

By: Hartnett

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 Act.

ARTICLE 2. DISCLAIMERS

SECTION 2.01. Section 37A, Texas Probate Code, is amended to read as follows:

Sec. 37A. MEANS OF EVIDENCING DISCLAIMER OR RENUNCIATION OF PROPERTY OR INTEREST RECEIVABLE FROM A DECEDENT. (a) Persons Who May Disclaim. Any person, or the guardian of an incapacitated person, the personal representative of a deceased person, or the guardian ad litem of an unborn or unascertained person, with prior court approval of the court having, or which would have, jurisdiction over such guardian, personal representative, or

1 guardian ad litem, or any independent executor of a deceased
2 person, without prior court approval, or an attorney in fact or
3 agent appointed under a durable power of attorney authorizing
4 disclaimers that is executed by a principal, who may be entitled to
5 receive any property as a beneficiary and who intends to effect
6 disclaimer irrevocably on or after September 1, 1977, of the whole
7 or any part of such property shall evidence same as herein provided.

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

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

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

26 (e) Definitions. The term "property" as used in this
27 section shall include all legal and equitable interests, powers,

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

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

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

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

26 (h) Filing of Disclaimer. Unless the beneficiary is a
27 charitable organization or governmental agency of the state, a

1 written memorandum of disclaimer disclaiming a present interest
2 shall be filed not later than nine months after the death of the
3 decedent and a written memorandum of disclaimer disclaiming a
4 future interest may be filed not later than nine months after the
5 event determining that the taker of the property or interest is
6 finally ascertained and his interest is indefeasibly vested. If
7 the beneficiary is a charitable organization or a governmental
8 agency of the state, a written memorandum of disclaimer disclaiming
9 a present or future interest shall be filed not later than nine
10 months after the beneficiary receives the notice required by
11 Section 128A of this code. The written memorandum of disclaimer
12 shall be filed in the probate court in which the decedent's will has
13 been probated or in which proceedings have been commenced for the
14 administration of the decedent's estate or which has before it an
15 application for either of the same; provided, however, if the
16 administration of the decedent's estate is closed, or after the
17 expiration of one year following the date of the issuance of letters
18 testamentary in an independent administration, or if there has been
19 no will of the decedent probated or filed for probate, or if no
20 administration of the decedent's estate has been commenced, or if
21 no application for administration of the decedent's estate has been
22 filed, the written memorandum of disclaimer shall be filed with the
23 county clerk of the county of the decedent's residence, or, if the
24 decedent is not a resident of this state but real property or an
25 interest therein located in this state is disclaimed, a written
26 memorandum of disclaimer shall be filed with the county clerk of the
27 county in which such real property or interest therein is located,

1 and recorded by such county clerk in the deed records of that
2 county.

3 (i) [~~(b)~~] Notice of Disclaimer. Unless the beneficiary is a
4 charitable organization or governmental agency of the state, copies
5 of any written memorandum of disclaimer shall be delivered in
6 person to, or shall be mailed by registered or certified mail to and
7 received by, the legal representative of the transferor of the
8 interest or the holder of legal title to the property to which the
9 disclaimer relates not later than nine months after the death of the
10 decedent or, if the interest is a future interest, not later than
11 nine months after the date the person who will receive the property
12 or interest is finally ascertained and the person's interest is
13 indefeasibly vested. If the beneficiary is a charitable
14 organization or government agency of the state, the notices
15 required by this section shall be filed not later than nine months
16 after the beneficiary receives the notice required by Section 128A
17 of this code.

18 (j) [~~(c)~~] Power to Provide for Disclaimer. Nothing herein
19 shall prevent a person from providing in a will, insurance policy,
20 employee benefit agreement, or other instrument for the making of
21 disclaimers by a beneficiary of an interest receivable under that
22 instrument and for the disposition of disclaimed property in a
23 manner different from the provisions hereof.

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

26 (l) [~~(e)~~] Partial Disclaimer. Any person who may be
27 entitled to receive any property as a beneficiary may disclaim such

1 property in whole or in part, including but not limited to specific
2 powers of invasion, powers of appointment, and fee estate in favor
3 of life estates; and a partial disclaimer or renunciation, in
4 accordance with the provisions of this section, shall be effective
5 whether the property so renounced or disclaimed constitutes a
6 portion of a single, aggregate gift or constitutes part or all of a
7 separate, independent gift; provided, however, that a partial
8 disclaimer shall be effective only with respect to property
9 expressly described or referred to by category in such disclaimer;
10 and provided further, that a partial disclaimer of property which
11 is subject to a burdensome interest created by the decedent's will
12 shall not be effective unless such property constitutes a gift
13 which is separate and distinct from undisclaimed gifts.

