) uncertainty exists regarding the prudence standards for the management and investment of charitable funds and for endowment spending by institutions described by Subdivision (1); and
(3) the institutions, their officers, directors, and trustees, and the citizens of this state will benefit from removal of the uncertainty regarding applicable prudence standards and by permitting endowment funds to be invested for the long-term goals of achieving growth and maintaining purchasing power without adversely affecting the availability of funds for current expenditure.
(b) The purpose of this chapter is to provide guidance and authority through modern articulations of prudence standards for the management and investment of charitable funds and for endowment spending by institutions organized and operated exclusively for a charitable purpose in order to provide uniformity and remove uncertainty regarding those standards.


§ 163.003. Definitions

In this chapter:
(1) “Charitable purpose” means the promotion of a scientific, educational, philanthropic, or environmental purpose, social welfare, the arts and humanities, or another civic or public purpose described by Section 501 (c)(3) of the Internal Revenue Code of 1986.
(2) “Endowment fund” means an institutional fund or part thereof that, under the terms of a gift
§ 163.004. Standard of Conduct in Managing and Investing Institutional Fund

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(A) shall pool two or more institutional funds for purposes of management and investment;

(B) shall make a reasonable effort to verify facts relevant to the management and investment of the fund;

(C) shall make distributions and to preserve capital; and

(D) make decisions concerning the retention or disposition of property, an institution shall make and carry out decisions concerning the retention or disposition of property or type of investment consistent with this section.

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(3) Except as otherwise provided by a gift instrument, the following rules apply:

(A) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(B) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(6) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(7) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund’s portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(8) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(9) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(10) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.


Electronic copy available at: https://ssrn.com/abstract=4537861
§ 163.005. Appropriation for Expenditure or Accumulation of Endowment Fund; Rules of Construction

(a) Subject to the intent of a donor expressed in the gift instrument and to Subsections (d) and (e), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) the duration and preservation of the endowment fund;
(2) the purposes of the institution and the endowment fund;
(3) general economic conditions;
(4) the possible effect of inflation or deflation;
(5) the expected total return from income and the appreciation of investments;
(6) other resources of the institution; and
(7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under Subsection (a), a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only “income, “ ‘interest,” “dividends,” or “rents, issues, or profits,” or “to preserve the principal intact,” or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under Subsection (a).

(d) Except as provided in Subsection (f), appropriation for expenditure in any year of an amount greater than seven percent of the fair market value of an endowment fund with an aggregate value of $1 million or more, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(1) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or
(2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent of the fair market value of the endowment fund.

(e) For an institution with an endowment fund with an aggregate value of less than $1 million, a rebuttable presumption of imprudence is created if more than five percent of the fair market value of the endowment fund is appropriated for expenditure in any year, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(1) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or
(2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to five percent of the fair market value of the endowment fund.

(f) This subsection applies only to a university system, as defined by Section 61.003(10), Education Code. The appropriation for expenditure in any year of any amount greater than nine percent of the fair market value of an endowment fund with an aggregate value of $450 million or more, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(1) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or
(2) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to nine percent of the fair market value of the endowment fund.

(g) If an institution pools the assets of individual endowment funds for collective investment, this section applies to the pooled fund and does not apply to individual endowment funds, including individual endowment funds for which the nature of the underlying asset or donor restrictions preclude inclusion in a pool but which are managed by the institution in accordance with a collective investment policy.


§ 163.006. Delegation of Management and Investment Functions

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and
investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) selecting an agent;
(2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
(3) periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with Subsection (a) is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter.


§ 163.007. Release or Modification of Restrictions on Management, Investment, or Purpose

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. Chapter 123 applies to a proceeding under this subsection. To the extent practicable, any modification must be made in accordance with the donor’s probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. Chapter 123 applies to a proceeding under this subsection.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after receipt of notice by the attorney general, may release or modify the restriction, in whole or part, if:

(1) the institutional fund subject to the restriction has a total value of less than $25,000;
(2) more than 20 years have elapsed since the fund was established; and
(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(e) The notification to the attorney general under Subsection (d) must be accompanied by a copy of the gift instrument and a statement of facts sufficient to evidence compliance with Subsections (d)(1), (2), and (3).


§ 163.008. Reviewing Compliance

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.


§ 163.009. Relation to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits, and supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101 of that Act (15 U.S.C. Section 7001(a)) or authorize electronic delivery of any of the notices described in Section 103 of that Act (15 U.S.C. Section 7003(b)).


§ 163.010. Uniformity of Application and Construction

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.


Statutes in Context

§ 163.011

The Texas Uniform Prudent Management of Institutional Funds Act (Property Code 163) originally provided that the Trust Code did not apply to certain charitable funds held in trust form under the act. The 2017 Legislature revised this provision to limit only the applicability of Chapter 116 (Uniform Principal and Income Act) and Chapter 117 (Uniform Prudent Investor Act). The rest of the Trust Code now applies to these institutional funds.
§ 163.011. Applicability of Other Parts of Code

Chapters 116 and 117 do not apply to any institutional fund subject to this chapter.


Subtitle C. Powers of Appointment

Chapter 181. Powers of Appointment

Statutes in Context

Chapter 181

A power of appointment is the right to designate the new owner of property. You have this power with respect to the property you own because you may give anything you own to another person. The power to name a new owner of your property is one of the things you take for granted as accompanying property ownership.

