

By: Hartnett

H.B. No. 391

Substitute the following for H.B. No. 391:

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C.S.H.B. No. 391

A BILL TO BE ENTITLED

AN ACT

relating to the estates of decedents.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. DEFINITIONS AND USE OF TERMS

SECTION 1.01. Section 3(r), Texas Probate Code, is amended to read as follows:

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

SECTION 1.02. The changes in law made by this article apply to a proceeding that is pending or commenced on or after the effective date of this article.

ARTICLE 2. VENUE FOR DECEDENTS' ESTATES

AND DETERMINATION OF HEIRSHIPS

SECTION 2.01. Sections 8(a), (b), (c), and (e), Texas Probate Code, are amended to read as follows:

(a) Concurrent Venue. When two or more courts have concurrent venue of an estate or a proceeding to declare heirship under Section 48(a) of this code, the court in which the application for a proceeding in probate or determination of heirship [~~proceedings thereon~~] is first filed shall have and retain jurisdiction of the estate or heirship proceeding, as appropriate,

1 to the exclusion of the other court or courts. The proceeding
2 [~~proceedings~~] shall be deemed commenced by the filing of an
3 application averring facts sufficient to confer venue; and the
4 proceeding first legally commenced shall extend to all of the
5 property of the decendent or the decendent's estate. Provided,
6 however, that a bona fide purchaser of real property in reliance on
7 any such subsequent proceeding, without knowledge of its
8 invalidity, shall be protected in such purchase unless the decree
9 admitting the will to probate, determining heirship, or granting
10 administration in the prior proceeding shall be recorded in the
11 office of the county clerk of the county in which such property is
12 located.

13 (b) Proceedings in More Than One County. If a proceeding in
14 [~~proceedings for~~] probate or to declare heirship under Section
15 48(a) of this code is [~~are~~] commenced in more than one county, the
16 proceeding [~~they~~] shall be stayed except in the county where first
17 commenced until final determination of venue in the county where
18 first commenced. If the proper venue is finally determined to be in
19 another county, the clerk, after making and retaining a true copy of
20 the entire file in the case, shall transmit the original file to the
21 proper county, and the proceeding [~~proceedings~~] shall thereupon be
22 had in the proper county in the same manner as if the proceeding
23 [~~proceedings~~] had originally been instituted therein.

24 (c) Transfer of Proceeding.

25 (1) Transfer for Want of Venue. If it appears to the
26 court at any time before the final decree that the proceeding was
27 commenced in a court which did not have priority of venue over such

1 proceeding, the court shall, on the application of any interested
2 person, transfer the proceeding to the proper county by
3 transmitting to the proper court in such county the original file in
4 such case, together with certified copies of all entries in the
5 minutes theretofore made, and the probate of the will,
6 determination of heirship, or administration of the estate in such
7 county shall be completed in the same manner as if the proceeding
8 had originally been instituted therein; but, if the question as to
9 priority of venue is not raised before final decree in the
10 proceedings is announced, the finality of such decree shall not be
11 affected by any error in venue.

12 (2) Transfer for Convenience of the Estate. If it
13 appears to the court at any time before the estate is closed or, if
14 there is no administration of the estate, when the proceeding in
15 probate or to declare heirship is concluded that it would be in the
16 best interest of the estate or, if there is no administration of the
17 estate, that it would be in the best interest of the heirs or
18 beneficiaries of the decedent's will, the court, in its discretion,
19 may order the proceeding transferred to the proper court in any
20 other county in this State. The clerk of the court from which the
21 proceeding is transferred shall transmit to the court to which the
22 proceeding is transferred the original file in the proceeding and a
23 certified copy of the index.

24 (e) Jurisdiction to Determine Venue. Any court in which
25 there has been filed an application for a proceeding [~~proceedings~~]
26 in probate or determination of heirship shall have full
27 jurisdiction to determine the venue of the [~~such~~] proceeding in

1 probate or heirship proceeding, and of any proceeding relating
2 thereto, and its determination shall not be subject to collateral
3 attack.

