

BILL ANALYSIS

Senate Research Center
80R9369 KLA-F

H.B. 391
By: Hartnett (Wentworth)
Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law regarding the treatment of the estate of a decedent need to be updated to better address the needs of those engaged in proceedings involving such an estate.

H.B. 391 authorizes a court to declare that a decedent's marriage is void if the decedent did not have the requisite mental capacity at the time of marriage and did not recover said capacity. This bill provides that a former spouse in a will, and each related relative who is not a relative of the testator, is to be treated as persons who failed to survive the testator. This bill deletes existing references to oral or nuncupative wills, provides for a citation to be sent to all persons interested in an estate regarding an application to sell an interest in land, and provides for a hearing for timely opposition to such an application.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. DEFINITIONS AND USE OF TERMS

SECTION 1.01. Amends Section 3(r), Texas Probate Code, to redefine "interested persons" and "persons interested."

SECTION 1.02. Makes application of the changes in law made by this article prospective.

ARTICLE 2. VENUE FOR DECEDENTS' ESTATES AND DETERMINATION OF HEIRSHIPS

SECTION 2.01. Amends Sections 8(a), (b), (c), and (e), Texas Probate Code, as follows:

(a) Concurrent Venue. Requires the court in which the application for a proceeding in probate or determination of heirship is first filed, rather than probate proceedings thereon, to have and retain jurisdiction of the estate or heirship proceeding, as appropriate, to the exclusion of the other court or courts when two or more courts have concurrent venue of an estate or a proceeding to declare heirship under Section 48(a). Requires the proceeding, rather than proceedings, to be deemed commenced by the filing of an application averring facts sufficient to confer venue, and requires the first legally commenced proceeding to extend to all of the property of the decedent or the decedent's estate. Requires a bona fide purchaser of real property under certain circumstances to be protected in such purchase unless the decree determining heirship in the prior proceeding is recorded in a certain manner.

(b) Proceedings in More Than One County. Requires a proceeding in probate or to declare heirship under Section 48(a), commenced in more than one county to be stayed except in the county where the proceeding was first commenced until final determination of venue in the county where first commenced. Makes conforming changes.

(c) Transfer of Proceeding.

(1) Transfer for Want of Venue. Requires the probate of the will and determination of heirship to be completed in the same manner as if the proceeding had originally been instituted in the court from which the proceeding was transferred under certain circumstances.

(2) Transfer for Convenience of the Estate. Authorizes the court, if it appears to the court before the estate is closed, or when the proceeding in probate or to declare heirship is concluded if there is no administration of the estate, that it would be in the best interest of the estate or, if there is no administration of the estate, that it would be in the best interest of the heirs or beneficiaries of the decedent's will, to order the proceeding to be transferred to the proper court in any other county in this state.

(e) Jurisdiction to Determine Venue. Requires any court in which an application for a proceeding in probate or determination of heirship has been filed to have full jurisdiction to determine the venue of the proceeding in probate or heirship proceeding.

SECTION 2.02. Amends Section 48(a), Texas Probate Code, to authorize the court of a county in which venue would be proper for commencement of an administration of the decedent's estate under Section 6 (Venue for Probate of Wills and Administration of Estates of Decedents), Texas Probate Code, rather than the county in which any of the real property belonging to the estate is situated, or the county in which any personal property belonging to such estate is found, to determine and declare in the manner provided who are the heirs and only heirs of such a decedent and their respective shares and interest.

SECTION 2.03. Makes application of this article prospective.

ARTICLE 3. DISCLAIMERS

SECTION 3.01. Amends Section 37A, Texas Probate Code, as follows:

Sec. 37A. MEANS OF EVIDENCING DISCLAIMER OR RENUNCIATION OF PROPERTY OR INTEREST RECEIVABLE FROM A DECEDENT. (a) Persons Who May Disclaim. Creates subsection from existing text. Includes an attorney in fact or agent appointed under a durable power of attorney authorizing disclaimers that is executed by a principal as a person who may be entitled to receive any property as a beneficiary and who intends to effect disclaimer irrevocably on or after September 1, 1977, as a person required to evidence same as herein provided.