You may sever this power of appointment from the ownership of the property itself. When this happens, the following relationships are created. The owner of property (the person who is severing) is the donor of the power, the person with the power to appoint the property is the donee, and the prospective new owners are the objects of the power. When the donee actually exercises the power, the new owners are called the appointees. If the donee fails to exercise the power, the property passes to the default takers. If the donor failed to name default takers, the property reverts to the donor or the donor’s estate.

The donor can create a power of appointment in an inter vivos document, such as a deed or trust, or in a separate power of appointment instrument. The donor can also create a power of appointment by will.

Powers of appointment are generally categorized in one of two ways. First, the power of appointment may be general, meaning that there are no restrictions or conditions on the donee’s exercise of the power. Thus, the donee could even appoint the donee’s own self as the new owner. In many aspects, the donee of a general power of appointment is like the actual owner of the property. Second, the power may be specific, special, or limited, i.e., the donor may specify certain individuals or groups as the objects of the property which do not include the donee, the donee’s creditors, the donee’s estate, or the creditors of the donee’s estate. In addition, the donor may make the donee’s exercise of the power conditional on whatever factors, within legal bounds, the donor desires, for example, only for the appointees’ health-related and educational expenses.

The donee of a power of appointment does not have title, either legal or equitable, to the subject property. Instead, the donee only has a power to appoint. The appointees take title from the donor, not the donee.

The donee has no duty to exercise the power of appointment in favor of the hopeful appointees. Unlike a trustee, a donee is not a fiduciary and has no duty to manage the property or to distribute the property. A power of appointment is also not an agency relationship; the donee is not the donor’s agent.

The donor may dictate the method the donee must use to exercise the power of appointment. For example, the power may be an inter vivos power indicating that the donee must exercise it while alive. Alternatively, it may be a testamentary power which the donee may only exercise by will. The donor also may permit the donee to exercise the power in both ways.

Although the donor may create a power of appointment in anyone, powers of appointment are typically used with trusts. Trustees often have the power to decide which beneficiaries will receive distributions and in what amounts. Settlors of trusts also may give powers of appointment over trust property to the beneficiaries.

Subchapter A. General Provisions

§ 181.001. Definitions

In this chapter:
(1) “Donee” means a person, whether or not a resident of this state, who, either alone or in conjunction with others, may exercise a power.
(1-a) “Object of the power of appointment” means a person to whom the donee is given the power to appoint.
(2) “Power” means the authority to appoint or designate the recipient of property, to invade or consume property, to alter, amend, or revoke an instrument under which an estate or trust is created or held, and to terminate a right or interest under an estate or trust, and any authority remaining after a partial release of a power.
(3) “Property” means all property and interests in property, real or personal, including parts of property, partial interests, and all or any part of the income from property.
(4) “Release” means a renunciation, relinquishment, surrender, refusal to accept, extinguishment, and any other form of release, including a covenant not to exercise all or part of a power.

§ 181.002. Application
(a) Except as provided by Subsection (b), this chapter applies:

(1) to a power or a release of a power, regardless of the date the power is created;
(2) to a vested, contingent, or conditional power; and
(3) to a power classified as a power in gross, a power appurtenant, a power appendant, a collateral power, a general, limited, or special power, an exclusive or nonexclusive power, or any other power.

(b) This chapter applies regardless of the time or manner a power is created or reserved or the release is made and regardless of the time, manner, or in whose favor a power may be exercised.

(c) This chapter does not apply to a power in trust that is imperative.


§ 181.003. Chapter Not Exclusive
The provisions of this chapter concerning the release of a power are not exclusive.


§ 181.004. Construction
This chapter is intended to be declarative of the common law of this state, and it shall be liberally construed to make all powers, except imperative powers in trust, releasable unless the instrument creating the trust expressly provides otherwise.


Subchapter B. Release of Powers of Appointment

§ 181.051. Authority of Donee to Release Power
Unless the instrument creating the power specifically provides to the contrary, a donee may at any time:

(1) completely release the power;
(2) release the power as to any property subject to the power;
(3) release the power as to a person in whose favor a power may be exercised; or
(4) limit in any respect the extent to which the power may be exercised.


§ 181.052. Requisites of Release
(a) A partial or complete release of a power, with or without consideration, is valid if the donee executes and acknowledges, in the manner required by law for the execution and recordation of deeds, an instrument evidencing an intent to make the release, and the instrument is delivered:

(1) to the person or in the manner specified in the instrument creating the power;
(2) to an adult, other than the donee releasing the power, who may take any of the property subject to the power if the power is not exercised or in whose favor it may be exercised after the partial release;
(3) to a trustee or cotrustee of the property subject to the power; or
(4) to an appropriate county clerk for recording.

(b) An instrument releasing a power may be recorded in a county in this state in which:

(1) property subject to the power is located;
(2) a donee in control of the property resides;
(3) a trustee in control of the property resides;
(4) a corporate trustee in control of the property has its principal office; or
(5) the instrument creating the power is probated or recorded.


§ 181.053. Release by Guardian
If a person under a disability holds a power, the guardian of the person’s estate may release the power in the manner provided in this chapter on the order of the court in this state in which the guardian was appointed or in which the guardianship proceeding is pending.


§ 181.054. Effect of Release on Multiple Donees
Unless the instrument creating a power provides otherwise, the complete or partial release by one or more donees of a power that may be exercised by two or more donees, either as an individual or a fiduciary, together or successively, does not prevent or limit the exercise or participation in the exercise of the power by the other donee or donees.


§ 181.055. Notice of Release
(a) A fiduciary or other person in possession or control of property subject to a power, other than the donee, does not have notice of a release of the power until the original release or a copy is delivered to the fiduciary or other person.