4 SECTION 2.02. Section 48(a), Texas Probate Code, is amended
5 to read as follows:

6 (a) When a person dies intestate owning or entitled to real
7 or personal property in Texas, and there shall have been no
8 administration in this State upon his estate; or when there has
9 been a will probated in this State or elsewhere, or an
10 administration in this State upon the estate of such decedent, and
11 any real or personal property in this State has been omitted from
12 such will or from such administration, or no final disposition
13 thereof has been made in such administration, the court of the
14 county in which such proceedings were last pending, or in the event
15 no will of such decedent has been admitted to probate in this State,
16 and no administration has been granted in this State upon the estate
17 of such decedent, then the court of the county in which venue would
18 be proper for commencement of an administration of the decedent's
19 estate under Section 6 of this code [~~any of the real property~~
20 ~~belonging to such estate is situated, or if there is no such real~~
21 ~~estate, then of the county in which any personal property belonging~~
22 ~~to such estate is found~~], may determine and declare in the manner
23 hereinafter provided who are the heirs and only heirs of such
24 decedent, and their respective shares and interests, under the laws
25 of this State, in the estate of such decedent, and proceedings
26 therefor shall be known as proceedings to declare heirship.

27 SECTION 2.03. The changes in law made by this article apply

1 only to a proceeding commenced on or after the effective date of
2 this article. A proceeding commenced before the effective date of
3 this article is governed by the law applicable to the proceeding
4 immediately before the effective date of this article, and that law
5 is continued in effect for that purpose.

6 ARTICLE 3. DISCLAIMERS

7 SECTION 3.01. Section 37A, Texas Probate Code, is amended
8 to read as follows:

9 Sec. 37A. MEANS OF EVIDENCING DISCLAIMER OR RENUNCIATION OF
10 PROPERTY OR INTEREST RECEIVABLE FROM A DECEDENT. (a) Persons Who
11 May Disclaim. Any person, or the guardian of an incapacitated
12 person, the personal representative of a deceased person, or the
13 guardian ad litem of an unborn or unascertained person, with prior
14 court approval of the court having, or which would have,
15 jurisdiction over such guardian, personal representative, or
16 guardian ad litem, or any independent executor of a deceased
17 person, without prior court approval, or an attorney in fact or
18 agent appointed under a durable power of attorney authorizing
19 disclaimers that is executed by a principal, who may be entitled to
20 receive any property as a beneficiary and who intends to effect
21 disclaimer irrevocably on or after September 1, 1977, of the whole
22 or any part of such property shall evidence same as herein provided.

23 (b) Effective Date of Disclaimer. A disclaimer evidenced as
24 provided by this section [~~herein~~] shall be effective as of the death
25 of decedent and shall relate back for all purposes to the death of
26 the decedent and is not subject to the claims of any creditor of the
27 disclaimant.

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

9 (d) Ineffective Disclaimer. Failure to comply with the
10 provisions of this section [~~hereof~~] shall render such disclaimer
11 ineffective except as an assignment of such property to those who
12 would have received same had the person attempting the disclaimer
13 died prior to the decedent.

14 (e) Definitions. The term "property" as used in this
15 section shall include all legal and equitable interests, powers,
16 and property, whether present or future, whether vested or
17 contingent, and whether beneficial or burdensome, in whole or in
18 part. The term "disclaimer" as used in this section shall include
19 "renunciation." In this section "beneficiary" includes a person
20 who would have been entitled, if the person had not made a
21 disclaimer, to receive property as a result of the death of another
22 person by inheritance, under a will, by an agreement between
23 spouses for community property with a right of survivorship, by a
24 joint tenancy with a right of survivorship, or by any other
25 survivorship agreement, account, or interest in which the interest
26 of the decedent passes to a surviving beneficiary, by an insurance,
27 annuity, endowment, employment, deferred compensation, or other

1 contract or arrangement, or under a pension, profit sharing,
2 thrift, stock bonus, life insurance, survivor income, incentive, or
3 other plan or program providing retirement, welfare, or fringe
4 benefits with respect to an employee or a self-employed individual.

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

8 (g) Form [~~The following shall apply to such disclaimers:~~

9 [~~(a) Written Memorandum~~] of Disclaimer [~~and Filing~~
10 ~~Thereof~~]. In the case of property receivable by a beneficiary, the
11 disclaimer shall be evidenced by a written memorandum, acknowledged
12 before a notary public or other person authorized to take
13 acknowledgements of conveyances of real estate.