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

23 (n) [~~(g)~~] Disclaimer After Acceptance. No disclaimer shall
24 be effective after the acceptance of the property by the
25 beneficiary. For the purpose of this subsection [~~section~~],
26 acceptance shall occur only if the person making such disclaimer
27 has previously taken possession or exercised dominion and control

1 of such property in the capacity of beneficiary.

2 (o) [~~(h)~~] Interest in Trust Property. A beneficiary who
3 accepts an interest in a trust is not considered to have a direct or
4 indirect interest in trust property that relates to a licensed or
5 permitted business and over which the beneficiary exercises no
6 control. Direct or indirect beneficial ownership of not more than
7 five percent of any class of equity securities that is registered
8 under the Securities Exchange Act of 1934 shall not be deemed to be
9 an ownership interest in the business of the issuer of such
10 securities within the meaning of any statute, pursuant thereto.

11 SECTION 2.02. Section 37B(b), Texas Probate Code, is
12 amended to read as follows:

13 (b) The assignment may, at the request of the assignor, be
14 filed as provided for the filing of a disclaimer under Section
15 37A(h) [~~37A(a)~~] of this code. The filing requires the service of
16 notice under Section 37A(i) [~~37A(b)~~] of this code.

17 ARTICLE 3. DISSOLUTION OF MARRIAGE;

18 EFFECT ON DECEDENTS' ESTATES

19 SECTION 3.01. Chapter II, Texas Probate Code, is amended by
20 adding Section 47A to read as follows:

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

22 (a) On application and notice applicable to a proceeding for a
23 declaratory judgment under Chapter 37, Civil Practice and Remedies
24 Code, by an interested person, the court may determine whether a
25 decedent who was married on the date of the decedent's death had, on
26 the date of the decedent's marriage, the mental capacity to consent
27 to the marriage and to understand the nature of the marriage

1 ceremony, if a ceremony occurred, or whether the decedent did not
2 have that mental capacity because of a mental disease or defect
3 suffered by the decedent on the date of the marriage.

4 (b) The court shall declare the decedent's marriage void if
5 the court finds that:

6 (1) the decedent did not have the mental capacity
7 described by Subsection (a) of this section because of a mental
8 disease or defect suffered by the decedent on the date of the
9 marriage; and

10 (2) the decedent did not voluntarily cohabit with the
11 other party to the marriage during any period that occurred after
12 the date of the marriage during which the decedent possessed the
13 mental capacity to recognize the marriage relationship.

14 (c) If the court declares a decedent's marriage void in a
15 proceeding under this section, the other party to the marriage is
16 not considered the decedent's surviving spouse for purposes of any
17 law of this state, including Sections 38 and 45 of this code.

18 SECTION 3.02. Section 69, Texas Probate Code, is amended to
19 read as follows:

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

25 (b) If, after making a will, the testator's marriage is
26 dissolved, whether by divorce, annulment, or a declaration that the
27 marriage is void [testator is divorced or the testator's marriage

1 ~~is annulled~~], all provisions in the will, including all fiduciary
2 appointments ~~[in favor of the testator's former spouse, or~~
3 ~~appointing such spouse to any fiduciary capacity under the will or~~
4 ~~with respect to the estate or person of the testator's children]~~,
5 shall ~~[must]~~ be read as if the former spouse and each relative of
6 the former spouse who is not a relative of the testator failed to
7 survive the testator, ~~[and shall be null and void and of no effect]~~
8 unless the will expressly provides otherwise.

9 (c) ~~[(b)]~~ A person whose marriage to ~~[who is divorced from]~~
10 the decedent has been dissolved, whether by divorce, annulment, or
11 a declaration that the marriage is void, ~~[or whose marriage to the~~
12 ~~decedent has been annulled]~~ is not a surviving spouse unless, by
13 virtue of a subsequent marriage, the person is married to the
14 decedent at the time of death and the subsequent marriage is not
15 declared void under Section 47A of this code.

16 SECTION 3.03. Section 6.111, Family Code, is amended to
17 read as follows:

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

22 SECTION 3.04. (a) Except as provided by Subsection (b) of
23 this section, the changes in law made by this article apply only to:

24 (1) the estate of a decedent who dies before the
25 effective date of this Act, if the probate or administration of the
26 estate is pending on or commenced on or after the effective date of
27 this Act; and

1 (2) the estate of a decedent who dies on or after the
2 effective date of this Act.