(b) A purchaser, lessee, or mortgagee of real property subject to a power who has paid a valuable consideration and who is without actual notice does not have notice of a release of the power until the instrument releasing the power is filed for record with the county clerk of the county in which the real property is located.


§ 181.056. Recording
(a) A county clerk shall record a release of a power in the county deed records, and the clerk shall index the
release, with the name of the donee entered in the grantor index.

(b) The county clerk shall charge the same fee for recording the release of a power as the clerk is authorized to charge for recording a deed.


§ 181.057. Effect of Failure to Deliver or File
Failure to deliver or file an instrument releasing a power under Sections 181.052 and 181.055 does not affect the validity of the release as to the donee, the person in whose favor the power may be exercised, or any other person except those expressly protected by Sections 181.052 and 181.055.


§ 181.058. Restraints on Alienation or Anticipation
The release of a power that otherwise may be released is not prevented merely by provisions of the instrument creating the power that restrain alienation or anticipation.


Statutes in Context
Subchapter C

The 2003 Legislature codified various aspects of the law governing the exercise of powers of appointment when it added Subchapter C. Unless the power of appointment expressly provides otherwise, the donee of a power of appointment may do the following things when exercising the power:

1. Appoint present, future, or both present and future interests.
2. Impose conditions and limitations on the appointment.
3. Impose restraints on alienation.
4. Appoint interests to a trustee for the benefit of one or more objects of the power.
5. Create any right existing under the common law.
6. Grant the objects of the power of appointment the power to appoint the property provided that these powers of appointment must be exercisable only in favor of the objects of the power who would have been permissible objects under the original donee’s power.
7. If the donee has the power to appoint outright to the object of the power, exercise the power to give a power of appointment to the object of the original power. The donee of the original power becomes the donor of the second-generation power. There are no restrictions on the identity of the objects of the second-generation power; in other words, these objects do not have to be permissible objects of the original power of appointment.

Subchapter C. Exercise of Powers of Appointment

§ 181.081. Extent of Power
Unless an instrument creating a power expressly provides to the contrary, a donee may exercise a power in any manner consistent with this subchapter.


§ 181.082. General Exercise
In exercising a power, a donee may make an appointment:

1. of present, future, or present and future interests;
2. with conditions and limitations;
3. with restraints on alienation;
4. of interests to a trustee for the benefit of one or more objects of the power; and
5. that creates any right existing under common law.


§ 181.083. Creating Additional Powers
(a) In exercising a power, a donee may make appointments that create in the objects of the power additional powers of appointment. The additional powers of appointment must be exercisable in favor of objects of the power who would have been permissible objects under the original donee’s power.

(b) In exercising a power, a donee who may appoint outright to an object of the power may make appointments that create in the object of the power powers exercisable in favor of persons that the original donee may direct, even though the objects of the secondary power of appointment may not have been permissible objects of the original donee’s power.


Title 13. Disclaimer of Property Interests

Chapter 240. Texas Uniform Disclaimer of Property Interests Act

Statutes in Context
Chapter 240

The 2015 Texas Legislature enacted the Uniform Disclaimer of Property Interests Act to replace the provisions in the Estate Code and the Trust Code.

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

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

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

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

Once made, a disclaimer is irrevocable.

Disclaimers are an effective method for a debtor to prevent property to be inherited, received under a will, or taken under a survivorship agreement from falling into the hands of a creditor. The disclaimer is not a fraudulent conveyance and thus it may not be set aside by the disclaimant’s creditors.

There are, however, two important exceptions. First, the United States Supreme Court held that a disclaimer will not defeat a federal tax lien. Drye v. United States, 528 U.S. 49 (1999). Second, an heir or will beneficiary may not disclaim property if that person is in arrears in paying child support.


Subchapter A. General Provisions

§ 240.001. Short Title

This chapter may be cited as the Texas Uniform Disclaimer of Property Interests Act.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.002. Definitions

In this chapter:

(1) “Charity” means a charitable entity or a charitable trust, as those terms are defined by Section 123.001.

(1-a) “Current beneficiary” and “presumptive remainder beneficiary” have the meanings assigned by Section 112.071.

(2) “Disclaim” means to refuse to accept an interest in or power over property, including an interest or power the person is entitled to:

(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 arrangement;

(F) by an instrument creating a trust.

(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; or

(H) by an instrument creating a trust.

(3) “Disclaimer” means:

(A) the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(B) the estate to which a disclaimed interest or power would have passed had the disclaimer not been made by the personal representative of the estate; or
§ 240.003. Applicability of Chapter
This chapter applies to disclaimers of any interest in or power over property, whenever created.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.004. Chapter Supplemented by Other Law
(a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a statute other than this chapter.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.005. Uniformity of Application and Construction
In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law, with respect to the subject matter of this chapter, among states that enact a law based on the uniform act on which this chapter is based.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.006. Power to Disclaim by Person Other Than Fiduciary
(a) A person other than a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment.

(b) A person other than a fiduciary may disclaim an interest or power under this section even if the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.007. Power to Disclaim Power Held in Fiduciary Capacity by Person Designated to Serve as or Serving as Fiduciary
(a) Subject to Subsection (b) and except to the extent the person’s right to disclaim is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship, a person designated to serve or serving as a fiduciary may disclaim, in whole or in part, any power over property, including a power of appointment and the power to disclaim, held in a fiduciary capacity.

(b) If a power being disclaimed under Subsection (a) by a person designated to serve or serving as a trustee affects the distributive rights of any beneficiary of the trust:

(1) the person may disclaim only on or after accepting the trust;
(2) the disclaimer must be compatible with the trustee’s fiduciary obligations; and
(3) if the disclaimer is made on accepting the trust, the trustee is considered to have never possessed the power disclaimed.