14 (h) Filing of Disclaimer. Unless the beneficiary is a
15 charitable organization or governmental agency of the state, a
16 written memorandum of disclaimer disclaiming a present interest
17 shall be filed not later than nine months after the death of the
18 decedent and a written memorandum of disclaimer disclaiming a
19 future interest may be filed not later than nine months after the
20 event determining that the taker of the property or interest is
21 finally ascertained and his interest is indefeasibly vested. If
22 the beneficiary is a charitable organization or a governmental
23 agency of the state, a written memorandum of disclaimer disclaiming
24 a present or future interest shall be filed not later than the first
25 anniversary of the date [~~nine months after~~] the beneficiary
26 receives the notice required by Section 128A of this code, or the
27 expiration of the six-month period following the date the personal

1 representative files the inventory, appraisement, and list of
2 claims due or owing to the estate, whichever occurs later. The
3 written memorandum of disclaimer shall be filed in the probate
4 court in which the decedent's will has been probated or in which
5 proceedings have been commenced for the administration of the
6 decedent's estate or which has before it an application for either
7 of the same; provided, however, if the administration of the
8 decedent's estate is closed, or after the expiration of one year
9 following the date of the issuance of letters testamentary in an
10 independent administration, or if there has been no will of the
11 decedent probated or filed for probate, or if no administration of
12 the decedent's estate has been commenced, or if no application for
13 administration of the decedent's estate has been filed, the written
14 memorandum of disclaimer shall be filed with the county clerk of the
15 county of the decedent's residence, or, if the decedent is not a
16 resident of this state but real property or an interest therein
17 located in this state is disclaimed, a written memorandum of
18 disclaimer shall be filed with the county clerk of the county in
19 which such real property or interest therein is located, and
20 recorded by such county clerk in the deed records of that county.

21 (i) [~~(b)~~] Notice of Disclaimer. Unless the beneficiary is a
22 charitable organization or governmental agency of the state, copies
23 of any written memorandum of disclaimer shall be delivered in
24 person to, or shall be mailed by registered or certified mail to and
25 received by, the legal representative of the transferor of the
26 interest or the holder of legal title to the property to which the
27 disclaimer relates not later than nine months after the death of the

1 decedent or, if the interest is a future interest, not later than
2 nine months after the date the person who will receive the property
3 or interest is finally ascertained and the person's interest is
4 indefeasibly vested. If the beneficiary is a charitable
5 organization or government agency of the state, the notices
6 required by this section shall be filed not later than the first
7 anniversary of the date [~~nine months after~~] the beneficiary
8 receives the notice required by Section 128A of this code, or the
9 expiration of the six-month period following the date the personal
10 representative files the inventory, appraisement, and list of
11 claims due or owing to the estate, whichever occurs later.

12 (j) [~~(e)~~] Power to Provide for Disclaimer. Nothing herein
13 shall prevent a person from providing in a will, insurance policy,
14 employee benefit agreement, or other instrument for the making of
15 disclaimers by a beneficiary of an interest receivable under that
16 instrument and for the disposition of disclaimed property in a
17 manner different from the provisions hereof.

18 (k) [~~(d)~~] Irrevocability of Disclaimer. Any disclaimer
19 filed and served under this section shall be irrevocable.

20 (l) [~~(e)~~] Partial Disclaimer. Any person who may be
21 entitled to receive any property as a beneficiary may disclaim such
22 property in whole or in part, including but not limited to specific
23 powers of invasion, powers of appointment, and fee estate in favor
24 of life estates; and a partial disclaimer or renunciation, in
25 accordance with the provisions of this section, shall be effective
26 whether the property so renounced or disclaimed constitutes a
27 portion of a single, aggregate gift or constitutes part or all of a

1 separate, independent gift; provided, however, that a partial
2 disclaimer shall be effective only with respect to property
3 expressly described or referred to by category in such disclaimer;
4 and provided further, that a partial disclaimer of property which
5 is subject to a burdensome interest created by the decedent's will
6 shall not be effective unless such property constitutes a gift
7 which is separate and distinct from undisclaimed gifts.

