

BILL ANALYSIS

Senate Research Center
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H.B. 3085
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In conjunction with the *nonsubstantive* recodification of the Probate Code by the Texas Legislative Council pursuant to its legislative mandate (currently incorporated in H.B. 2502), the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed several *substantive* changes to the independent administration provisions designed to clear up some particularly confusing provisions. These revised provisions bring further substantive clarification to three areas of independent administration: (i) the authority of an independent administrator to sell assets in the absence of an express grant in the will; (ii) the procedures applicable to creditors' claims; and (iii) a simpler procedure for closing an independent administration.

The committee substitute added a requirement that a judicial determination of heirship accompany any application for independent administration by agreement in an intestate situation (this is already required by local rule in most, if not all, statutory probate courts).

The changes are designed to go into effect this year, in addition to being included in the new Estates Code (effective January 1, 2014).

H.B. 3085 relates to the independent administration of a decedent's estate.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1.01. Amends the Texas Probate Code by adding Chapter VI-1, as follows:

CHAPTER VI-1. INDEPENDENT ADMINISTRATION

PART 1. CREATION

Sec. 177A. EXPRESSION OF TESTATOR'S INTENT IN WILL. (a) Authorizes any person capable of making a will to provide in the person's will that no other action is required to be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will and the return of an inventory, appraisement, and list of claims of the person's estate.

(b) Authorizes any person capable of making a will to provide in the person's will that no independent administration of his or her estate is authorized to be allowed. Requires that in such case the person's estate, if administered, be administered and settled under the direction of the probate court as other estates are required to be settled and not as an independent administration.

Sec. 177B. CREATION IN TESTATE ESTATE BY AGREEMENT. (a) Provides that except as provided in Section 177A(b) of this code, if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 177A(a) of this code, all of the distributees of the decedent are authorized to agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor names in the

will to serve as independent executor and request in the application that no other action is required to be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisal, and list of claims of the decedent's estate. Requires the probate court in such case to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Provides that except as provided in Section 177A(b) of this code, in situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate the executor's inability or unwillingness to serve as executor, all of the distributees of the decedent are authorized to agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action is required to be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisal, and list of claims of the decedent's estate. Requires the probate court in such case to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

Sec. 177C. CREATION IN INTESTATE ESTATE BY AGREEMENT. (a) Authorizes that all of the distributees of a decedent dying intestate to agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action is required to be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisal, and list of claims of the decedent's estate. Requires the probate court in such case to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Prohibits the court from appointing an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter III (Determination of Heirship) of this code, to constitute all of the decedent's heirs.

Sec. 177D. MEANS OF ESTABLISHING DISTRIBUTEES CONSENT. (a) Provides that this section applies to the creation of an independent administration under Section 177B or 177C of this code.

(b) Requires all distributees to be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(c) Authorizes the guardian of the person of the distributee, if a distributee is an incapacitated person, to sign the application on behalf of the distributee. Provides that if the probate court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 177B or 177C of this code, the court is prohibited from entering an order granting independent administration of the estate. Authorizes the probate court, if a distributee who is an incapacitated person has no guardian of the person, to appoint a guardian ad litem to make application on behalf of the incapacitated

person if the court considers such an appointment necessary to protect the interest of the distributees. Authorizes the natural guardian or guardians, alternatively if the distributee who is an incapacitated person is a minor and has no guardian of the person, to consent on behalf of such incapacitated person if there is no conflict of interest between the minor and such natural guardian or guardians.

(d) Requires the person or class of persons first eligible to receive the income from the trust, if a trust is created in the decedent's will, when determined as if the trust were to be in existence on the date of the decedent's death, to, for the purposes of Section 177B of this code, be considered to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence on the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which is authorized to come into existence on the termination of such trust. Authorizes such trustee or cotrustee, if a person who is a trust beneficiary and who is considered to be a distributee under this subsection is an incapacitated person, to file the application or give the consent, provided that such trustee or cotrustee is not the person proposed to serve as the independent executor.

(e) Requires the life tenant or life tenants, if a life estate is created either in the decedent's will or by law, when determined as if the life estate were to commence on the date of the decedent's death, to, for the purposes of Section 177B or 177C of this code, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(f) Requires that if a decedent's will contains a provision that a distributee is required to survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who is required to be the distributee under Section 177B of this code and under Subsection (c) of this section, it be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survive the decedent by the prescribed period.

(g) Requires that in the case of all decedents, whether dying testate or intestate, for the purposes of determining who is required to be the distributees under Section 177B or 177C of this code and under Subsection (c) of this section, it be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(h) Authorizes the deceased distributee's personal representative, if a distributee of a decedent's estate should die and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, to sign the application for independent administration of the decedent's estate under Section 177B or 177C of this code and under Subsection (c) of this section.

Sec. 177E. BOND; WAIVER OF BOND. Requires the independent executor, if an independent administration of a decedent's estate is created under Section 177B or 177C of this code, unless the probate court waives bond on application for waiver, to be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. Provides that this section does not repeal any other section of this code.

Sec. 177F. GRANTING POWER OF SALE BY AGREEMENT. Authorizes the court in a situation in which a decedent does not have a will or the will does not contain or

insufficiently contains language authorizing the personal representative to sell real property, to include in an order appointing an independent executor under Section 177B or 177C of this code such general or specific authority regarding the power of the independent executor to sell real property as authorized to be consented to by the beneficiaries who are to receive any such real property in their consents to the independent administration. Authorizes the independent executor, in such event, to sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Sec. 177G. **NO LIABILITY OF JUDGE.** Prohibits a judge, absent proof of fraud or collusion on the part of a judge, from being held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor under Section 177B or 177C of this code. Provides that Section 36 (Duty and Responsibility of Judge) of this code does not apply to the appointment of an independent executor under Section 177B or 177C of this code.

Sec. 177H. **PERSON DECLINING TO SERVE.** Authorizes a person who declines to serve or resigns as independent executor of a decedent's estate be appointed an executor or administrator of the estate if the estate will be administered and settled under the direction of the court.

PART 2. ADMINISTRATION

Sec. 177I. **GENERAL SCOPE AND EXERCISE OF POWERS.** Provides that when an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court, as long as the estate is represented by an independent executor, further action of any nature is prohibited from being had in the probate court except where this code specifically and explicitly provides for some action in such court.

Sec. 177J. **INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL.** Provides that unless this code specifically provides otherwise, any action that a personal representative subject to court supervision is authorized to do with or without a court order is authorized to be taken by an independent executor without a court order. Provides that the other provisions of this chapter are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this part.