(c) A person designated to serve or serving as a fiduciary may disclaim a power under this section even if the creator of the power imposed a spendthrift provision or similar restriction on transfer.

600

Electronic copy available at: https://ssrn.com/abstract=4537861
§ 240.008. Power to Disclaim by Fiduciary Acting in Fiduciary Capacity

(a) Subject to this section and except to the extent the fiduciary’s right to disclaimer is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship, a fiduciary acting in a fiduciary capacity may disclaim, in whole or in part, any interest in or power over property, including a power of appointment and the power to disclaim, that would have passed to the ward, estate, trust, or principal with respect to which the fiduciary was acting had the disclaimer not been made even if:

(1) the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim; or

(2) an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(b) Except as provided by Subsection (c), (d), or (f), a disclaimer by a fiduciary acting in a fiduciary capacity does not require court approval to be effective unless the instrument that created the fiduciary relationship requires court approval.

(c) Except as provided by Subsection (e-1), the following disclaimers by a fiduciary acting in a fiduciary capacity are not effective unless approved by a court of competent jurisdiction:

(1) a disclaimer by a personal representative who is not an independent administrator or independent executor;

(2) a disclaimer by the trustee of a management trust created under Chapter 1301, Estates Code;

(3) a disclaimer by the trustee of a trust created under Section 142.005; or

(4) a disclaimer that would result in an interest in property not to become trust property unless:

(i) the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim;

(ii) an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim; and

(iii) the disclaimer is not an independent administrator or independent executor.

(d) A disclaimer described by Subsection (c)(4) does not require court approval if the disclaimer is authorized under Subtitle P, Title 2, Estates Code.

(e) In the absence of a court-appointed guardian, without court approval, a natural guardian as described by Section 1104.051, Estates Code, may disclaim on behalf of a minor child of the natural guardian, in whole or in part, any interest in or power over property, including a power of appointment, that the minor child is to receive solely as a result of another disclaimer, but only if the disclaimed interest or power does not pass to or for the benefit of the natural guardian as a result of the disclaimer.

(f) Unless a court of competent jurisdiction approves the disclaimer, a disclaimer by a fiduciary acting in a fiduciary capacity must be compatible with the fiduciary’s fiduciary obligations. A disclaimer by a fiduciary acting in a fiduciary capacity is not a per se breach of the fiduciary’s fiduciary obligations.

(g) Possible remedies for a breach of fiduciary obligations do not include declaring an otherwise effective disclaimer void or granting other legal or equitable relief that would make the disclaimer ineffective.


§ 240.0081. Notice Required by Trustee Disclaiming Certain Interests in Property; Effect of Notice

(a) A trustee acting in a fiduciary capacity may disclaim an interest in property that would cause the interest in property not to become trust property without court approval if the trustee provides written notice of the disclaimer to all of the current beneficiaries and presumptive remainder beneficiaries of the trust.

(b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice under Subsection (a), a beneficiary is determined as of the date the notice is sent.

(c) Except as provided by Subsection (e-1), in addition to the notice required under Subsection (a), the trustee shall give written notice of the trustee’s disclaimer to the attorney general if:

(1) a charity is entitled to notice;

(2) a charity entitled to notice is no longer in existence;

(3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or

(4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(d) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor.

(e) The trustee is not required to provide the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence;

(2) is not known to the trustee;

(3) waives the requirement of the notice under this section; or

(4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary’s ancestor have similar interests in the property.
trust and no apparent conflict of interest exists between them.

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement in writing.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

(f) The notice required under Subsection (a) must:

(1) include a statement that:
   (A) the trustee intends to disclaim an interest in property;
   (B) if the trustee makes the disclaimer, the property will not become trust property and will not be available to distribute to the beneficiary from the trust;
   (C) the beneficiary has the right to object to the disclaimer; and
   (D) the beneficiary may petition a court to approve, modify, or deny the disclaimer;
(2) describe the interest in property the trustee intends to disclaim;
(3) specify the earliest date the trustee intends to make the disclaimer;
(4) include the name and mailing address of the trustee;
(5) be given not later than the 30th day before the date the disclaimer is made; and
(6) be sent by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the notice's receipt.

(g) A beneficiary is not considered to have accepted the disclaimed interest solely because the beneficiary acts or does not act on receipt of a notice provided under this section.

(h) If the trustee makes the disclaimer for which notice is provided under this section, the beneficiary does not lose the beneficiary’s right, if any, to sue the trustee for breach of the trustee’s fiduciary obligations in connection with making the disclaimer. Section 240.008(g) applies to remedies sought in connection with the alleged breach.

(b) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(c) A disclaimer is irrevocable on the later of the date the disclaimer:

(1) is delivered or filed under Subchapter C; or
(2) takes effect as provided in Sections 240.051-240.056.

d) A disclaimer made under this chapter is not a transfer, assignment, or release.

e) A disclaimer of an interest in property made by an individual must contain a statement under penalty of perjury regarding whether the disclaimant is a child support obligor whose disclaimer is barred under Section 240.151(g). An individual’s failure to include the statement does not invalidate a disclaimer if the disclaimer is not barred under Section 240.151(g).


Subchapter B. Type and Effect of Disclaimer

§ 240.0501. Definition

In this subchapter, “future interest” means an interest that:

(1) takes effect in possession or enjoyment, if at all, later than the time at which the instrument creating the interest becomes irrevocable; and
(2) passes to the holder of the interest at the time of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.051. Disclaimer of Interest in Property

(a) This section and Sections 240.0511 and 240.0512 apply to a disclaimer of an interest in property other than a disclaimer subject to Section 240.052 or 240.053.