8 (m) [~~(f)~~] Partial Disclaimer by Spouse. Without limiting
9 Subsection (1) [~~(e)~~] of this section, a disclaimer by the
10 decedent's surviving spouse of a transfer by the decedent is not a
11 disclaimer by the surviving spouse of all or any part of any other
12 transfer from the decedent to or for the benefit of the surviving
13 spouse, regardless of whether the property or interest that would
14 have passed under the disclaimed transfer passes because of the
15 disclaimer to or for the benefit of the surviving spouse by the
16 other transfer.

17 (n) [~~(g)~~] Disclaimer After Acceptance. No disclaimer shall
18 be effective after the acceptance of the property by the
19 beneficiary. For the purpose of this subsection [~~section~~],
20 acceptance shall occur only if the person making such disclaimer
21 has previously taken possession or exercised dominion and control
22 of such property in the capacity of beneficiary.

23 (o) [~~(h)~~] Interest in Trust Property. A beneficiary who
24 accepts an interest in a trust is not considered to have a direct or
25 indirect interest in trust property that relates to a licensed or
26 permitted business and over which the beneficiary exercises no
27 control. Direct or indirect beneficial ownership of not more than

1 five percent of any class of equity securities that is registered
2 under the Securities Exchange Act of 1934 shall not be deemed to be
3 an ownership interest in the business of the issuer of such
4 securities within the meaning of any statute, pursuant thereto.

5 SECTION 3.02. Section 37B(b), Texas Probate Code, is
6 amended to read as follows:

7 (b) The assignment may, at the request of the assignor, be
8 filed as provided for the filing of a disclaimer under Section
9 37A(h) [~~37A(a)~~] of this code. The filing requires the service of
10 notice under Section 37A(i) [~~37A(b)~~] of this code.

11 ARTICLE 4. DISSOLUTION OF MARRIAGE;

12 EFFECT ON DECEDENTS' ESTATES

13 SECTION 4.01. Chapter II, Texas Probate Code, is amended by
14 adding Section 47A to read as follows:

15 Sec. 47A. MARRIAGE VOIDABLE BASED ON MENTAL INCAPACITY.

16 (a) If a proceeding under Chapter 6, Family Code, to declare a
17 marriage void based on the lack of mental capacity of one of the
18 parties to the marriage is pending on the date of death of one of
19 those parties, or if a guardianship proceeding in which a court is
20 requested under Chapter 6, Family Code, to declare a ward's or
21 proposed ward's marriage void based on the lack of mental capacity
22 of the ward or proposed ward is pending on the date of death of the
23 ward or proposed ward, the court may make the determination and
24 declare the marriage void after the decedent's death. In making
25 that determination after the decedent's death, the court shall
26 apply the standards for an annulment prescribed by Section
27 6.108(a), Family Code.

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

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

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

20 (1) consent to the marriage; and

21 (2) understand the nature of the marriage ceremony, if
22 a ceremony occurred.

23 (e) In a proceeding brought under Subsection (b) of this
24 section, a court that makes a finding described by Subsection (d) of
25 this section may not declare the decedent's marriage void if the
26 court finds that, after the date the marriage occurred, the
27 decedent:

1 (1) gained the mental capacity to recognize the
2 marriage relationship; and

3 (2) did recognize the marriage relationship.

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

9 SECTION 4.02. Section 69, Texas Probate Code, is amended to
10 read as follows:

11 Sec. 69. WILL PROVISIONS MADE BEFORE DISSOLUTION OF
12 MARRIAGE [VOIDNESS ARISING FROM DIVORCE]. (a) In this section,
13 "relative" means an individual who is related to another individual
14 by consanguinity or affinity, as determined under Sections 573.022
15 and 573.024, Government Code, respectively.

16 (b) If, after making a will, the testator's marriage is
17 dissolved, whether by divorce, annulment, or a declaration that the
18 marriage is void [testator is divorced or the testator's marriage
19 is annulled], all provisions in the will, including all fiduciary
20 appointments [in favor of the testator's former spouse, or
21 appointing such spouse to any fiduciary capacity under the will or
22 with respect to the estate or person of the testator's children],
23 shall [must] be read as if the former spouse and each relative of
24 the former spouse who is not a relative of the testator failed to
25 survive the testator, [and shall be null and void and of no effect]
26 unless the will expressly provides otherwise.