Sec. 177K. **POWER OF SALE.** (a) General. (1) Provides that an independent executor has the power of sale set forth in the will, if applicable, exercisable without court approval as otherwise provided for independent administrations.

(2) Provides that unless limited by the terms of a will, an independent executor has, in addition to any power of sale given in the will, the same power of sale for the same purposes as personal representatives have in a supervised administration, but without the requirement of court approval. Provides that the procedural requirements applicable to a supervised administration do not apply.

(b) Protection of Person Purchasing Estate Property. (1) Provides that a person who is not a devisee or heir is not required to inquire into the independent executor's power of sale or the propriety of the exercise of the power of sale if the person deals with the independent executor in good faith and a power of sale is granted to the independent executor in the will; or in the court order appointing the independent executor, or the independent executor provides an affidavit, sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 341(1) (relating to the authorization that property of the estate be sold to pay expenses for administration, funeral expenses, and expenses

of last sickness of decedents, and allowances and claims against the estates of decedents) of this code.

(2) Provides that as to acts undertaken in good faith reliance, the affidavit executed by the independent executor and described by Subsection (b)(1)(B) of this section is conclusive proof, as between a purchaser of property from an estate, and the personal representative of an estate or the heirs and distributees of the estate, with respect to the authority of the independent executor to sell the property. Provides that the signature or joinder of any person who is a devisee or heir and who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest in the estate in the property being sold.

(3) Provides that this section does not relieve the independent executor of any duty owing to a devisee or heir related directly or indirectly to the sale.

(c) No Limitations. Provides that this section does not limit the authority of an independent executor to take other actions without court supervision or approval with respect to estate assets that are authorized to take place in a supervised administration, for purposes and within the scope otherwise authorized by this code, including leases and borrowing money.

PART 3. CLAIMS; EXEMPTIONS AND ALLOWANCES

Sec. 177L. SETTING ASIDE EXEMPT PROPERTY AND ALLOWANCES. Requires the independent executor to set aside and deliver to those entitled exempt property and allowances for support, and allowances in lieu of exempt property, as prescribed in this code, to the same extent and result as if the independent executor's actions had been accomplished in, and under orders of, the court.

Sec. 177M. CLAIMS. (a) Duty of the Independent Executor. Provides that an independent executor, in the administration of an estate, independently of and without application to, or any action in or by the court, is required to give the notices required under Sections 294 (Notice By Representative of Appointment) and 295 (Notice to Holders of Secured Claims) of this code; is authorized to give the notice to an unsecured creditor with a claim for money permitted under Section 294(d) (Permissive Notice to Unsecured Creditors) of this code and bar a claim under Subsection (e) of this section; and is authorized to approve or reject any claim, or take no action on a claim, and is required to classify and pay claims approved or established by suit against the estate in the same order of priority, classification, and proration prescribed in this code.

(a-1) Statement in Notice of Claim. Requires that the notice described by Subsection (a)(2) of this section, in order to be effective, include, in addition to the other information required by Section 294(d) of this code, a statement that a claim is authorized to be effectively presented only by one of the methods described in this section.

(b) Secured Claims for Money. Requires a creditor with a claim for money secured by real or personal property of the estate, within six months after the date letters are granted or within four months after the date notice is received under Section 295 of this code, whichever is later, to give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. Requires such creditor whose claim is secured by real property, in addition to such notice, to record a notice of such election in the deed records of the county in which such real property is located. Requires that the claim, if no such election to be a matured secured creditor is made, or is made but not within the required period, or is made within the required period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as described above

within the required period, be a preferred debt and lien against the specific property securing the indebtedness and be paid according to the terms of the contract that secured the lien, and the claim is prohibited from being asserted against other assets of the estate. Authorizes the independent executor to pay the claim prior to maturity if it is determined to be in the best interest of the estate to do so.

(c) **Matured Secured Claims.** (1) Requires that a claim approved as a matured secured claim under Subsection (b) of this section to remain secured by any lien or security interest against the specific property securing its payment but subordinated to the payment from the property of claims having a higher classification under Section 322 (Classification of Claims Against Estates of Decedent) of this code. Provides that the secured creditor, however, is prohibited from being entitled to exercise any remedies in a manner that prevents the payment of such higher priority claims and allowances, and during the administration of the estate, is prohibited from being entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(1-a) Provides that nothing in Subdivision (1) of this subsection is required to be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or executing on any judgment against an independent executor. Provides that except with respect to real property, any third party acting in good faith is authorized to obtain good title with respect to an estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether such creditor had the right to collect or whether the creditor acted improperly in exercising such rights during an estate administration due to having elected matured secured status.

(2) Requires the independent executor, if a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Section 71A (No Right to Exoneration of Debts; Exception) of this code, to collect from the devisees the amount of the debt and pay that amount to the claimant or sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Section 306(c-1) (relating to the requirement that the personal representative collect and pay a claimant a secured claim against an estate for a debt that would otherwise pass with the property securing the debt to one or more devisees) of this code applicable in court supervised administrations.

(d) **Preferred Debt and Lien Claims.** Provides that during an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Subsection (b) of this section is free to exercise any and all judicial or extrajudicial collection rights, including foreclosure and execution; provided, however, that such creditor is prohibited from having the right to conduct a nonjudicial foreclosure sale within a period of six months after letters are granted.

(e) **Certain Unsecured Claims; Barring of Claims.** Requires an unsecured creditor who has a claim for money against an estate and who receives a notice under Section 294(d) of this code to give notice to the independent executor of the nature and amount of the claim not later than the 120th day after the date on which the notice is received or the claim is barred.

(f) **Notices Required by Creditors.** Requires that notice to the personal representative required by Subsections (b) and (e) of this section be contained in a written instrument that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney; a pleading filed in a lawsuit with respect to

the claim; or a written instrument or pleading filed in the court in which the administration of the estate is pending.

(f-1) Filing Requirements Applicable. Provides that nothing in Subsection (f) of this section is required to relieve a creditor who elects matured secured status from the filing requirements in Subsection (b) of this section, to the extent applicable.

(g) Statute of Limitations. Requires that the running of the statute of limitations, except as otherwise provided in Section 16.062 (Effect of Death), Civil Practice and Remedies Code, to be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor. Prohibits in particular, the presentation of a statement or claim, to an independent executor, or a notice with respect to a claim, from tolling the running of the statute of limitations with respect to that claim.