(b) Effective Date of Disclaimer. Creates subsection from existing text. Requires a disclaimer evidenced as provided by this section, rather than herein, to be effective as of the death of the decedent.

(c) Effect of Disclaimer. Creates subsection from existing text.

(d) Ineffective Disclaimer. Creates subsection from existing text. Makes a conforming change.

(e) Definitions. Creates subsection from existing text.

(f) Subsequent Disclaimers. Creates subsection from existing text.

(g) New heading: Form of Disclaimer. Redesignates text from existing Subsection (a). Deletes existing text requiring subsequent subsections to apply to disclosures specified in this section.

(h) Filing of Disclaimer. Redesignates text from existing Subsection (a). Requires a written memorandum of disclaimer disclaiming a present or future interest to be filed not later than the first anniversary of the date the beneficiary receives the notice required by Section 128A (Notice to Certain Entities After Probate), Texas Probate Code, rather than nine months after said receipt, or the

expiration of the six-month period following the date the personal representative files the inventory, appraisal, and list of claims due or owing to the estate, whichever occurs later, if the beneficiary is a charitable organization or governmental agency of the state.

(i) Notice of Disclaimer. Redesignates text from existing Subsection (b). Makes conforming changes.

(j) Power to Provide for Disclaimer. Redesignates text from existing Subsection (c). Makes no changes to this subsection.

(k) Irrevocability of Disclaimer. Redesignates text from existing Subsection (d). Makes no changes to this subsection.

(l) Partial Disclaimer. Redesignates text from existing Subsection (e). Makes no changes to this subsection.

(m) Partial Disclaimer by Spouse. Redesignates text from existing Subsection (f). Makes a conforming change.

(n) Disclaimer After Acceptance. Redesignates text from existing Subsection (g). Deletes existing text referencing this section and adds text referencing this subsection.

(o) Interest in Trust Property. Redesignates text from existing Subsection (h). Makes no changes to this subsection.

SECTION 3.02. Amends Section 37B(b), Texas Probate Code, to make conforming changes.

ARTICLE 4. DISSOLUTION OF MARRIAGE; EFFECT ON DECEDENTS' ESTATES

SECTION 4.01. Amends Chapter II, Texas Probate Code, by adding Section 47A, as follows:

Sec. 47A. MARRIAGE VOIDABLE BASED ON MENTAL INCAPACITY. (a) Authorizes the court to make a determination and declare a marriage void after the decedent's death, if a proceeding under Chapter 6 (Suit for Dissolution of Marriage), Family Code, to void a marriage 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 under Chapter 6, Family Code, to void a ward's marriage or proposed marriage based on the lack of mental capacity on the ward or proposed ward is pending on the date of death of the ward or proposed ward. Requires the court in making such a determination to apply the standards for an annulment prescribed by 6.108(a) (regarding procedure for annulment of marriage due to mental incapacity), Family Code.

(b) Authorizes an interested person, if a proceeding under Subsection (a) is not pending on the date of a decedent's death, subject to Subsection (c), to file an application with the court requesting that the court void the marriage of a decedent if the decedent was married and that marriage was for less than three years before the date of the decedent's death. Provides that the notice applicable to a proceeding for a declaratory judgment under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, applies to a proceeding under this subsection.

(c) Prohibits the filing of an application requesting the court to void a decedent's marriage authorized by Subsection (b) of this section after the first anniversary of the date of the decedent's death.

(d) Requires the court, in a proceeding brought under Subsection (b) of this section and except as provided by Subsection (e) of this section, to declare the decedent's marriage void if the court finds that the decedent did not have the

mental capacity to consent to the marriage and to understand the nature of the marriage ceremony, if such occurred, on the date the marriage occurred.

