

By: Wentworth

S.B. No. 593

A BILL TO BE ENTITLED

AN ACT

1
2 relating to providing notice to the beneficiaries under a
3 decedent's will.

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

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

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

16 (b) Not later than the 60th day after the date of an order
17 admitting a decedent's will to probate, the personal representative
18 of the decedent's estate, including an independent executor or
19 independent administrator, shall give notice that complies with
20 Subsection (d) of this section to each beneficiary named in the will
21 whose identity and address are known to the personal representative
22 or, through reasonable diligence, can be ascertained. If, after
23 the 60th day after the date of the order, the personal
24 representative becomes aware of the identity and address of a

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

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

9 (1) if the beneficiary is a trust, to the trustee,
10 unless the personal representative is the trustee, in which case
11 the personal representative shall give the notice to:

12 (A) except as provided by Paragraph (B) of this
13 subdivision, the person, entity, or class first eligible to receive
14 the trust income, to be determined for purposes of this paragraph as
15 if the trust were in existence on the date of the decedent's death;
16 or

17 (B) the attorney general, if under Paragraph (A)
18 of this subdivision the notice is required to be given to:

19 (i) a charitable beneficiary that is no
20 longer in existence; or

21 (ii) a class of charitable beneficiaries,
22 but providing the notice to the class is impracticable because the
23 class is not composed of natural persons or is unascertainable;

24 (2) if the beneficiary has a court-appointed guardian
25 or conservator, to that guardian or conservator;

26 (3) if the beneficiary is a minor for whom no guardian
27 or conservator has been appointed, to a parent of the minor; and

1 (4) if the beneficiary is a charitable beneficiary
2 that is no longer in existence or is a class of charitable
3 beneficiaries that is not composed of natural persons or is
4 unascertainable, to the attorney general.

5 (d) The notice required by this section must:

6 (1) state:

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

10 (i) the name and address of the beneficiary
11 for whom the notice is given or, if that beneficiary is a charitable
12 beneficiary or class of charitable beneficiaries described by
13 Subsection (c)(4) of this section, a description of the beneficiary
14 or class of beneficiaries; and

15 (ii) the name and address of the person to
16 whom the notice is given;

17 (B) the decedent's name;

18 (C) that the decedent's will has been admitted to
19 probate;

20 (D) that the beneficiary to whom or for whom the
21 notice is given is named as a beneficiary in the will;

22 (E) the personal representative's name and
23 contact information; and

24 (F) that the personal representative is a
25 fiduciary and owes duties to the beneficiary, the beneficiary has
26 rights under the Texas Probate Code and common law, and the
27 beneficiary should consider retaining an attorney to advise the

1 beneficiary of those rights and duties; and

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

4 (e) The notice required by this section must be sent by
5 registered or certified mail, return receipt requested.

6 (f) Not later than the 90th day after the date of an order
7 admitting a will to probate, the personal representative shall file
8 with the clerk of the court in which the decedent's estate is
9 pending a sworn affidavit of the personal representative, or a
10 certificate signed by the personal representative's attorney,
11 stating:

12 (1) the name and address of each beneficiary to whom
13 the personal representative gave the notice and, with respect to
14 each beneficiary described by Subsection (c) of this section:

15 (A) the name and address of the beneficiary for
16 whom the personal representative gave the notice or, if a
17 beneficiary is a charitable beneficiary or class of charitable
18 beneficiaries described by Subsection (c)(4) of this section, a
19 description of the beneficiary or class of beneficiaries; and

20 (B) the name and address of the person to whom the
21 personal representative gave the notice;

22 (2) the name of each beneficiary whose identity or
23 address could not be ascertained despite the personal
24 representative's exercise of reasonable diligence; and

25 (3) any other information necessary to explain the
26 personal representative's inability to give the notice to or for
27 any beneficiary as required by this section.

1 (g) The affidavit or certificate required by Subsection (f)
2 of this section may be included with any pleading or other document
3 filed with the clerk of the court, including the inventory,
4 appraisement, and list of claims or an application for an extension
5 of the deadline to file the inventory, appraisement, and list of
6 claims, provided that the pleading or other document with which the
7 affidavit or certificate is included is filed not later than the
8 date the affidavit or certificate is required to be filed as
9 provided by Subsection (f) of this section [~~If the address of the~~
10 ~~entity can be ascertained with reasonable diligence, an applicant~~
11 ~~under Section 81 of this code shall give the state, a governmental~~
12 ~~agency of the state, or a charitable organization notice that the~~
13 ~~entity is named as a devisee in a written will, a written will not~~
14 ~~produced, or a nuncupative will that has been admitted to probate.~~

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

18 [~~(c) The notice must be in writing and state the county in~~
19 ~~which the will was admitted to probate. A copy of the application~~
20 ~~and the order admitting the will to probate and, if the application~~
21 ~~is for probate of a written will, a copy of the will must be attached~~
22 ~~to the notice.~~

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

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

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

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

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

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

12 (1) the independent executor fails to return within
13 ninety days after qualification, unless such time is extended by
14 order of the court, an inventory of the property of the estate and
15 list of claims that have come to the independent executor's [~~his~~]
16 knowledge;

17 (2) sufficient grounds appear to support belief that
18 the independent executor [~~he~~] has misapplied or embezzled, or that
19 the independent executor [~~he~~] is about to misapply or embezzle, all
20 or any part of the property committed to the independent executor's
21 [~~his~~] care;

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

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

27 (5) the independent executor [~~he~~] is proved to have

1 been guilty of gross misconduct or gross mismanagement in the
2 performance of the independent executor's [~~his~~] duties; or

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

7 SECTION 4. Subsection (b), Section 222, Texas Probate Code,
8 is amended to read as follows:

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

14 (1) Sufficient grounds appear to support belief that
15 the personal representative [~~he~~] has misapplied, embezzled, or
16 removed from the state, or that the personal representative [~~he~~] is
17 about to misapply, embezzle, or remove from the state, all or any
18 part of the property committed to the personal representative's
19 [~~his~~] care;

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

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

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

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

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

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

12 SECTION 5. The changes in law made by this Act apply only to
13 the estate of a decedent who dies on or after the effective date of
14 this Act. The estate of a decedent who dies before the effective
15 date of this Act is governed by the law in effect on the date of the
16 decedent's death, and the former law is continued in effect for that
17 purpose.

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