(h) Other Claim Procedures of Code Generally Do Not Apply. Provides that except as otherwise provided in this section, the procedural provisions of this code governing creditor claims in supervised administrations do not apply in independent administrations. Provides that by way of example only and not of limitation:

(1) Section 313 (Suit on Rejected Claim) of this code does not apply in independent administrations, and consequently a creditor's claim is prohibited from being barred solely because the creditor failed to file a suit within 90 days after a claim has been rejected by an independent executor or with respect to which the independent executor takes no action; and

(2) Sections 306(f) (Foreclosure of Preferred Liens), (g) (Citation), (h) (Setting of Hearing on Application), (i) (Hearing), (j) (Appeal), and (k) (Unsuccessful Foreclosure) of this code do not apply in independent administrations.

(i) Liability of Independent Executor. Authorizes an independent executor, in the administration of an estate, to pay at any time and without personal liability a claim for money against the estate to the extent approved and classified by the personal representative if the claim is not barred by limitations, and at the time of payment, the independent executor reasonably believes the estate will have sufficient assets to pay all claims against the estate.

Sec. 177N. ENFORCEMENT OF CLAIMS BY SUIT. Authorizes any person having a debt or claim against the estate to enforce the payment of the same by suit against the independent executor; and provides that, when judgment is recovered against the independent executor, the execution is required to run against the estate of the decedent in the possession of the independent executor that is subject to such debt. Prohibits the independent executor from being required to plead to any suit brought against the executor for money until after six months after the date that an independent administration was created and the order appointing the executor was entered by the probate court.

Sec. 177O. REQUIRING HEIRS TO GIVE BOND. Provides that when an independent administration is created and the order appointing an independent executor is entered by the probate court, any person having a debt against such estate is authorized, by written complaint filed in the probate court in which such order was entered, to cause all distributees of the estate, heirs at law, and other persons entitled to any portion of such estate under the will, if any, to be cited by personal service to appear before such probate court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of such estate, as shown by the inventory and list of claims, whichever is the smaller, such bond to be payable to the judge, and the judge's successors, and to be approved by the judge, and conditioned that all obligors are required to pay all debts that

are required to be established against such estate in the manner provided by law. Requires that such estate, on the return of the citation served unless such person so entitled to any portion of the estate, or some of them, or some other person for them, to execute such bond to the satisfaction of the probate court, be administered and settled under the direction of the probate court as other estates are required to be settled. Requires the independent administration, if the bond is executed and approved, to proceed. Authorizes creditors of the estate to sue on such bond, and shall be entitled to judgment on the bond for the amount of their debt, or authorizes them to have their action against those in possession of the estate.

PART 4. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

Sec. 177P. ACCOUNTING. (a) Interested Person May Demand Accounting. Authorizes any person interested in the estate, at any time after the expiration of 15 months after the date that an independent administration was created and the order appointing an independent executor was entered by the probate court, to demand an accounting from the independent executor. Requires the independent executor to furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail the property belonging to the estate that has come into the executor's possession as executor; the disposition that has been made of such property; the debts that have been paid; the debts and expenses, if any, still owing by the estate; the property of the estate, if any, still remaining in the executor's possession; such other facts may be necessary to a full and definite understanding of the exact condition of the estate; and such facts, if any, that show why the administration should not be closed and the estate distributed.

(a-1) Copy of Exhibit or Accounting. Requires any other interested person, on demand, to be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Enforcement of Demand. Authorizes the person making the demand, should the independent executor not comply with a demand for an accounting authorized by this section within 60 days after receipt of the demand, to compel compliance by an action in the probate court. Requires the court, after a hearing, to enter an order requiring the accounting to be made at such time as it considers proper under the circumstances.

(c) Subsequent Demands. Authorizes any person interested in an estate, after an initial accounting has been given by an independent executor, to demand subsequent periodic accountings at intervals of not less than 12 months, and such subsequent demands are authorized to be enforced in the same manner as an initial demand.

(d) Remedies Cumulative. Provides that the right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate are authorized to have against the independent executor of the estate.

Sec. 177Q. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND. Provides that when it has been provided by will, regularly probated, that an independent executor appointed by such will is not required to give bond for the management of the estate devised by such will, or the independent executor is not required to give bond because bond has been waived by court order as authorized under Section 177E of this code, then such independent executor may be required to give bond, on proper proceedings had for that purpose as in the case of personal representatives in a supervised administration, if it be made to appear at any time that such independent executor is mismanaging the property, or has betrayed or is about to betray the independent executor's trust, or has in some other way become disqualified.

Sec. 177R. REMOVAL OF INDEPENDENT EXECUTOR. (a) Authorizes the probate court, on its own motion or on motion of any interested person, after the independent

executor has been cited by personal service to answer at a time and place fixed in the notice, to remove an independent executor when:

- (1) the independent executor fails to return within 90 days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge;
- (2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care;
- (3) the independent executor fails to make an accounting which is required by law to be made;
- (4) the independent executor fails to timely file the affidavit or certificate required by Section 128A (Notice to Certain Entities After Probate) of this code;
- (5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties; or
- (6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor's fiduciary duties.

(b) Requires that the order of removal state the cause of removal and to direct by order the disposition of the assets remaining in the name or under the control of the removed executor. Requires that the order of removal require that letters issued to the removed executor be surrendered and that all letters to be canceled of record. Authorizes the court, if an independent executor is removed by the court under this section, to, on application, appoint a successor independent executor as provided by Section 177T of this code.

(c) Requires an independent executor who defends an action for the independent executor's removal in good faith, whether successful or not, to be allowed out of the estate the independent executor's necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

(d) Authorizes that costs and expenses incurred by the party seeking removal that are incident to removal of an independent executor appointed without bond, including reasonable attorney's fees and expenses, be paid out of the estate.

Sec. 177S. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN INDEPENDENT EXECUTOR. (a) Grant of Powers by Court. Authorizes the court, whenever a person has died, or shall die, testate, owning property in this state, and such person's will has been or is required to be admitted to probate by the court, and such probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of said will, and such will grants to such independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and such independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator with the will annexed is appointed by the probate court, and an administrator's bond is filed and approved by the court, then in all such cases, in addition to the powers conferred on such administrator under other provisions of the laws of this state, to authorize, direct, and empower such administrator to do and

perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent provisions of this section.

(b) Power to Borrow Money and Mortgage or Pledge Property. Authorizes the court, on application, citation, and hearing, to, by its order, authorize, direct, and empower such administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, on application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage on property or assets of the estate, real, personal, or mixed, on such terms and conditions, and for such duration of time, as the court shall consider to be in the best interests of the estate, and by its order shall prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against such administrator in the administrator's official capacity.