(e) Prohibits a court that makes a finding described by Subsection (d) for a proceeding brought under Subsection (b) of this section from declaring the decedent's marriage void if the court finds that the decedent gained the mental capacity to recognize and did recognize the marriage relationship after the date the marriage occurred.

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

SECTION 4.02. Amends Section 69, Texas Probate Code, as follows:

Sec. 69. New heading: WILL PROVISIONS MADE BEFORE DISSOLUTION OF MARRIAGE. (a) Defines "relative."

(b) Created from existing text. Requires all provisions in the will of a testator whose marriage is dissolved in certain ways, including all fiduciary appointments, to be read as if the former spouse and each relative of the former spouse who is not a relative of the testator failed to survive the testator, unless the will expressly provides otherwise. Deletes existing text requiring all provisions in the will of a testator, who is divorced or whose marriage is annulled, in favor of the testator's former spouse, or appointing such spouse to any fiduciary capacity under the will or with respect to the estate or person of the testator's children, to be read as if the former spouse failed to survive the testator and is required to be null and void and of no effect, unless the will expressly provides otherwise.

(c) Redesignated from existing Subsection (b). Provides that a person whose marriage to the decedent has been dissolved in certain ways, rather than a person who is divorced from the decedent or whose marriage to the decedent has been annulled, is not a surviving spouse unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death and the subsequent marriage is not declared void under Section 47A, Texas Probate Code.

SECTION 4.03. Amends Section 6.111, Family Code, to prohibit a marriage subject to annulment from being challenged in a proceeding instituted after the death of either party to the marriage, except as provided by Section 47A, Texas Probate Code.

SECTION 4.04. (a) Provides that the changes in law made by this article apply only to the estate of a decedent who dies before the effective date of this article, if the probate or administration of the estate is pending on or commenced on or after the effective date of this article, and the estate of a decedent who dies on or after the effective date of this article, except as provided by Subsection (b).

(b) Makes application of Section 69, Texas Probate Code, prospective to the effective date of the article.

ARTICLE 5. NUNCUPATIVE, OR ORAL, WILLS

SECTION 5.01. Amends Section 82, Texas Probate Code, to delete existing text referring to a will as being either written or oral.

SECTION 5.02. Amends Section 91, Texas Probate Code, to delete existing text referring to an oral will.

SECTION 5.03. Amends Section 128(b), Texas Probate Code, to delete existing text referring to a nuncupative will.

SECTION 5.04. Amends Section 128A(a), Texas Probate Code, to make a conforming change.

SECTION 5.05. Repealer: Sections 64 (Capacity to Make a Nuncupative Will); 65 (Requisites of a Nuncupative Will); 81(c) (regarding required statements in a nuncupative will); 86 (Proof of Nuncupative Will); and 89A(c) (regarding an application for probate of a nuncupative will as muniment of title), Texas Probate Code.

SECTION 5.06. Makes application of this article prospective.

ARTICLE 6. WRITTEN WILLS NOT PRODUCED

SECTION 6.01. Amends Section 85, Texas Probate Code, to require the contents of a will that cannot by any reasonable diligence be produced in court, and is proven as such to the satisfaction of the court, to be substantially proved by the testimony of a credible witness who has read the will, has heard the will, or can identify a copy of the will, rather than a credible witness who has read or heard the will in question.

SECTION 6.02. Provides that the changes in law made by this article apply only to the estate of a decedent who dies before the effective date of this article, if the probate or administration of the estate is pending on or commenced on or after the effective date of this article and the estate of a decedent who dies on or after the effective date of this article.

ARTICLE 7. GRANTING OF ADMINISTRATION OF DECEDENTS' ESTATES

SECTION 7.01. Amends Section 83(c), Texas Probate Code, to require administration with the will annexed of the estate of a testator, discovered after letters of administration have been granted, to be granted as in other cases if the executor of the will fails, rather than neglects or otherwise fails, to qualify within 20 days after the date of the probate of the will, or who fails, rather than neglects, for a period of 30 days after the discovery of such will to present it for probate.