(b) If an interest in property passes because of the death of a decedent:

(1) a disclaimer of the interest:
   (A) takes effect as of the time of the decedent’s death; and
   (B) relates back for all purposes to the time of the decedent’s death; and
(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(c) If an interest in property passes because of an event not related to the death of a decedent:

(1) a disclaimer of the interest:
   (A) takes effect:
      (i) as of the time the instrument creating the interest became irrevocable; or
      (ii) in the case of an irrevocable transfer made without an instrument, at the time of the irrevocable transfer; and

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.0509. Power to Disclaim; General Requirements; When Irrevocable

(a) To be effective, a disclaimer must:

(1) be in writing;
(2) declare the disclaimer;
(3) describe the interest or power disclaimed;
(4) be signed by the person making the disclaimer; and
(5) be delivered or filed in the manner provided by Subchapter C.

(b) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(c) A disclaimer is irrevocable on the later of the date the disclaimer:

(1) is delivered or filed under Subchapter C; or
(2) takes effect as provided in Sections 240.051-240.056.

(d) If a disclaimer is made under this chapter, it is not a transfer, assignment, or release.

(e) A disclaimer of an interest in property made by an individual must contain a statement under penalty of perjury regarding whether the disclaimant is a child support obligor whose disclaimer is barred under Section 240.151(g). An individual’s failure to include the statement does not invalidate a disclaimer if the disclaimer is not barred under Section 240.151(g).

(B) relates back for all purposes to the time the instrument became irrevocable or the time of the irrevocable transfer, as applicable; and
(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.
(d) A disclaimed interest passes according to any provision in the instrument creating the interest that provides for:
(1) the disposition of the interest if the interest were to be disclaimed; or
(2) the disposition of disclaimed interests in general.
(c) If the instrument creating the disclaimed interest does not contain a provision described by Subsection (d) and:
(1) if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist; or
(2) if the disclaimant is an individual:
(A) except as provided by Section 240.0511, if the interest is passing because of the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (b); or
(B) except as provided by Section 240.0512, if the interest is passing because of an event not related to the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (c).
(f) A disclaimed interest that passes by intestacy passes as if the disclaimant died immediately before the decedent.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.0511. Disposition of Interest Passing Because of Decedent’s Death and Disclaimed by Individual

(a) Subject to Subsection (b):
(1) if by law or under the instrument creating the disclaimed interest the descendants of a disclaimant of an interest passing because of the death of a decedent would share in the disclaimed interest by any method of representation under Section 240.051(e)(2)(A), the disclaimed interest passes only to the descendants of the disclaimant who survive the decedent; or
(2) if the disclaimed interest would have passed to the disclaimant’s estate under Section 240.051(e)(2)(A), the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the decedent.
(b) If no descendant of the disclaimant survives the decedent, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor’s intestate estate under the intestate succession law of the transferor’s domicile had the transferor died immediately before the decedent, except that if the transferor’s surviving spouse is living but remarried before the decedent’s death, the transferor is considered to have died unmarried immediately before the decedent’s death.
(c) On the disclaimant of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died immediately before the decedent, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.0512. Disposition of Interest Passing Because of Event Other Than Decedent’s Death and Disclaimed by Individual

(a) Subject to Subsection (b):
(1) if by law or under the instrument creating the disclaimed interest the descendants of a disclaimant of an interest passing because of an event not related to the death of a decedent would share in the disclaimed interest by any method of representation under Section 240.051(e)(2)(B), the disclaimed interest passes only to the descendants of the disclaimant living at the time of the event that causes the interest to pass; or
(2) if the disclaimed interest would have passed to the disclaimant’s estate under Section 240.051(e)(2)(B), the disclaimed interest instead passes by representation to the descendants of the disclaimant living at the time of the event that causes the interest to pass.
(b) If no descendant of the disclaimant is living at the time of the event described by Subsection (a)(1), the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor’s intestate estate under the intestate succession law of the transferor’s domicile had the transferor died immediately before the event described by Subsection (a)(1), except that if the transferor’s surviving spouse is living but remarried before the event, the transferor is considered to have died unmarried immediately before the event.
(c) On the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died immediately before the time the disclaimer takes effect under Section 240.051(c)(1)(A), but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.052. Disclaimer of Rights in Survivorship Property