(c) Powers Limited to Those Granted by the Will. Authorizes the court to order and authorize such administrator to have and exercise the powers and privileges set forth in Subsection (a) or (b) of this section only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of such deceased person, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of such administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing such administrator orders the business of such estate to be carried on and it becomes necessary, from time to time, under orders of the court, for such administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

(d) Powers Other Than Those Relating to Borrowing Money and Mortgaging or Pledging Property. Authorizes the court, in addition, on application, citation, and hearing, to order, authorize, and empower such administrator to assume, exercise, and discharge, under the orders and directions of said court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of such deceased person, as the court finds to be in the best interests of the estate and shall, from time to time, order and direct.

(e) Application for Grant of Powers. Requires that the granting to such administrator by the court of some, or all, of the powers and authorities set forth in this section be on application filed by such administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

(f) Citation. Requires the clerk, on the filing of such application, to issue citation to all persons interested in the estate, stating the nature of the application, and requiring such persons to appear on the return day named in such citation and show cause why such application should not be granted, should they choose to do so. Requires that such citation be served by posting.

(g) Hearing and Order. Requires the court to hear such application and evidence on the application, on or after the return day named in the citation, and, if satisfied a necessity exists and that it would be in the best interests of the estate to grant said application in whole or in part, the court is required to so order; otherwise, the court is required to refuse said application.

Sec. 177T. COURT-APPOINTED SUCCESSOR INDEPENDENT EXECUTOR. (a) Authorizes all of the distributees of the decedent as of the filing of the application for an

order continuing dependent administration, if the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration the successor executor's inability or unwillingness to serve as successor independent executor, to apply to the probate court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. Requires the probate court, if the probate court finds that continued administration of the estate is necessary, to enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the probate court finds that it would not be in the best interests of the estate to do so. Requires that such successors serve with all of the powers and privileges granted to the successor's predecessor independent executor.

(b) Authorizes the guardian of the person of the distributee, if a distributee described in this section is an incapacitated person, to sign the application on behalf of the distributee. Prohibits the probate court, if the probate court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the incapacitated person, notwithstanding Subsection (a) of this section, from entering an order continuing independent administration of the estate. Authorizes the court, if the distributee is an incapacitated person and has no guardian for the person, to appoint a guardian ad litem to make application on behalf of the incapacitated person if the probate court considers such an appointment necessary to protect the interest of such distributee.

(c) Requires the person or class of persons first eligible to receive the income from the trust, if a trust is created in the decedent's will, determined as if the trust were to be in existence on the date of the filing of the application for an ordering continuing independent administration, for the purposes of this section, to be considered to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence on the termination of such trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which is authorized to come into existence on the termination of such trust.

(d) Requires the life tenant or life tenants, if a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, for the purposes of this section, to be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) Requires that if a decedent's will contains a provision that a distributee is required to survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who is required to be the distributee under this section, it is required to be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) Requires that in the case of all decedents, for the purposes of determining who is required to be the distributees under this section, it is presumed that no distributee living at the time the application for an order continuing independent

administration of the decedent's estate is filed is required to subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(g) Provides that if a distributee of a decedent's estate should die, and if by virtue of such distributee's death such distributee's share of the decedent's estate is required to become payable to such distributee's estate, then the deceased distributee's personal representative is authorized to sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) Requires the successor independent executor, if a successor independent executor is appointed under this section, unless the probate court is required to waive bond on application for waiver, to be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in an amount that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(i) Prohibits the judge, absent proof of fraud or collusion on the part of a judge, from being held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent executor under this section. Provides that Section 36 of this code does not apply to an appointment of a successor independent executor under this section.

PART 5. CLOSING AND DISTRIBUTIONS

Sec. 177U. ACCOUNTING AND DISTRIBUTION. (a) Authorizes a person interested in the estate, in addition to or in lieu of the right to an accounting provided by Section 177P of this code, at any time after the expiration of two years after the date that an independent administration was created and the order appointing an independent executor was entered, to petition the court for an accounting and distribution. Authorizes the court to order an accounting to be made with the court by the independent executor at such time as the court considers proper. Requires that the accounting include the information that the court considers necessary to determine whether any part of the estate should be distributed.

(b) Requires the court, on receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, to order its distribution by the independent executor to the distributees entitled to the property. Requires the court, if the court finds there is a continued necessity for administration of the estate, to order the distribution of any portion of the estate that the court finds should not be subject to further administration by the independent executor. Requires the court, if any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, to order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates.

(c) Authorizes the court, if all the property in the estate is ordered distributed by the court and the estate is fully administered, to also order the independent executor to file a final account with the court and is authorized to enter an order closing the administration and terminating the power of the independent executor to act as executor.

Sec. 177V. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY INDEPENDENT EXECUTOR. (a) Prohibits an independent executor from being required to deliver tangible or intangible personal property to a distributee unless the independent executor shall receive, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee.

(b) Prohibits an independent executor from requiring a waiver or release from the distributee as a condition of delivery of property to a distributee.

Sec. 177W. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR. (a) Authorizes the independent executor of the estate, after an estate has been administered and if there is no further need for an independent administration of the estate, to file an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.

(b) Requires each beneficiary of the estate, on the filing of an action under this section, to be personally served with citation, except for a beneficiary who has waived the issuance and service of citation.

(c) Authorizes the court, in a proceeding under this section, to require the independent executor to file a final account that includes any information the court considers necessary to adjudicate the independent executor's request for a discharge of liability. Authorizes the court to audit, settle, or approve a final account filed under this subsection.

(d) Requires the independent executor, on or before filing an action under this section, to distribute to the beneficiaries of the estate any of the remaining assets or property of the estate that remains in the independent executor's possession after all of the estate's debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending court approval of the final account. Authorizes the court to review the amount of assets on reserve and may order the independent executor to make further distributions under this section.

(e) Entitles the independent executor, except as ordered by the court, to pay from the estate legal fees, expenses, or other costs incurred in relation to a proceeding for judicial discharge filed under this section. Requires the independent executor to be personally liable to refund any amount of such fees, expenses, or other costs not approved by the court as a proper charge against the estate.

Sec. 177X. CLOSING INDEPENDENT ADMINISTRATION BY CLOSING REPORT OR NOTICE OF CLOSING ESTATE. Authorizes the independent executor, when all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the independent executor's possession will permit, when there is no pending litigation, and when the independent executor has distributed to the distributees entitled to the estate all assets of the estate, if any, remaining after payment of debts, to file with the court a closing report or a notice of closing of the estate.