27 (c) [(b)] A person whose marriage to [who is divorced from]

1 the decedent has been dissolved, whether by divorce, annulment, or
2 a declaration that the marriage is void, [~~or whose marriage to the~~
3 ~~decedent has been annulled~~] is not a surviving spouse unless, by
4 virtue of a subsequent marriage, the person is married to the
5 decedent at the time of death and the subsequent marriage is not
6 declared void under Section 47A of this code.

7 SECTION 4.03. Section 6.111, Family Code, is amended to
8 read as follows:

9 Sec. 6.111. DEATH OF PARTY TO VOIDABLE MARRIAGE. Except as
10 provided by Section 47A, Texas Probate Code, a [A] marriage subject
11 to annulment may not be challenged in a proceeding instituted after
12 the death of either party to the marriage.

13 SECTION 4.04. (a) Except as provided by Subsection (b) of
14 this section, the changes in law made by this article apply only to:

15 (1) the estate of a decedent who dies before the
16 effective date of this article, if the probate or administration of
17 the estate is pending on or commenced on or after the effective date
18 of this article; and

19 (2) the estate of a decedent who dies on or after the
20 effective date of this article.

21 (b) The changes in law made by this article to Section 69,
22 Texas Probate Code, apply only to the estate of a decedent who dies
23 on or after the effective date of this article. The estate of a
24 decedent who dies before the effective date of this article is
25 governed by the law in effect on the date of the decedent's death,
26 and the former law is continued in effect for that purpose.

ARTICLE 5. NUNCUPATIVE, OR ORAL, WILLS

SECTION 5.01. Section 82, Texas Probate Code, is amended to read as follows:

Sec. 82. CONTENTS OF APPLICATION FOR LETTERS OF ADMINISTRATION. An application for letters of administration when no will [~~written or oral~~] is alleged to exist shall state:

(a) The name and domicile of the applicant, relationship to the decedent, if any, and that the applicant is not disqualified by law to act as administrator;

(b) The name and intestacy of the decedent, and the fact, time and place of death;

(c) Facts necessary to show venue in the court to which the application is made;

(d) Whether the decedent owned real or personal property, with a statement of its probable value;

(e) The name, age, marital status and address, if known, and the relationship, if any, of each heir to the decedent;

(f) If known by the applicant at the time of the filing of the application, whether children were born to or adopted by the decedent, with the name and the date and place of birth of each;

(g) If known by the applicant at the time of the filing of the application, whether the decedent was ever divorced, and if so, when and from whom; and

(h) That a necessity exists for administration of the estate, alleging the facts which show such necessity.

SECTION 5.02. Section 91, Texas Probate Code, is amended to read as follows:

1 Sec. 91. WHEN WILL NOT IN CUSTODY OF COURT[~~, OR ORAL~~]. If
2 for any reason a written will is not in the custody of the court, [~~or~~
3 ~~if the will is oral,~~] the court shall find the contents thereof by
4 written order, and certified copies of same as so established by the
5 court may be recorded in other counties, and may be used in
6 evidence, as in the case of certified copies of written wills in the
7 custody of the court.

8 SECTION 5.03. Section 128(b), Texas Probate Code, is
9 amended to read as follows:

10 (b) Where Application Is for Probate of a Written Will Not
11 Produced [~~or of a Nuncupative Will~~]. When the application is for the
12 probate of a [~~nuncupative will, or of a~~] written will which cannot
13 be produced in court, the clerk shall issue a citation to all
14 parties interested in such estate, which citation shall contain
15 substantially the statements made in the application for probate,
16 and the time when, place where, and the court before which such
17 application will be acted upon. If the heirs of the testator be
18 residents of this state, and their residence be known, the citation
19 shall be served upon them by personal service. Service of such
20 citation may be made by publication in the following cases:

- 21 (1) When the heirs are non-residents of this state; or
22 (2) When their names or their residences are unknown;
23 or
24 (3) When they are transient persons.