3 (b) The changes in law made by this article to Section 69,
4 Texas Probate Code, apply only to the estate of a decedent who dies
5 on or after the effective date of this Act. The estate of a decedent
6 who dies before the effective date of this Act is governed by the
7 law in effect on the date of the decedent's death, and the former
8 law is continued in effect for that purpose.

9 ARTICLE 4. NUNCUPATIVE, OR ORAL, WILLS

10 SECTION 4.01. Section 82, Texas Probate Code, is amended to
11 read as follows:

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

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

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

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

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

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

26 (f) If known by the applicant at the time of the filing of
27 the application, whether children were born to or adopted by the

1 decedent, with the name and the date and place of birth of each;

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

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

7 SECTION 4.02. Section 91, Texas Probate Code, is amended to
8 read as follows:

9 Sec. 91. WHEN WILL NOT IN CUSTODY OF COURT[~~, OR ORAL~~]. If
10 for any reason a written will is not in the custody of the court, [~~or~~
11 ~~if the will is oral,~~] the court shall find the contents thereof by
12 written order, and certified copies of same as so established by the
13 court may be recorded in other counties, and may be used in
14 evidence, as in the case of certified copies of written wills in the
15 custody of the court.

16 SECTION 4.03. Section 128(b), Texas Probate Code, is
17 amended to read as follows:

18 (b) Where Application Is for Probate of a Written Will Not
19 Produced [~~or of a Nuncupative Will~~]. When the application is for the
20 probate of a [~~nuncupative will, or of a~~] written will which cannot
21 be produced in court, the clerk shall issue a citation to all
22 parties interested in such estate, which citation shall contain
23 substantially the statements made in the application for probate,
24 and the time when, place where, and the court before which such
25 application will be acted upon. If the heirs of the testator be
26 residents of this state, and their residence be known, the citation
27 shall be served upon them by personal service. Service of such

1 citation may be made by publication in the following cases:

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

6 SECTION 4.04. Section 128A(a), Texas Probate Code, is
7 amended to read as follows:

8 (a) If the address of the entity can be ascertained with
9 reasonable diligence, an applicant under Section 81 of this code
10 shall give the state, a governmental agency of the state, or a
11 charitable organization notice that the entity is named as a
12 devisee in a written will or [~~7~~] a written will not produced [~~7~~, ~~or~~ a
13 ~~nuncupative will~~] that has been admitted to probate.

14 SECTION 4.05. Sections 64, 65, 81(c), 86, and 89A(c), Texas
15 Probate Code, are repealed.

16 SECTION 4.06. The changes in law made by this article apply
17 only to a nuncupative, or oral, will made on or after the effective
18 date of this Act. A nuncupative, or oral, will made before the
19 effective date of this Act is governed by the law in effect on the
20 date the will was made, and the former law is continued in effect
21 for that purpose.

22 ARTICLE 5. WRITTEN WILLS NOT PRODUCED

23 SECTION 5.01. Section 85, Texas Probate Code, is amended to
24 read as follows:

25 Sec. 85. PROOF OF WRITTEN WILL NOT PRODUCED IN COURT. A
26 written will which cannot be produced in court shall be proved in
27 the same manner as provided in the preceding Section for an attested

1 written will or an holographic will, as the case may be, and the
2 same amount and character of testimony shall be required to prove
3 such will as is required to prove a written will produced in court;
4 but, in addition thereto, the cause of its non-production must be
5 proved, and such cause must be sufficient to satisfy the court that
6 it cannot by any reasonable diligence be produced, and the contents
7 of such will must be substantially proved by the testimony of a
8 credible witness who has read the will, has [~~it or~~] heard the will
9 [~~it~~] read, or can identify a copy of the will.

10 SECTION 5.02. The changes in law made by this article apply
11 only to:

12 (1) the estate of a decedent who dies before the
13 effective date of this Act, if the probate or administration of the
14 estate is pending on or commenced on or after the effective date of
15 this Act; and

16 (2) the estate of a decedent who dies on or after the
17 effective date of this Act.