(a) Closing Report. Authorizes an independent executor to file a closing report verified by affidavit that shows the property of the estate that came into the independent executor's possession; the debts that have been paid; the debts, if any, still owing by the estate; the property of the estate, if any, remaining on hand after payment of debts; and the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

(b) Notice of Closing Estate. (1) Provides that an independent executor is not required to but is authorized to file a notice of closing estate verified by affidavit that states that all debts known to exist against the estate have been paid or that the debts have been paid so far as the assets in the possession of the independent executor will permit; that all remaining assets of the estate, if any, have been distributed; and the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(2) Requires the independent executor, before filing the notice, to provide all distributees of the estate with a copy of the notice of closing estate. Requires that the notice of closing estate filed by the independent executor include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

(c) Effect of Filing Closing Report or Notice of Closing Estate. (1) Requires that the independent administration of an estate be considered closed 30 days after the filing of a closing report or notice of closing estate unless an interested person files an objection within the 30-day period. Requires the independent administration of the estate, if an interested person files an objection, to be closed when the objection has been disposed of or the court signs an order closing the estate.

(2) Provides that the closing of an independent administration by filing of a closing report or notice of closing estate terminates the power and authority of the independent executor, but does not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice.

(3) Provides that when a closing report or notice of closing estate has been filed, persons dealing with properties of the estate, or with claims against the estate, are required to deal directly with the distributees of the estate; and the acts of such distributees with respect to such properties or claims are required in all ways to be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in such report or notice.

(4) Provides that if the independent executor is required to give bond, the independent executor's filing of the closing report and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. Provides that the filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(5) Requires that an independent executor's closing report or notice of closing estate constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. Entitles the distributees described in the will to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Sec. 177Y. PARTITION AND DISTRIBUTION OR SALE OF PROPERTY INCAPABLE OF DIVISION. Provides that the independent executor, if the will does not distribute the entire estate of the testator or provide a means for partition of the estate, or if no will was probated, is authorized to, but may not be required to, petition the probate court for either a partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both. Requires that the estate or portion of the estate either be partitioned and distributed or sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in supervised estates.

Sec. 177Z. CLOSING INDEPENDENT ADMINISTRATION ON APPLICATION BY DISTRIBUTEES. (a) Authorizes any distributee, at any time after an estate has been fully administered and there is no further need for an independent administration of such

estate, to file an application to close the administration; and, after citation on the independent executor, and on hearing, the court is authorized to enter an order requiring the independent executor to file a closing report meeting the requirements of Section 177X of this code; closing the administration; terminating the power of the independent executor to act as such; and releasing the sureties on any bond the independent executor was required to give from all liability for the future acts of the principal.

(b) Requires that the order of the court closing the independent administration constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. Authorizes the distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset to enforce their right to the payment or transfer by suit.

Sec. 177AA. ISSUANCE OF LETTERS. Requires the clerk, at any time before the authority of an independent executor has been terminated in the manner set forth in this chapter, to issue such number of letters testamentary as the independent executor is required to request.

Sec. 177BB. RIGHTS AND REMEDIES CUMULATIVE. Provides that the rights and remedies conferred by this part are cumulative of other rights and remedies to which a person interested in the estate is authorized to be entitled under law.

Sec. 177CC. CLOSING PROCEDURES NOT REQUIRED. Provides that an independent executor is not required to close the independent administration of an estate under Section 177W or 177X of this code.

SECTION 1.02. Amends Section 3(q), Texas Probate Code, to redefine "independent executor."

SECTION 1.03. Amends Section 5A(b), Texas Probate Code, to require this subsection to be construed in conjunction with and in harmony with Chapter VI-1 of this Code, rather than Section 145 (Independent Administration), and all other sections of this Code dealing with independent executors, but is prohibited from being construed so as to increase permissible judicial control over independent executors.

SECTION 1.04. Amends Section 5C(a), Texas Probate Code, to make a conforming change.

SECTION 1.05. Amends Section 110, Texas Probate Code, as follows:

Sec. 110. REQUIREMENTS FOR EMERGENCY INTERVENTION. Authorizes an applicant to file an emergency application with the court under Section 108 of this code only if an application has not been filed and is not pending under Section 81 (Contents of Application for Letters Testamentary), 82 (Contents of Application for Letters of Administration), or 137 (Collection of Small Estates Upon Affidavit) of this code or Part 1, Chapter VI-1, rather than 145, of this code and the applicant needs to obtain funds for the funeral and burial of the decedent, or needs to gain access to rental accommodations in which the decedent's personal property is located and the applicant has been denied access to those accommodations.

SECTION 1.06. Amends Section 241(a), Texas Probate Code, to authorize the court, on application of an interested person or on its own motion, to deny a commission allowed by this subsection in whole or in part if the executor or administrator has been removed under Section 222 (Removal), rather than 149C (Removal of Independent Executor) or 222, of this code or Part 4, Chapter VI-1 of this code.

SECTION 1.07. Repealers, notwithstanding the transfer of Sections 145-149, 149A-149G, 150-154, and 154A, Texas Probate Code, to the Estates and Guardianships Code, as adopted by H.B.

No. 2502 or S.B. No. 2071, Acts of the 81st Legislature, Regular Session, 2009, by one of those Acts: (1) Section 145 (Independent Administration), Texas Probate Code;

(2) Section 146 (Payment of Claims and Delivery of Exemptions and Allowances), Texas Probate Code;

(3) Section 147 (Enforcement of Claims By Suit), Texas Probate Code;

(4) Section 148 (Requiring Heirs to Give Bond), Texas Probate Code;

(5) Section 149 (Requiring Independent Executor to Give Bond), Texas Probate Code;

(6) Section 149A (Accounting), Texas Probate Code;

(7) Section 149B (Accounting and Distribution), Texas Probate Code;

(8) Section 149C (Removal of Independent Executor), Texas Probate Code;

(9) Section 149D (Distribution of Remaining Estate Pending Judicial Discharge), Texas Probate Code;

(10) Section 149E (Judicial Discharge of Independent Executor), Texas Probate Code;

(11) Section 149F (Court Costs and Other Charges Related to Final Account in Judicial Discharge), Texas Probate Code;

(12) Section 149G (Rights and Remedies Cumulative), Texas Probate Code;

(13) Section 150 (Partition and Distribution or Sale of Property Incapable of Division), Texas Probate Code;

(14) Section 151 (Closing Independent Administration By Affidavit), Texas Probate Code;

(15) Section 152 (Closing Independent Administration Upon Application By Distributee), Texas Probate Code;

(16) Section 153 (Issuance of Letters), Texas Probate Code;

(17) Section 154 (Powers of An Administrator Who Succeeds An Independent Executor), Texas Probate Code; and

(18) Section 154A (Court-Appointed Successor Independent Executor), Texas Probate Code.

SECTION 1.08. Makes application of this Article prospective.