25 SECTION 5.04. Section 128A(a), Texas Probate Code, is
26 amended to read as follows:

27 (a) If the address of the entity can be ascertained with

1 reasonable diligence, an applicant under Section 81 of this code
2 shall give the state, a governmental agency of the state, or a
3 charitable organization notice that the entity is named as a
4 devisee in a written will or [~~7~~] a written will not produced [~~7~~ ~~or a~~
5 ~~nuncupative will~~] that has been admitted to probate.

6 SECTION 5.05. Sections 64, 65, 81(c), 86, and 89A(c), Texas
7 Probate Code, are repealed.

8 SECTION 5.06. The changes in law made by this article apply
9 only to a nuncupative, or oral, will made on or after the effective
10 date of this article. A nuncupative, or oral, will made before the
11 effective date of this article is governed by the law in effect on
12 the date the will was made, and the former law is continued in
13 effect for that purpose.

14 ARTICLE 6. WRITTEN WILLS NOT PRODUCED

15 SECTION 6.01. Section 85, Texas Probate Code, is amended to
16 read as follows:

17 Sec. 85. PROOF OF WRITTEN WILL NOT PRODUCED IN COURT. A
18 written will which cannot be produced in court shall be proved in
19 the same manner as provided in the preceding Section for an attested
20 written will or an holographic will, as the case may be, and the
21 same amount and character of testimony shall be required to prove
22 such will as is required to prove a written will produced in court;
23 but, in addition thereto, the cause of its non-production must be
24 proved, and such cause must be sufficient to satisfy the court that
25 it cannot by any reasonable diligence be produced, and the contents
26 of such will must be substantially proved by the testimony of a
27 credible witness who has read the will, has [~~it or~~] heard the will

1 ~~it~~ read, or can identify a copy of the will.

2 SECTION 6.02. The changes in law made by this article apply
3 only to:

4 (1) the estate of a decedent who dies before the
5 effective date of this article, if the probate or administration of
6 the estate is pending on or commenced on or after the effective date
7 of this article; and

8 (2) the estate of a decedent who dies on or after the
9 effective date of this article.

10 ARTICLE 7. GRANTING OF ADMINISTRATION OF DECEDENTS' ESTATES

11 SECTION 7.01. Section 83(c), Texas Probate Code, is amended
12 to read as follows:

13 (c) Where Letters of Administration Have Been Granted.
14 Whenever letters of administration shall have been granted upon an
15 estate, and it shall afterwards be discovered that the deceased
16 left a lawful will, such will may be proved in the manner provided
17 for the proof of wills; and, if an executor is named in such will,
18 and he is not disqualified, he shall be allowed to qualify and
19 accept as such executor, and the letters previously granted shall
20 be revoked; but, if no such executor be named in the will, or if the
21 executor named be disqualified, be dead, or shall renounce the
22 executorship, or shall ~~neglect or otherwise~~ fail or be unable to
23 accept and qualify within twenty days after the date of the probate
24 of the will, or shall fail ~~neglect~~ for a period of thirty days
25 after the discovery of such will to present it for probate, then
26 administration with the will annexed of the estate of such testator
27 shall be granted as in other cases. All acts done by the first

1 administrator, prior to the qualification of the executor or of the
2 administrator with the will annexed, shall be as valid as if no such
3 will had been discovered.

4 SECTION 7.02. Section 178(b), Texas Probate Code, is
5 amended to read as follows:

6 (b) Letters of Administration. When a person shall die
7 intestate, or where no executor is named in a will, or where the
8 executor is dead or shall fail [~~or neglect~~] to accept and qualify
9 within twenty days after the probate of the will, or shall fail
10 [~~neglect~~] for a period of thirty days after the death of the
11 testator to present the will for probate and the court finds there
12 was no good cause for not presenting the will for probate during
13 that period, then administration of the estate of such intestate,
14 or administration with the will annexed of the estate of such
15 testator, shall be granted, should administration appear to be
16 necessary. No administration of any estate shall be granted unless
17 there exists a necessity therefor, such necessity to be determined
18 by the court hearing the application. Such necessity shall be
19 deemed to exist if two or more debts exist against the estate, or if
20 or when it is desired to have the county court partition the estate
21 among the distributees, or if the administration is necessary to
22 receive or recover funds or other property due the estate, but
23 mention of these three [~~two~~] instances of necessity for
24 administration shall not prevent the court from finding other
25 instances of necessity upon proof before it.

