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H.B. No. 2507

A BILL TO BE ENTITLED

AN ACT

relating to providing notice to certain beneficiaries under a decedent's will.

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

SECTION 1. Section 128A, Texas Probate Code, is amended to read as follows:

Sec. 128A. NOTICE TO CERTAIN BENEFICIARIES [~~ENTITIES~~] AFTER PROBATE OF WILL. (a) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trust entitled to receive real or personal property under the terms of a decedent's will, to be determined for purposes of this section with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will.

(b) Except as provided by Subsection (d) of this section, not later than the 60th day after the date of an order admitting a decedent's will to probate, the personal representative of the decedent's estate, including an independent executor or independent administrator, shall give notice that complies with Subsection (e) of this section to each beneficiary named in the will whose identity and address are known to the personal representative or, through reasonable diligence, can be ascertained. If, after the 60th day after the date of the order, the personal

1 representative becomes aware of the identity and address of a  
2 beneficiary who was not given notice on or before the 60th day, the  
3 personal representative shall give the notice as soon as possible  
4 after becoming aware of that information.

5 (c) Notwithstanding the requirement under Subsection (b) of  
6 this section that the personal representative give the notice to  
7 the beneficiary, the personal representative shall give the notice  
8 with respect to a beneficiary described by this subsection as  
9 follows:

10 (1) if the beneficiary is a trust, to the trustee,  
11 unless the personal representative is the trustee, in which case  
12 the personal representative shall give the notice to the person or  
13 class of persons first eligible to receive the trust income, to be  
14 determined for purposes of this subdivision as if the trust were in  
15 existence on the date of the decedent's death;

16 (2) if the beneficiary has a court-appointed guardian  
17 or conservator, to that guardian or conservator; and

18 (3) if the beneficiary is a minor for whom no guardian  
19 or conservator has been appointed, to a parent of the minor.

20 (d) A personal representative is not required to give the  
21 notice otherwise required by this section to a beneficiary:

22 (1) who made an appearance in the proceeding with  
23 respect to the decedent's estate before the will was admitted to  
24 probate;

25 (2) who waived the right to receive the notice in an  
26 instrument that is:

27 (A) signed by the beneficiary; and

1                   (B) filed with the court; or

2                   (3) whose only benefit under the will is cash in the  
3 amount of \$1,000 or less.

4           (e) The notice required by this section must:

5                   (1) state:

6                   (A) the name and address of the beneficiary to  
7 whom the notice is given or, for a beneficiary described by  
8 Subsection (c) of this section, the name and address of the  
9 beneficiary for whom the notice is given and of the person to whom  
10 the notice is given;

11                   (B) the decedent's name;

12                   (C) that the decedent's will has been admitted to  
13 probate;

14                   (D) that the beneficiary to whom or for whom the  
15 notice is given is named as a beneficiary in the will; and

16                   (E) the personal representative's name and  
17 contact information; and

18                   (2) contain as attachments a copy of the will admitted  
19 to probate and the order admitting the will to probate.

20           (f) The notice required by this section must be sent by  
21 registered or certified mail, return receipt requested.

22           (g) Not later than the 90th day after the date of an order  
23 admitting a will to probate, the personal representative shall file  
24 with the clerk of the court in which the decedent's estate is  
25 pending a sworn affidavit of the personal representative, or a  
26 certificate signed by the personal representative's attorney,  
27 stating:

1           (1) for each beneficiary to whom notice was required  
2 to be given under this section, the name and address of the  
3 beneficiary to whom the personal representative gave the notice or,  
4 for a beneficiary described by Subsection (c) of this section, the  
5 name and address of the beneficiary and of the person to whom the  
6 notice was given;

7           (2) the name and address of each beneficiary who filed  
8 a waiver of the notice;

9           (3) the name of each beneficiary whose identity or  
10 address could not be ascertained despite the personal  
11 representative's exercise of reasonable diligence; and

12           (4) any other information necessary to explain the  
13 personal representative's inability to give the notice to or for  
14 any beneficiary as required by this section.

15           (h) The affidavit or certificate required by Subsection (g)  
16 of this section may be included with any pleading or other document  
17 filed with the clerk of the court, including the inventory,  
18 appraisement, and list of claims, provided that the pleading or  
19 other document with which the affidavit or certificate is included  
20 is filed not later than the date the affidavit or certificate is  
21 required to be filed as provided by Subsection (g) of this section.