ARTICLE 2. INDEPENDENT ADMINISTRATION: ESTATES AND GUARDIANSHIPS CODE

SECTION 2.01. Amends Subtitle I, Title 2, Estates and Guardianships Code, as adopted by H.B. 2502 or S.B. 2071, Acts of the 81st Legislature, Regular Session, 2009, effective January 1, 2014, by adding Chapters 401-405, as follows:

CHAPTER 401. CREATION

Sec. 401.001. EXPRESSION OF TESTATOR'S INTENT IN WILL. (a) Authorizes any person capable of making a will to provide in the person's will that no other action is required to be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will and the return of an inventory, appraisal, and list of claims of the person's estate.

(b) Authorizes any person capable of making a will to provide in the person's will that no independent administration of his or her estate is authorized to be allowed. Requires that in such case the person's estate, if administered, be required to be administered and settled under the direction of the probate court as other estates are required to be settled and not as an independent administration.

Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT. (a) Provides that except as provided in Section 401.001(b), if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), all of the distributees of the decedent are authorized to agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor named in the will to serve as independent executor and request in the application that no other action is required to be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisal, and list of claims of the decedent's estate. Requires the probate court, in such case, to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Provides that except as provided in Section 401.001(b), in situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate the executor's inability or unwillingness to serve as executor, all of the distributees of the decedent are authorized to agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action is required to be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisal, and list of claims of the decedent's estate. Requires the probate court, in such case, to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

Sec. 401.003. CREATION IN INTESTATE ESTATE BY AGREEMENT. (a) Authorizes all of the distributees of a decedent dying intestate to agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action is required to be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisal, and list of claims of the decedent's estate. Requires the probate court, in such case, to enter an order granting independent administration and appointing the person, firm or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Requires that the court not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter 202, to constitute all of the decedent's heirs.

Sec. 401.004. MEANS OF ESTABLISHING DISTRIBUTEES CONSENT. (a) Provides that this section applies to the creation of an independent administration under Section 401.002 or 401.003.

(b) Requires that all distributees be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(c) Authorizes the guardian of the person of the distributee, if a distributee is an incapacitated person, to sign the application on behalf of the distributee. Prohibits the probate court, if the court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interest of the incapacitated person, notwithstanding anything to the contrary in Section 401.002 or 401.003, from entering an order granting independent administration of the estate. Authorizes the probate court, if a distributee who is an incapacitated person has no guardian of the person, to appoint a guardian ad litem to make application on behalf of the incapacitated person if the court considers such an appointment necessary to protect the interest of the distributees. Authorizes the natural guardian or guardians of such minor, alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, to consent on behalf of such incapacitated person if there is no conflict of interest between the minor and such natural guardian or guardians.

(d) Requires that if a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, for the purposes of Section 401.002, be considered to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence on the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of such trust. Provides that if a person who is a trust beneficiary and who is considered to be a distributee under this subsection is an incapacitated person, then such trustee or cotrustee is authorized to file the application or give the consent, provided that such trustee or cotrustee is not the person proposed to serve as the independent executor.

(e) Requires that if a life estate is created either in the decedent's will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent's death, for the purposes of Section 401.002 or 401.003, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(f) Provides that if a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Section 401.002 and under Subsection (c), it is required to be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(g) Provides that in the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Section 401.002 or 401.003 and under Subsection (c), it is required to be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(h) Provides that if a distributee of a decedent's estate should die and if by virtue of such distributee's death such distributee's share of the decedent's estate is required to become payable to such distributee's estate, then the deceased distributee's personal representative is authorized to sign the application for

independent administration of the decedent's estate under Section 401.002 or 401.003 and under Subsection (c).

Sec. 401.005. BOND; WAIVER OF BOND. Requires the independent executor, if an independent administration of a decedent's estate is created under Section 401.002 or 401.003, then, unless the probate court waives bond on application for waiver, to be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. Provides that this section does not repeal any other section of this title.

Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. Authorizes the court, in a situation in which a decedent does not have a will or the will does not contain or insufficiently contains language authorizing the personal representative to sell real property, to include in an order appointing an independent executor under Section 401.002 or 401.003 such general or specific authority regarding the power of the independent executor to sell real property as authorized to be consented to by the beneficiaries who are to receive any such real property in their consents to the independent administration. Authorizes the independent executor, in such event, to sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Sec. 401.007. NO LIABILITY OF JUDGE. Provides that absent proof of fraud or collusion on the part of a judge, no judge is authorized to be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor under Section 401.002 or 401.003. Provides that Section 351.354 does not apply to the appointment of an independent executor under Section 401.002 or 401.003.

Sec. 401.008. PERSON DECLINING TO SERVE. Authorizes a person who declines to serve or resigns as independent executor of a decedent's estate to be appointed an executor or administrator of the estate if the estate will be administered and settled under the direction of the court.

CHAPTER 402. ADMINISTRATION

Sec. 402.001. GENERAL SCOPE AND EXERCISE OF POWERS. Provides that when an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the probate court except where this title specifically and explicitly provides for some action in such court.

Sec. 402.002. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL. Provides that, unless this title specifically provides otherwise, any action that a personal representative subject to court supervision is authorized to do with or without a court order is authorized to be taken by an independent executor without a court order. Provides that the other provisions of this subtitle are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this chapter.

Sec. 402.003. POWER OF SALE. (a) General. (1) Provides that an independent executor has the power of sale set forth in the will, if applicable, exercisable without court approval as otherwise provided for independent administrations.

(2) Provides that an independent executor, unless limited by the terms of a will, has, in addition to any power of sale given in the will, the same power of sale for the same purposes as personal representatives have in a

supervised administration, but without the requirement of court approval. Provides that the procedural requirements applicable to a supervised administration do not apply.

(b) Protection of Person Purchasing Estate Property. (1) Provides that a person who is not a devisee or heir is not required to inquire into the independent executor's power of sale or the propriety of the exercise of the power of sale if the person deals with the independent executor in good faith and:

(A) a power of sale is granted to the independent executor in the will or in the court order appointing the independent executor; or

(B) the independent executor provides an affidavit, sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 356.251(1) (relating to the authorization for an application to be made to the court for an order to sell estate property if the sale appears necessary or advisable to pay certain expenses).

(2) Provides that as to acts undertaken in good faith reliance, the affidavit executed by the independent executor and described by Subsection (b)(1)(B) is conclusive proof, as between a purchaser of property from an estate, and the personal representative of an estate or the heirs and distributees of the estate, with respect to the authority of the independent executor to sell the property. Provides that the signature or joinder of any person who is a devisee or heir and who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(3) Provides that this section does not relieve the independent executor of any duty owing to a devisee or heir related directly or indirectly to the sale.