18 ARTICLE 6. GRANTING OF ADMINISTRATION OF DECEDENTS' ESTATES

19 SECTION 6.01. Section 83(c), Texas Probate Code, is amended
20 to read as follows:

21 (c) Where Letters of Administration Have Been Granted.
22 Whenever letters of administration shall have been granted upon an
23 estate, and it shall afterwards be discovered that the deceased
24 left a lawful will, such will may be proved in the manner provided
25 for the proof of wills; and, if an executor is named in such will,
26 and he is not disqualified, he shall be allowed to qualify and
27 accept as such executor, and the letters previously granted shall

1 be revoked; but, if no such executor be named in the will, or if the
2 executor named be disqualified, be dead, or shall renounce the
3 executorship, or shall [~~neglect or otherwise~~] fail or be unable to
4 accept and qualify within twenty days after the date of the probate
5 of the will, or shall fail [~~neglect~~] for a period of thirty days
6 after the discovery of such will to present it for probate, then
7 administration with the will annexed of the estate of such testator
8 shall be granted as in other cases. All acts done by the first
9 administrator, prior to the qualification of the executor or of the
10 administrator with the will annexed, shall be as valid as if no such
11 will had been discovered.

12 SECTION 6.02. Section 178(b), Texas Probate Code, is
13 amended to read as follows:

14 (b) Letters of Administration. When a person shall die
15 intestate, or where no executor is named in a will, or where the
16 executor is dead or shall fail [~~or neglect~~] to accept and qualify
17 within twenty days after the probate of the will, or shall fail
18 [~~neglect~~] for a period of thirty days after the death of the
19 testator to present the will for probate and the court finds there
20 was no good cause for not presenting the will for probate during
21 that period, then administration of the estate of such intestate,
22 or administration with the will annexed of the estate of such
23 testator, shall be granted, should administration appear to be
24 necessary. No administration of any estate shall be granted unless
25 there exists a necessity therefor, such necessity to be determined
26 by the court hearing the application. Such necessity shall be
27 deemed to exist if two or more debts exist against the estate, or if

1 or when it is desired to have the county court partition the estate
2 among the distributees, or if the administration is necessary to
3 receive or recover funds or other property due the estate, but
4 mention of these three [~~two~~] instances of necessity for
5 administration shall not prevent the court from finding other
6 instances of necessity upon proof before it.

7 SECTION 6.03. Section 179, Texas Probate Code, is amended
8 to read as follows:

9 Sec. 179. OPPOSITION TO GRANT OF LETTERS OF ADMINISTRATION.
10 When application is made for letters of administration, any
11 interested person may at any time before the application is
12 granted, file the person's [~~his~~] opposition thereto in writing, and
13 may apply for the grant of letters to the person [~~himself~~] or to any
14 other person; and, upon the trial, the court shall grant letters to
15 the person that may seem best entitled to them, having regard to
16 applicable provisions of this Code, without further notice than
17 that of the original application.

18 SECTION 6.04. Section 190(b), Texas Probate Code, is
19 amended to read as follows:

20 (b) Administrator. Before the issuance of letters of
21 administration, the person appointed administrator shall take and
22 subscribe an oath in form substantially as follows: "I do solemnly
23 swear that _____, deceased, died without leaving any lawful will
24 (or that the named executor in any such will is dead or has failed
25 [~~or neglected~~] to offer the same for probate, or to accept and
26 qualify as executor, within the time required, as the case may be),
27 so far as I know or believe, and that I will well and truly perform

1 all the duties of administrator of the estate of said deceased."

2 SECTION 6.05. The changes in law made by this article apply
3 to an application for the administration of an estate that is
4 pending on or filed on or after the effective date of this Act.

5 ARTICLE 7. SALES OF ESTATE PROPERTY

6 SECTION 7.01. Section 344, Texas Probate Code, is amended
7 to read as follows:

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

17 SECTION 7.02. Section 345, Texas Probate Code, is amended
18 to read as follows:

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

25 SECTION 7.03. Part 5, Chapter VIII, Texas Probate Code, is
26 amended by adding Section 345A to read as follows:

27 Sec. 345A. HEARING ON APPLICATION AND ANY OPPOSITION. (a)

1 The clerk of a court in which an application for an order of sale is
2 filed shall immediately call to the attention of the judge any
3 opposition to the sale that is filed during the period provided in
4 the citation issued under Section 344 of this code. The court shall
5 hold a hearing on an application if an opposition to the sale is
6 filed during the period provided in the citation.

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

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

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

22 SECTION 7.04. Section 343, Texas Probate Code, is repealed.

23 SECTION 7.05. The changes in law made by this article apply
24 only to:

25 (1) the estate of a decedent who dies before the
26 effective date of this Act, if the probate or administration of the
27 estate is pending on the effective date of this Act; and

1 (2) the estate of a decedent who dies on or after the
2 effective date of this Act.

3 ARTICLE 8. EFFECTIVE DATE

4 SECTION 8.01. This Act takes effect September 1, 2007.