SECTION 7.02. Amends Section 178(b), Texas Probate Code, as follows:

(b) Letters of Administration. Requires the granting of the administration of the estate of a person who dies intestate, or administration with the will annexed of the estate of a will in which no testator is named, if granting appears to be necessary, if an executor named in the will fails, rather than fails or neglects, to accept and qualify within 20 days after the probate of the will or who fails, rather than neglects, for a period of 30 days after the death of the testator to present the will for probate and the court finds there was no good cause for not presenting the will for probate during that period. Provides that necessity of administration is deemed to exist if the administration is necessary to receive or recover funds or other property due to the estate. Makes a conforming change.

SECTION 7.03. Amends Section 179, Texas Probate Code, to authorize any interested person, rather than any person, to file the person's opposition to an application for letters of administration any time before the application is granted. Makes a conforming change.

SECTION 7.04. Amends Section 190(b), Texas Probate Code, to make a conforming change.

SECTION 7.05. Makes application of this article prospective.

ARTICLE 8. EMERGENCY INTERVENTION APPLICATIONS

SECTION 8.01. Amends Section 111(a), Texas Probate Code, to delete existing text requiring the social security number to be included in certain information required of an applicant for emergency intervention to obtain funds needed for a decedent's funeral and burial expenses.

SECTION 8.02. Amends Section 112, Texas Probate Code, to make a conforming change.

SECTION 8.03. Makes application of the changes in law made by this article to an emergency intervention application retrospective.

ARTICLE 9. SALES OF ESTATE PROPERTY

SECTION 9.01. Amends Section 344, Texas Probate Code, as follows:

Sec. 344. New heading: CITATION ON APPLICATION. Requires the clerk of the court to issue a citation to all persons interested in the estate upon the filing of an application for the sale of real estate, and to inform said persons of the right under Section 345 (Opposition to Application), Texas Probate Code, to file an opposition to the sale during the period described by the court, rather than requiring said persons to appear at the time set by the court and show cause why the sale should not be made.

SECTION 9.02. Amends Section 345, Texas Probate Code, to authorize a person to make application for the sale of other property of the estate or file opposition to the sale during the period provided in the citation issued under Section 344, Texas Probate Code, (citation-provided period), rather than before an order is made thereon.

SECTION 9.03. Amends Part 5, Chapter VIII, Texas Probate Code, by adding Section 345A, as follows:

Sec. 345A. HEARING ON APPLICATION AND ANY OPPOSITION. (a) Requires the clerk of a court in which an application for an order of sale is filed to immediately call to the attention of the judge any opposition to the sale that is filed during the period provided in the citation issued under Section 344 (period). Requires the court to hold a hearing on an application if an opposition to the sale is filed during said period.

(b) Provides that 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. Authorizes the court, in its discretion, to determine that a hearing is necessary on the application even if no opposition was filed during that period.

(c) Requires the court, upon ordering a hearing under Subsection (a) or (b) of this section, to designate in writing a date and time for hearing the application and any opposition, together with the evidence pertaining to both. Requires the clerk to issue a notice to the applicant and to each person who files an opposition to the sale, if applicable, of the date and time of the hearing.

(d) Authorizes the judge, by entries on the docket, to continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

SECTION 9.04. Amends Section 346, Texas Probate Code, to require the court to order the sale to be made if satisfied, rather than if satisfied upon hearing, that the sale of the property of the estate described in the application is necessary or advisable.

SECTION 9.05. Repealer: Section 343 (Setting of Hearing on Application), Texas Probate Code.

SECTION 9.06. Provides that the changes in law made by this article apply only to the estate of a decedent who dies before the effective date of this article, if the probate or administration of the estate is pending on the effective date of this article, or to the estate of a decedent who dies on or after the effective date of this article.

ARTICLE 10. EFFECTIVE DATE

SECTION 10.01. Effective date: September 1, 2007, except for Article 8. Effective date, Article 8: upon passage or September 1, 2007.