(c) No Limitations. Provides that this section does not limit the authority of an independent executor to take other actions without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this title, including leases and borrowing money.

CHAPTER 403. CLAIMS; EXEMPTIONS AND ALLOWANCES

Sec. 403.001. SETTING ASIDE EXEMPT PROPERTY AND ALLOWANCES. Requires the independent executor to set aside and deliver to those entitled exempt property and allowances for support, and allowances in lieu of exempt property, as prescribed in this title, to the same extent and result as if the independent executor's actions had been accomplished in, and under orders of, the court.

Sec. 403.002. CLAIMS. (a) Duty of the Independent Executor. Provides that an independent executor, in the administration of any estate, independently of and without application to, or any action in or by the court:

(1) is required to give the notices required under Sections 308.051 (Required Notice Regarding Presentment of Claims in General), 308.052 (Proof of Publication), 308.053 (Required Notice to Secured Creditor), and 308.054 (Permissive Notice to Unsecured Creditor);

(2) is authorized to give the notice to an unsecured creditor with a claim for money permitted under Section 308.054 and bar a claim under Subsection (e); and

(3) is authorized to approve or reject any claim, or take no action on a claim, and is required to classify and pay claims approved or established by suit against the estate in the same order of priority, classification, and proration prescribed in this title.

(a-1) Statement in Notice of Claim. Requires the notice described by Subsection (a)(2), in order to be effective, to include, in addition to the other information required by Section 308.054, a statement that a claim may be effectively presented only by one of the methods described in this section.

(b) Secured Claims for Money. Requires a creditor with a claim for money secured by real or personal property of the estate, within six months after the date letters are granted or within four months after the date notice is received under Section 308.053, whichever is later, to give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. Provides that in addition to such notice, such creditor whose claim is secured by real property is required to record a notice of such election in the deed records of the county in which such real property is located. Requires that the claim, if no election to be a matured secured creditor is made, or is made but not within the required period, or is made within the required period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as described above within the required period, be a preferred debt and lien against the specific property securing the indebtedness and is required to be paid according to the terms of the contract that secured the lien, and the claim is prohibited from being asserted against other assets of the estate. Authorizes the independent executor to pay the claim prior to maturity if it is determined to be in the best interest of the estate to do so.

(c) Matured Secured Claims. (1) Requires that a claim approved as a matured secured claim under Subsection (b) remain secured by any lien or security interest against the specific property securing its payment but subordinated to the payment from the property of claims having a higher classification under Section 355.102 (Claims Classification; Priority of Payment). Prohibits the secured creditor, however, from being entitled to exercise any remedies in a manner that prevents the payment of such higher priority claims and allowances; and during the administration of the estate, from being entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(1-a) Requires that nothing in Subdivision (1) be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or executing on any judgment against an independent executor. Authorizes any third party acting in good faith, except with respect to real property, to obtain good title with respect to an estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether such creditor had the right to collect or whether the creditor acted improperly in exercising such rights during an estate administration due to having elected matured secured status.

(2) Requires the independent executor, if a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Subchapter G (Exoneration of Debts Secured by Specific Devises), Chapter 255 (Construction and Interpretation of Wills), to collect from the devisees the amount of the debt and pay that amount to the claimant or sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Sections 355.153(b) (relating to certain actions a personal representative is required to undertake for payment of a matured secured claim), (c) (relating to the amount of each devisee's share of the debt), (d) (relating to the requirement that the representative sell the property securing the debt and use the sale proceeds to pay the debt and

distribute the proceeds to each devisee), and (e) (relating to the requirement that the difference between the sale proceeds and the sum of the amount of the debt and the expenses associated with the sale be paid in a certain manner) applicable in court supervised administrations.

(d) Preferred Debt and Lien Claims. Provides that during an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Subsection (b) is free to exercise any and all judicial or extrajudicial collection rights, including foreclosure and execution; provided, however, that such creditor is not required to have the right to conduct a nonjudicial foreclosure sale within a period of six months after letters are granted.

(e) Certain Unsecured Claims; Barring of Claims. Requires an unsecured creditor who has a claim for money against an estate and who receives a notice under Section 308.054 to give notice to the independent executor of the nature and amount of the claim not later than the 120th day after the date on which the notice is received or the claim is barred.

(f) Notices Required by Creditors. Requires that notice to the personal representative required by Subsections (b) and (e) be contained in a written instrument that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney; a pleading filed in a lawsuit with respect to the claim; or a written instrument or pleading filed in the court in which the administration of the estate is pending.

(f-1) Filing Requirements Applicable. Provides that nothing in Subsection (f) is required to relieve a creditor who elects matured secured status from the filing requirements in Subsection (b), to the extent applicable.

(g) Statute of Limitations. Provides that except as otherwise provided in Section 16.062, Civil Practice and Remedies Code, the running of the statute of limitations is required to be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor. Provides that, in particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor is not required to toll the running of the statute of limitations with respect to that claim.

(h) Other Claim Procedures of Code Generally Do Not Apply. Provides that except as otherwise provided in this section, the procedural provisions of this title governing creditor claims in supervised administrations do not apply in independent administrations. Provides that by way of example only and not of limitation:

(1) Sections 355.064 (Suit on Rejected Claim) and 355.066 (Judgment in Suit on Rejected Claim) do not apply in independent administrations, and consequently a creditor's claim are not required to be barred solely because the creditor failed to file a suit within 90 days after a claim has been rejected by an independent executor or with respect to which the independent executor takes no action; and

(2) Sections 355.156 (Affidavit Required for Foreclosure), 355.157 (Citation on Application), 355.158 (Hearing on Application), 355.159 (Manner of Foreclosure; Minimum Price), and 355.160 (Unsuccessful Foreclosure; Subsequent Application) do not apply in independent administrations.

(i) Liability of Independent Executor. Authorizes an independent executor, in the administration of an estate, to pay at any time and without personal liability a

claim for money against the estate to the extent approved and classified by the personal representative if the claim is not barred by limitations; and at the time of payment, the independent executor reasonably believes the estate will have sufficient assets to pay all claims against the estate.

Sec. 403.003. ENFORCEMENT OF CLAIMS BY SUIT. Provides that any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution is required to run against the estate of the decedent in the possession of the independent executor that is subject to such debt. Provides that the independent executor is not required to be required to plead to any suit brought against the executor for money until after six months after the date that an independent administration was created and the order appointing the executor was entered by the probate court.