26 SECTION 7.03. Section 179, Texas Probate Code, is amended
27 to read as follows:

1 Sec. 179. OPPOSITION TO GRANT OF LETTERS OF ADMINISTRATION.

2 When application is made for letters of administration, any
3 interested person may at any time before the application is
4 granted, file the person's [~~his~~] opposition thereto in writing, and
5 may apply for the grant of letters to the person [~~himself~~] or to any
6 other person; and, upon the trial, the court shall grant letters to
7 the person that may seem best entitled to them, having regard to
8 applicable provisions of this Code, without further notice than
9 that of the original application.

10 SECTION 7.04. Section 190(b), Texas Probate Code, is
11 amended to read as follows:

12 (b) Administrator. Before the issuance of letters of
13 administration, the person appointed administrator shall take and
14 subscribe an oath in form substantially as follows: "I do solemnly
15 swear that _____, deceased, died without leaving any lawful will
16 (or that the named executor in any such will is dead or has failed
17 [~~or neglected~~] to offer the same for probate, or to accept and
18 qualify as executor, within the time required, as the case may be),
19 so far as I know or believe, and that I will well and truly perform
20 all the duties of administrator of the estate of said deceased."

21 SECTION 7.05. The changes in law made by this article apply
22 to an application for the administration of an estate that is
23 pending on or filed on or after the effective date of this article.

24 ARTICLE 8. EMERGENCY INTERVENTION APPLICATIONS

25 SECTION 8.01. Section 111(a), Texas Probate Code, is
26 amended to read as follows:

27 (a) An application for emergency intervention to obtain

1 funds needed for a decedent's funeral and burial expenses must be
2 sworn and must contain:

3 (1) the name, address, [~~social security number,~~] and
4 interest of the applicant;

5 (2) the facts showing an immediate necessity for the
6 issuance of an emergency intervention order under this section by
7 the court;

8 (3) the date of the decedent's death, place of death,
9 decedent's residential address, and the name and address of the
10 funeral home holding the decedent's remains;

11 (4) any known or ascertainable heirs and devisees of
12 the decedent and the reason:

13 (A) the heirs and devisees cannot be contacted;
14 or

15 (B) the heirs and devisees have refused to assist
16 in the decedent's burial;

17 (5) a description of funeral and burial procedures
18 necessary and a statement from the funeral home that contains a
19 detailed and itemized description of the cost of the funeral and
20 burial procedures; and

21 (6) the name and address of an individual, entity, or
22 financial institution, including an employer, that is in possession
23 of any funds of or due to the decedent, and related account numbers
24 and balances, if known by the applicant.

25 SECTION 8.02. Section 112, Texas Probate Code, is amended
26 to read as follows:

27 Sec. 112. CONTENTS FOR EMERGENCY INTERVENTION APPLICATION

1 FOR ACCESS TO PERSONAL PROPERTY. An application for emergency
2 intervention to gain access to rental accommodations of a decedent
3 at the time of the decedent's death that contain the decedent's
4 personal property must be sworn and must contain:

5 (1) the name, address, [~~social security number,~~] and
6 interest of the applicant;

7 (2) the facts showing an immediate necessity for the
8 issuance of an emergency intervention order by the court;

9 (3) the date and place of the decedent's death, the
10 decedent's residential address, and the name and address of the
11 funeral home holding the decedent's remains;

12 (4) any known or ascertainable heirs and devisees of
13 the decedent and the reason:

14 (A) the heirs and devisees cannot be contacted;
15 or

16 (B) the heirs and devisees have refused to assist
17 in the protection of the decedent's personal property;

18 (5) the type and location of the decedent's personal
19 property and the name of the person in possession of the property;
20 and

21 (6) the name and address of the owner or manager of the
22 decedent's rental accommodations and whether access to the
23 accommodations is necessary.

24 SECTION 8.03. The changes in law made by this article apply
25 to an emergency intervention application filed before, on, or after
26 the effective date of this article.