(a) On the death of a holder of survivorship property, a surviving holder may disclaim, in whole or in part, an interest in the property of the deceased holder that would have otherwise passed to the surviving holder by reason of the deceased holder’s death.
(b) If an interest in survivorship property is disclaimed by a surviving holder of the property:
(1) the disclaimer:
(A) takes effect as of the time of the deceased holder’s death; and
(B) relates back for all purposes to the time of the deceased holder’s death; and
(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.
(c) An interest in survivorship property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.053. Disclaimer of Interest by Trustee
(a) If a trustee disclaims an interest in property that otherwise would have become trust property:
(1) the interest does not become trust property;
(2) the disclaimer:
(A) takes effect as of the time the trust became irrevocable; and
(B) relates back for all purposes to the time the trust became irrevocable; and
(3) the disclaimed interest is not subject to the claims of any creditor of the trustee, the trust, or any trust beneficiary.
(b) If the instrument creating the disclaimed interest contains a provision that provides for the disposition of the interest if the interest were to be disclaimed, the disclaimed interest passes according to that provision.
(c) If the instrument creating the disclaimed interest does not contain a provision described by Subsection (b), the disclaimed interest passes as if:
(1) all of the current beneficiaries, presumptive remainder beneficiaries, and contingent beneficiaries of the trust affected by the disclaimor who are individuals died before the trust became irrevocable; and
(2) all beneficiaries of the trust affected by the disclaimor who are not individuals ceased to exist without successor organizations and without substitution of beneficiaries under the cy pres doctrine before the trust became irrevocable.
(d) Subsection (c) applies only for purposes of determining the disposition of an interest in property disclaimed by a trustee that otherwise would have become trust property and applies only with respect to the trust affected by the disclaimer. Subsection (c) does not apply with respect to other trusts governed by the instrument and does not apply for other purposes under the instrument or under the laws of intestacy.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.054. Disclaimer of Power of Appointment or Other Power Not Held in Fiduciary Capacity
(a) If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, this section applies.
(b) If the holder:
(1) has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable; or
(2) has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.
(c) The instrument creating the power is construed as if the power had expired when the disclaimer became effective.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.055. Disclaimer by Appointee of, or Object or Taker in Default of Exercise of, Power of Appointment
(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.
(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.056. Disclaimer of Power Held in Fiduciary Capacity
(a) If a person designated to serve or serving as a fiduciary disclaims a power held or to be held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.
(b) If a person designated to serve or serving as a fiduciary disclaims a power held or to be held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.
(c) A disclaimer subject to this section is effective as to another person designated to serve or serving as a fiduciary if:
(1) the disclaimer provides that it is effective as to another person designated to serve or serving as a fiduciary; and
(2) the person disclaiming has the authority to bind the estate, trust, or other person for whom the person is acting.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.057. Tax Qualified Disclaimer
(a) In this section, “Internal Revenue Code” has the meaning assigned by Section 111.004.
(b) Notwithstanding any other provision of this chapter, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under the Internal Revenue Code as never having been transferred to the disclaimor, the disclaimer or transfer is effective as a disclaimer under this chapter.
Texas Property Code

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.058. Partial Disclaimer by Spouse

A disclaimer by a decedent’s surviving spouse of an interest in property transferred as the result of the death of the decedent is not a disclaimer by the surviving spouse of any other transfer from the decedent to or for the benefit of the surviving spouse, regardless of whether the interest that would have passed under the disclaimed transfer passes because of the disclaimer or for the benefit of the surviving spouse by the other transfer.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

Subchapter C. Delivery or Filing

§ 240.101. Delivery or Filing Generally

(a) Subject to applicable requirements of this subchapter, a disclaimant may deliver a disclaimer by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the disclaimer’s receipt.

(b) If a disclaimer is mailed to the intended recipient by certified mail, return receipt requested, at an address the disclaimant in good faith believes is likely to result in the disclaimer’s receipt, delivery is considered to have occurred on the date of mailing regardless of receipt.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.102. Disclaimer of Interest Created Under Intestate Succession or Will

In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent’s estate; or

(2) if no personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent’s death; or

(B) owned real property.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.103. Disclaimer of Interest in Testamentary Trust

In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, a disclaimer must be delivered to the personal representative of the decedent’s estate; or

(3) if no trustee or personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent’s death; or

(B) owned real property.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.104. Disclaimer of Interest in Inter Vivos Trust

In the case of an interest in an inter vivos trust:

(1) a disclaimer must be delivered to the trustee then serving, or, if no trustee is then serving, a disclaimer must be filed:

(A) with a court having jurisdiction to enforce the trust; or

(B) in the official public records of the county in which:

(i) the situs of administration of the trust is maintained; or

(ii) the settlor is domiciled or was domiciled on the date of the settlor’s death; and

(2) if a disclaimer is made before the time the instrument creating the trust becomes irrevocable, a disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.105. Disclaimer of Interest Created by Beneficiary Designation

(a) In this section, “beneficiary designation” means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

(b) In the case of an interest created by a beneficiary designation that is disclaimed before the designation becomes irrevocable, the disclainer must be delivered to the person making the beneficiary designation.

(c) In the case of an interest created by a beneficiary designation that is disclaimed after the designation becomes irrevocable:

(1) a disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) a disclaimer of an interest in real property must be recorded in the official public records of the county where the real property that is the subject of the disclaimer is located.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1, 2015.

§ 240.106. Disclaimer by Surviving Holder of Survivorship Property

In the case of a disclaimer by a surviving holder of
survivorship property, the disclaimer must be delivered to
the person to whom the disclaimed interest passes.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1,
2015.

§ 240.107. Disclaimer by Object or Taker in Default of Exercise of Power of Appointment
In the case of a disclaimer by an object or taker in
default of an exercise of a power of appointment at any
time after the power was created:
(1) the disclaimer must be delivered to the holder
of the power or to the fiduciary acting under the
instrument that created the power; or
(2) if no fiduciary is then serving, the disclaimer
must be filed:
(A) with a court having authority to appoint
the fiduciary; or
(B) in the official public records of the county
in which the creator of the power is domiciled or
was domiciled on the date of the creator’s death.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1,
2015.

§ 240.108. Disclaimer by Certain Appointees
In the case of a disclaimer by an appointee of a
nonfiduciary power of appointment:
(1) the disclaimer must be delivered to the holder,
the personal representative of the holder’s estate, or
the fiduciary under the instrument that created the
power; or
(2) if no fiduciary is then serving, the disclaimer
must be filed:
(A) with a court having authority to appoint
the fiduciary; or
(B) in the official public records of the county
in which the creator of the power is domiciled or
was domiciled on the date of the creator’s death.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1,
2015.