22 ~~[If the address of the entity can be ascertained with reasonable~~  
23 ~~diligence, an applicant under Section 81 of this code shall give the~~  
24 ~~state, a governmental agency of the state, or a charitable~~  
25 ~~organization notice that the entity is named as a devisee in a~~  
26 ~~written will, a written will not produced, or a nuncupative will~~  
27 ~~that has been admitted to probate.~~

1       ~~[(b) The notice required by Subsection (a) of this section~~  
2 ~~must be given not later than the 30th day after the date of the~~  
3 ~~probate of the will.]~~

4       ~~[(c) The notice must be in writing and state the county in~~  
5 ~~which the will was admitted to probate. A copy of the application~~  
6 ~~and the order admitting the will to probate and, if the application~~  
7 ~~is for probate of a written will, a copy of the will must be attached~~  
8 ~~to the notice.]~~

9       ~~[(d) An entity entitled to notice under Subsection (a) of~~  
10 ~~this section must be notified by registered or certified mail,~~  
11 ~~return receipt requested.]~~

12       ~~[(e) The applicant must file a copy of the notice with the~~  
13 ~~court in which the will was admitted to probate.]~~

14       SECTION 2. The heading to Section 128B, Texas Probate Code,  
15 is amended to read as follows:

16       Sec. 128B. NOTICE TO HEIRS ON APPLICATION TO PROBATE ~~[WHEN]~~  
17 ~~WILL [PROBATED]~~ AFTER FOUR YEARS.

18       SECTION 3. Section 149C(a), Texas Probate Code, is amended  
19 to read as follows:

20       (a) The county court, as that term is defined by Section 3 of  
21 this code, on its own motion or on motion of any interested person,  
22 after the independent executor has been cited by personal service  
23 to answer at a time and place fixed in the notice, may remove an  
24 independent executor when:

25           (1) the independent executor fails to return within  
26 ninety days after qualification, unless such time is extended by  
27 order of the court, an inventory of the property of the estate and

1 list of claims that have come to the independent executor's [~~his~~]  
2 knowledge;

3 (2) sufficient grounds appear to support belief that  
4 the independent executor [~~he~~] has misapplied or embezzled, or that  
5 the independent executor [~~he~~] is about to misapply or embezzle, all  
6 or any part of the property committed to the independent executor's  
7 [~~his~~] care;

8 (3) the independent executor [~~he~~] fails to make an  
9 accounting which is required by law to be made;

10 (4) the independent executor [~~he~~] fails to timely file  
11 the affidavit or certificate [~~notice~~] required by Section 128A of  
12 this code;

13 (5) the independent executor [~~he~~] is proved to have  
14 been guilty of gross misconduct or gross mismanagement in the  
15 performance of the independent executor's [~~his~~] duties; or

16 (6) the independent executor [~~he~~] becomes an  
17 incapacitated person, or is sentenced to the penitentiary, or from  
18 any other cause becomes legally incapacitated from properly  
19 performing the independent executor's [~~his~~] fiduciary duties.

20 SECTION 4. Section 222(b), Texas Probate Code, is amended  
21 to read as follows:

22 (b) With Notice. The court may remove a personal  
23 representative on its own motion, or on the complaint of any  
24 interested person, after the personal representative has been cited  
25 by personal service to answer at a time and place fixed in the  
26 notice, when:

27 (1) Sufficient grounds appear to support belief that

1 the personal representative [~~he~~] has misapplied, embezzled, or  
2 removed from the state, or that the personal representative [~~he~~] is  
3 about to misapply, embezzle, or remove from the state, all or any  
4 part of the property committed to the personal representative's  
5 [~~his~~] care;

6 (2) The personal representative [~~He~~] fails to return  
7 any account which is required by law to be made;

8 (3) The personal representative [~~He~~] fails to obey any  
9 proper order of the court having jurisdiction with respect to the  
10 performance of the personal representative's [~~his~~] duties;

11 (4) The personal representative [~~He~~] is proved to have  
12 been guilty of gross misconduct, or mismanagement in the  
13 performance of the personal representative's [~~his~~] duties;

14 (5) The personal representative [~~He~~] becomes an  
15 incapacitated person, or is sentenced to the penitentiary, or from  
16 any other cause becomes incapable of properly performing the duties  
17 of the personal representative's [~~his~~] trust;

18 (6) As executor or administrator, the personal  
19 representative [~~he~~] fails to make a final settlement within three  
20 years after the grant of letters, unless the time be extended by the  
21 court upon a showing of sufficient cause supported by oath; or

22 (7) As executor or administrator, the personal  
23 representative [~~he~~] fails to timely file the affidavit or  
24 certificate [~~notice~~] required by Section 128A of this code.

25 SECTION 5. The changes in law made by this Act apply only to  
26 the estate of a decedent who dies on or after the effective date of  
27 this Act. The estate of a decedent who dies before the effective

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1 date of this Act is governed by the law in effect on the date of the  
2 decedent's death, and the former law is continued in effect for that  
3 purpose.

4 SECTION 6. This Act takes effect September 1, 2007.