1 ARTICLE 9. SALES OF ESTATE PROPERTY

2 SECTION 9.01. Section 344, Texas Probate Code, is amended
3 to read as follows:

4 Sec. 344. CITATION [~~AND RETURN~~] ON APPLICATION. Upon the
5 filing of such application and exhibit, the clerk shall issue a
6 citation to all persons interested in the estate, describing the
7 land or interest or part thereof sought to be sold, and informing
8 ~~[requiring]~~ them of the right under Section 345 of this code to file
9 an opposition to the sale during the period prescribed by the court
10 ~~[to appear at the time set by the court]~~ as shown in the citation
11 ~~[and show cause why the sale should not be made]~~, if they so elect.
12 Service of such citation shall be by posting.

13 SECTION 9.02. Section 345, Texas Probate Code, is amended
14 to read as follows:

15 Sec. 345. OPPOSITION TO APPLICATION. When an application
16 for an order of sale is made, any person interested in the estate
17 may, during the period provided in the citation issued under
18 Section 344 of this code ~~[before an order is made thereon]~~, file his
19 opposition to the sale, in writing, or may make application for the
20 sale of other property of the estate.

21 SECTION 9.03. Part 5, Chapter VIII, Texas Probate Code, is
22 amended by adding Section 345A to read as follows:

23 Sec. 345A. HEARING ON APPLICATION AND ANY OPPOSITION. (a)
24 The clerk of a court in which an application for an order of sale is
25 filed shall immediately call to the attention of the judge any
26 opposition to the sale that is filed during the period provided in
27 the citation issued under Section 344 of this code. The court shall

1 hold a hearing on an application if an opposition to the sale is
2 filed during the period provided in the citation.

3 (b) A hearing on an application for an order of sale is not
4 required under this section if no opposition to the application is
5 filed during the period provided in the citation. The court, in its
6 discretion, may determine that a hearing is necessary on the
7 application even if no opposition was filed during that period.

8 (c) If the court orders a hearing under Subsection (a) or
9 (b) of this section, the court shall designate in writing a date and
10 time for hearing the application and any opposition, together with
11 the evidence pertaining to the application and opposition. The
12 clerk shall issue a notice to the applicant and to each person who
13 files an opposition to the sale, if applicable, of the date and time
14 of the hearing.

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

18 SECTION 9.04. Section 346, Texas Probate Code, is amended
19 to read as follows:

20 Sec. 346. ORDER OF SALE. If satisfied [~~upon hearing~~] that
21 the sale of the property of the estate described in the application
22 is necessary or advisable, the court shall order the sale to be
23 made; otherwise, the court may deny the application and may, if it
24 deems best, order the sale of other property the sale of which would
25 be more advantageous to the estate. An order for the sale of real
26 estate shall specify:

27 (a) The property to be sold, giving such description

1 as will identify it; and

2 (b) Whether the property is to be sold at public
3 auction or at private sale, and, if at public auction, the time and
4 place of such sale; and

5 (c) The necessity or advisability of the sale and its
6 purpose; and

7 (d) Except in cases in which no general bond is
8 required, that, having examined the general bond of the
9 representative of the estate, the court finds it to be sufficient as
10 required by law, or finds the same to be insufficient and specifies
11 the necessary or increased bond, as the case may be; and

12 (e) That the sale shall be made and the report returned
13 in accordance with law; and

14 (f) The terms of the sale.

15 SECTION 9.05. Section 343, Texas Probate Code, is repealed.

16 SECTION 9.06. The changes in law made by this article apply
17 only to:

18 (1) the estate of a decedent who dies before the
19 effective date of this article, if the probate or administration of
20 the estate is pending on the effective date of this article; and

21 (2) the estate of a decedent who dies on or after the
22 effective date of this article.

23 ARTICLE 10. EFFECTIVE DATE

24 SECTION 10.01. This Act takes effect September 1, 2007,
25 except that Article 8 of this Act takes effect immediately if this
26 Act receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

C.S.H.B. No. 391

1 If this Act does not receive the vote necessary for immediate
2 effect, Article 8 takes effect September 1, 2007.