

By: Naishtat

H.B. No. 1710

A BILL TO BE ENTITLED

AN ACT

relating to the administration of community property.

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

SECTION 1. Section 155, Texas Probate Code, is amended to read as follows:

Sec. 155. NO NECESSITY FOR ADMINISTRATION OF COMMUNITY PROPERTY. When a husband or wife dies intestate and the community property passes to the survivor, no administration thereon~~[, community or otherwise,]~~ shall be necessary. Nothing in this part of this chapter prohibits the administration of community property under other provisions of this code relating to the administration of an estate.

SECTION 2. Section 156, Texas Probate Code, is amended to read as follows:

Sec. 156. LIABILITY OF COMMUNITY PROPERTY FOR DEBTS. The community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse upon death. In addition, the interest that the deceased spouse owned in any other nonexempt community property passes to his or her heirs or devisees charged with the debts which were enforceable against such deceased spouse prior to his or her death. The surviving spouse ~~[In the administration of community estates, the survivor]~~ or personal representative shall keep a separate, distinct account of all

1 community debts allowed or paid in the administration and  
2 settlement of such estate.

3 SECTION 3. Section 160(a), Texas Probate Code, is amended  
4 to read as follows:

5 (a) When no one has qualified as executor or administrator  
6 of the estate of a deceased spouse, the surviving spouse, whether  
7 the husband or wife, as the surviving partner of the marital  
8 partnership[~~, without qualifying as community administrator as~~  
9 ~~hereinafter provided,~~] has power to sue and be sued for the recovery  
10 of community property; to sell, mortgage, lease, and otherwise  
11 dispose of community property for the purpose of paying community  
12 debts; to collect claims due to the community estate; and has such  
13 other powers as shall be necessary to preserve the community  
14 property, discharge community obligations, and wind up community  
15 affairs.

16 SECTION 4. Section 168, Texas Probate Code, is amended to  
17 read as follows:

18 Sec. 168. ACCOUNTING BY SURVIVOR. The survivor[~~, whether~~  
19 ~~qualified as community administrator or not,~~] shall keep a fair and  
20 full account and statement of all community debts and expenses paid  
21 by him, and of the disposition made of the community property; and,  
22 upon final partition of such estate, shall deliver to the heirs,  
23 devisees or legatees of the deceased spouse their interest in such  
24 estate, and the increase and profits of the same, after deducting  
25 therefrom the proportion of the community debts chargeable thereto,  
26 unavoidable losses, necessary and reasonable expenses, and a  
27 reasonable commission for the management of the same. The [~~Neither~~

1 ~~the~~] survivor may not [~~nor his bondsmen shall~~] be liable for losses  
2 sustained by the estate, except when the survivor has been guilty of  
3 gross negligence or bad faith.

4 SECTION 5. Section 176, Texas Probate Code, is amended to  
5 read as follows:

6 Sec. 176. REMARRIAGE OF SURVIVING SPOUSE. The remarriage  
7 of a surviving spouse shall not terminate the surviving spouse's  
8 [~~powers or liabilities as a qualified community administrator or~~  
9 ~~administratrix; nor shall it terminate his or her~~] powers as a  
10 surviving partner.

11 SECTION 6. Section 177, Texas Probate Code, is amended to  
12 read as follows:

13 Sec. 177. DISTRIBUTION OF POWERS AMONG PERSONAL  
14 REPRESENTATIVES AND SURVIVING SPOUSE. [~~(a) When Community~~  
15 ~~Administrator Has Qualified. The qualified community administrator~~  
16 ~~is entitled to administer the entire community estate, including~~  
17 ~~the part which was by law under the management of the deceased~~  
18 ~~spouse during the continuance of the marriage.~~

19 [~~(b) When No Community Administrator Has Qualified.~~] When a  
20 personal representative of the estate of a deceased spouse has duly  
21 qualified, the personal representative is authorized to  
22 administer, not only the separate property of the deceased spouse,  
23 but also the community property which was by law under the  
24 management of the deceased spouse during the continuance of the  
25 marriage and all of the community property that was by law under the  
26 joint control of the spouses during the continuance of the  
27 marriage. The surviving spouse, as surviving partner of the

1 marital partnership, is entitled to retain possession and control  
2 of all community property which was legally under the sole  
3 management of the surviving spouse during the continuance of the  
4 marriage and to exercise over that property all the powers  
5 elsewhere in this part of this code authorized to be exercised by  
6 the surviving spouse when there is no administration pending on the  
7 estate of the deceased spouse. The surviving spouse may by written  
8 instrument filed with the clerk waive any right to exercise powers  
9 as community survivor, and in such event the personal  
10 representative of the deceased spouse shall be authorized to  
11 administer upon the entire community estate.

12 SECTION 7. The following laws are repealed:

13 (1) Section 151(e), Texas Probate Code; and

14 (2) Sections 161, 162, 163, 164, 165, 166, 167, 169,  
15 170, 171, 172, 173, 174, and 175, Texas Probate Code.

16 SECTION 8. The changes in law made by this Act to Part 5,  
17 Chapter VI, Texas Probate Code, apply only to the estate of a  
18 decedent who dies on or after the effective date of this Act. The  
19 estate of a decedent who dies before the effective date of this Act  
20 is governed by the law in effect on the date of the decedent's  
21 death, and the former law is continued in effect for that purpose.

22 SECTION 9. This Act takes effect September 1, 2007.