§ 240.109. Disclaimer by Certain Fiduciaries
In the case of a disclaimer by a fiduciary of a power
over a trust or estate, the disclaimer must be delivered as
provided by Section 240.102, 240.103, or 240.104 as if
the power disclaimed were an interest in property.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1,
2015.

§ 240.110. Disclaimer of Power by Agent
In the case of a disclaimer of a power by an agent, the
disclaimer must be delivered to the principal or the
principal’s representative.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1,
2015.

§ 240.111. Recording of Disclaimer
If an instrument transferring an interest in or power
over property subject to a disclaimer is required or
authorized by law to be filed, recorded, or registered, the
disclaimer may be filed, recorded, or registered as that
instrument. Except as otherwise provided by Section
240.105(c)(2), failure to file, record, or register the
disclaimer does not affect the disclaimer’s validity
between the disclaimant and persons to whom the
property interest or power passes by reason of the
disclaimer.

Added by Acts 2015, 84th Leg., ch. 562, § 15, eff. Sept. 1,
2015.

Subchapter D. Disclaimer Barred or Limited

§ 240.151. When Disclaimer Barred or Limited
(a) A disclaimer is barred by a written waiver of the
right to disclaim.
(b) A disclaimer of an interest in property is barred if
any of the following events occur before the disclaimer
becomes effective:
(1) the disclaimant accepts the interest sought to
be disclaimed by:
(A) taking possession of the interest; or
(B) exercising dominion and control over the
interest;
(2) the disclaimant voluntarily assigns, conveys,
encumbers, pledges, or transfers the interest sought to
be disclaimed or contracts to do so; or
(3) the interest sought to be disclaimed is sold
under a judicial sale.
(c) The acceptance of an interest in property by a
person in the person’s fiduciary capacity is not an
acceptance of the interest in the person’s individual
capacity and does not bar the person from disclaiming the
interest in the person’s individual capacity.
(d) A disclaimer, in whole or in part, of the future
exercise of a power held in a fiduciary capacity is not
barred by the previous exercise of the power.
(e) A disclaimer, in whole or in part, of the future
exercise of a power not held in a fiduciary capacity is not
barred by the previous exercise of the power unless the
power is exercisable in favor of the disclaimant.
(f) A disclaimer of:
(1) a power over property that is barred by this
section is ineffective; and
(2) an interest in property that is barred by this
section takes effect as a transfer of the interest
disclaimed to the persons who would have taken the
interest under Subchapter B had the disclaimer not
been barred.
(g) A disclaimer by a child support obligor is barred
as to disclaimed property that could be applied to satisfy
the disclaimant’s child support obligations if those
obligations have been:
(1) administratively determined as evidenced by a
certified child support payment record produced by
the Title IV-D agency [as defined by Section 101.023,
Family Code] in a Title IV-D case [as defined by
Section 101.024, Family Code]; or
(2) confirmed and reduced to judgment as
provided by Section 157.263, Family Code.
(h) If Subsection (g) applies, the child support obligee to whom child support arrearages are owed or the Title IV-D agency may enforce the child support obligation against the disclaimant as to disclaimed property by a lien or by any other remedy provided by law.

(i) In this section:

(1) “Title IV-D agency” has the meaning assigned by Section 101.033, Family Code.

(2) “Title IV-D case” has the meaning assigned by Section 101.034, Family Code.

# TABLE OF CASES

<table>
<thead>
<tr>
<th>Case</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.G. Edwards &amp; Sons, Inc. v. Beyer</td>
<td>79</td>
</tr>
<tr>
<td>Ahlgren v. Ahlgren</td>
<td>508</td>
</tr>
<tr>
<td>Allebach v. Gollub</td>
<td>96</td>
</tr>
<tr>
<td>Archer v. Anderson</td>
<td>59</td>
</tr>
<tr>
<td>Badouh v. Hale</td>
<td>599</td>
</tr>
<tr>
<td>Boren v. Boren</td>
<td>133</td>
</tr>
<tr>
<td>Bunting v. Pearson</td>
<td>252</td>
</tr>
<tr>
<td>Chambers v. Chambers</td>
<td>152</td>
</tr>
<tr>
<td>Courseview, Inc. v. Phillips Petroleum Co.</td>
<td>545</td>
</tr>
<tr>
<td>Crowson v. Wakeham</td>
<td>44</td>
</tr>
<tr>
<td>Currie v. Scott</td>
<td>148</td>
</tr>
<tr>
<td>Dampier v. Williams</td>
<td>114</td>
</tr>
<tr>
<td>Davis v. Davis</td>
<td>132</td>
</tr>
<tr>
<td>Ditta v. Conte</td>
<td>541</td>
</tr>
<tr>
<td>Dryden v. Dryden</td>
<td>493</td>
</tr>
<tr>
<td>Drye v. United States</td>
<td>599</td>
</tr>
<tr>
<td>Estate of Flarity</td>
<td>134</td>
</tr>
<tr>
<td>Estate of Gilbert</td>
<td>141</td>
</tr>
<tr>
<td>Estate of Lovell</td>
<td>69</td>
</tr>
<tr>
<td>Estate of Ross</td>
<td>161</td>
</tr>
<tr>
<td>Estate of Trickett</td>
<td>121</td>
</tr>
<tr>
<td>Estate of Wolfe</td>
<td>200</td>
</tr>
<tr>
<td>Farrington v. First Nat’I Bank of Belleville</td>
<td>65</td>
</tr>
<tr>
<td>Ferreira v. Butler</td>
<td>152</td>
</tr>
<tr>
<td>Fowler v. Stagner</td>
<td>132</td>
</tr>
<tr>
<td>Garton v. Rockett</td>
<td>156</td>
</tr>
<tr>
<td>Glover v. Davis</td>
<td>89</td>
</tr>
<tr>
<td>Heien v. Crabtree</td>
<td>39, 114</td>
</tr>
<tr>
<td>Hollenbeck v. Hanna</td>
<td>543</td>
</tr>
<tr>
<td>Holmes v. Beatty</td>
<td>69, 79</td>
</tr>
<tr>
<td>Holmes v. Ross</td>
<td>161</td>
</tr>
<tr>
<td>In re Estate of Catlin</td>
<td>139, 156</td>
</tr>
<tr>
<td>In re Estate of Forister</td>
<td>114</td>
</tr>
<tr>
<td>In re Estate of Iversen</td>
<td>131</td>
</tr>
<tr>
<td>In re Estate of Jones</td>
<td>156</td>
</tr>
<tr>
<td>In re Estate of Perez</td>
<td>152, 156</td>
</tr>
<tr>
<td>In re Estate of Pruitt</td>
<td>133</td>
</tr>
<tr>
<td>In re Estate of Rhea</td>
<td>198, 200</td>
</tr>
<tr>
<td>In re Estate of Teinert</td>
<td>259</td>
</tr>
<tr>
<td>In re Estate of Walker</td>
<td>186</td>
</tr>
<tr>
<td>In re Tovar</td>
<td>166</td>
</tr>
<tr>
<td>In re Willa Peters Hubberd Testamentary Trust</td>
<td>517</td>
</tr>
<tr>
<td>Interfirst Bank Dallas, N.A. v. Risser</td>
<td>544</td>
</tr>
<tr>
<td>Irving Trust Co. v. Day</td>
<td>131</td>
</tr>
<tr>
<td>James v. Haupt</td>
<td>132</td>
</tr>
<tr>
<td>Jennings v. Srp</td>
<td>61</td>
</tr>
<tr>
<td>Jones v. Krown</td>
<td>141</td>
</tr>
<tr>
<td>Kamoos v. Woodward</td>
<td>152</td>
</tr>
<tr>
<td>Kankonde v. Mankan</td>
<td>44</td>
</tr>
<tr>
<td>Kotz v. Kotz</td>
<td>61</td>
</tr>
<tr>
<td>Case Name</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Lacis v. Lacis</td>
<td>146</td>
</tr>
<tr>
<td>Lalli v. Lalli</td>
<td>113</td>
</tr>
<tr>
<td>Lawson v. Dawson’s Estate</td>
<td>132</td>
</tr>
<tr>
<td>Leatherwood v. Stephens</td>
<td>139</td>
</tr>
<tr>
<td>Little v. Smith</td>
<td>114</td>
</tr>
<tr>
<td>Logan v. Thomason</td>
<td>60</td>
</tr>
<tr>
<td>Matter of Troy S. Poe Trust</td>
<td>517</td>
</tr>
<tr>
<td>Maul v. Williams</td>
<td>133</td>
</tr>
<tr>
<td>Mayfield v. Peek</td>
<td>555</td>
</tr>
<tr>
<td>McCuen v. Huey</td>
<td>599</td>
</tr>
<tr>
<td>McKeehan v. McKeehan</td>
<td>67</td>
</tr>
<tr>
<td>McLendon v. McLendon</td>
<td>190</td>
</tr>
<tr>
<td>Mingo v. Mingo</td>
<td>156</td>
</tr>
<tr>
<td>Moos v. First State Bank</td>
<td>132</td>
</tr>
<tr>
<td>Nat’l Cas. Co. v. Doucette</td>
<td>599</td>
</tr>
<tr>
<td>Nichols v. Rowan</td>
<td>132</td>
</tr>
<tr>
<td>Odom v. Coleman</td>
<td>110</td>
</tr>
<tr>
<td>Parson v. Wolfe</td>
<td>98</td>
</tr>
<tr>
<td>Peterson v. Mayse</td>
<td>116</td>
</tr>
<tr>
<td>Pritchett v. Henry</td>
<td>554</td>
</tr>
<tr>
<td>Rachal v. Reitz</td>
<td>516</td>
</tr>
<tr>
<td>Roberts v. Squyres</td>
<td>149</td>
</tr>
<tr>
<td>San Antonio Area Foundation v. Lang</td>
<td>195</td>
</tr>
<tr>
<td>Stanley v. Henderson</td>
<td>109</td>
</tr>
<tr>
<td>State v. Estate of Loomis</td>
<td>131</td>
</tr>
<tr>
<td>Stephen v. Coleman</td>
<td>548, 589</td>
</tr>
<tr>
<td>Texas Commerce Bank, N.A. v. Grizzle</td>
<td>512</td>
</tr>
<tr>
<td>Trimble v. Gordon</td>
<td>112</td>
</tr>
<tr>
<td>United States v. Dallas Nat’l Bank</td>
<td>62</td>
</tr>
<tr>
<td>Valdez v. Hollenbeck</td>
<td>63, 599</td>
</tr>
<tr>
<td>Welder v. Hitchcock</td>
<td>511</td>
</tr>
<tr>
<td>Westerfeld v. Huckaby</td>
<td>189</td>
</tr>
<tr>
<td>Wheatley v. Farley</td>
<td>60</td>
</tr>
<tr>
<td>Wojcik v. Wesolick</td>
<td></td>
</tr>
</tbody>
</table>