Sec. 403.004. REQUIRING HEIRS TO GIVE BOND. Authorizes any person having a debt against such estate, when an independent administration is created and the order appointing an independent executor is entered by the probate court, by written complaint filed in the probate court in which such order was entered, to cause all distributees of the estate, heirs at law, and other persons entitled to any portion of such estate under the will, if any, to be cited by personal service to appear before such probate court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of such estate, as shown by the inventory and list of claims, whichever is the smaller, such bond to be payable to the judge, and the judge's successors, and to be approved by the judge, and conditioned that all obligors are required to pay all debts that are required to be established against such estate in the manner provided by law. Requires that on the return of the citation served, unless such person so entitled to any portion of the estate, or some of them, or some other person for them, to execute such bond to the satisfaction of the probate court, such estate is required to be administered and settled under the direction of the probate court as other estates are required to be settled. Requires the independent administration, if the bond is executed and approved, to proceed. Authorizes the creditors of the estate to sue on such bond, and are required to be entitled to judgment on the bond for the amount of their debt, or they are authorized to have their action against those in possession of the estate.

CHAPTER 404. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

Sec. 404.001. ACCOUNTING. (a) Interested Person May Demand Accounting. Authorizes any person interested in the estate, at any time after the expiration of 15 months after the date that an independent administration was created and the order appointing an independent executor was entered by the probate court, to demand an accounting from the independent executor. Requires the independent executor to furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

- (1) the property belonging to the estate that has come into the executor's possession as executor;
- (2) the disposition that has been made of such property;
- (3) the debts that have been paid;
- (4) the debts and expenses, if any, still owing by the estate;
- (5) the property of the estate, if any, still remaining in the executor's possession;
- (6) such other facts as may be necessary to a full and definite understanding of the exact condition of the estate; and

(7) such facts, if any, that show why the administration should not be closed and the estate distributed.

(a-1) Copy of Exhibit or Accounting. Requires any other interested person, on demand, to be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Enforcement of Demand. Authorizes the person making the demand, should the independent executor not comply with a demand for an accounting authorized by this section within 60 days after receipt of the demand, to compel compliance by an action in the probate court. Requires the court, after a hearing, to enter an order requiring the accounting to be made at such time as it considers proper under the circumstances.

(c) Subsequent Demands. Authorizes any person interested in an estate, after an initial accounting has been given by an independent executor, to demand subsequent periodic accountings at intervals of not less than 12 months, and such subsequent demands are authorized to be enforced in the same manner as an initial demand.

(d) Remedies Cumulative. Provides that the right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate are authorized to have against the independent executor of the estate.

Sec. 404.002. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND. Provides that when it has been provided by will, regularly probated, that an independent executor appointed by such will is not required to give bond for the management of the estate devised by such will, or the independent executor is not required to give bond because bond has been waived by court order as authorized under Section 401.005, then such independent executor is authorized to be required to give bond, on proper proceedings had for that purpose as in the case of personal representatives in a supervised administration, if it be made to appear at any time that such independent executor is mismanaging the property, or has betrayed or is about to betray the independent executor's trust, or has in some other way become disqualified.

Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR. (a) Authorizes the probate court, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, to remove an independent executor when:

(1) the independent executor fails to return within 90 days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge;

(2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care;

(3) the independent executor fails to make an accounting which is required by law to be made;

(4) the independent executor fails to timely file the affidavit or certificate required by Section 308.004 (Affidavit or Certificate);

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties; or

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor's fiduciary duties.

(b) Requires that the order of removal state the cause of removal and to direct by order the disposition of the assets remaining in the name or under the control of the removed executor. Requires that the order of removal require that letters issued to the removed executor are required to be surrendered and that all letters are required to be canceled of record. Authorizes the court, if an independent executor is removed by the court under this section, on application, to appoint a successor independent executor as provided by Section 404.005.

(c) Provides that an independent executor who defends an action for the independent executor's removal in good faith, whether successful or not, is not required to be allowed out of the estate the independent executor's necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

(d) Authorizes costs and expenses incurred by the party seeking removal that are incident to removal of an independent executor appointed without bond, including reasonable attorney's fees and expenses, be paid out of the estate.

Sec. 404.004. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN INDEPENDENT EXECUTOR. (a) Grant of Powers by Court. Authorizes the court, whenever a person has died, or shall die, testate, owning property in this state, and such person's will has been or is required to be admitted to probate by the court, and such probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of said will, and such will grants to such independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and such independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator with the will annexed is appointed by the probate court, and an administrator's bond is filed and approved by the court, then in all such cases, in addition to the powers conferred on such administrator under other provisions of the laws of this state, to authorize, direct, and empower such administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent provisions of this section.

(b) Power to Borrow Money and Mortgage or Pledge Property. Authorizes the court, on application, citation, and hearing, by its order, to authorize, direct, and empower such administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, on application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage on property or assets of the estate, real, personal, or mixed, on such terms and conditions, and for such duration of time, as the court shall consider to be in the best interests of the estate, and by its order shall prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against such administrator in the administrator's official capacity.

(c) Powers Limited to Those Granted by the Will. Authorizes the court to order and authorize such administrator to have and exercise the powers and privileges set forth in Subsection (a) or (b) only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of such deceased person, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of such administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent

executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing such administrator orders the business of such estate to be carried on and it becomes necessary, from time to time, under orders of the court, for such administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

(d) Powers Other Than Those Relating to Borrowing Money and Mortgaging or Pledging Property. Authorizes the court, in addition, on application, citation, and hearing, to order, authorize, and empower such administrator to assume, exercise, and discharge, under the orders and directions of said court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of such deceased person, as the court finds to be in the best interests of the estate and shall, from time to time, order and direct.

(e) Application for Grant of Powers. Requires that the granting to such administrator by the court of some, or all, of the powers and authorities set forth in this section be on application filed by such administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

(f) Citation. Requires the clerk, on the filing of such application, to issue citation to all persons interested in the estate, stating the nature of the application, and requiring such persons to appear on the return day named in such citation and show cause why such application should not be granted, should they choose to do so. Requires that such citation be served by posting.

(g) Hearing and Order. Requires the court to hear such application and evidence on the application, on or after the return day named in the citation, and, if satisfied a necessity exists and that it would be in the best interests of the estate to grant said application in whole or in part, the court is required to so order; otherwise, the court is required to refuse said application.

Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT EXECUTOR. (a) Authorizes all of the distributees of the decedent as of the filing of the application for an order continuing independent administration, if the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration the successor executor's inability or unwillingness to serve as successor independent executor, to apply to the probate court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. Requires the probate court, if the probate court finds that continued administration of the estate is necessary, to enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the probate court finds that it would not be in the best interest of the estate to do so. Requires that such successor serve with all of the powers and privileges granted to the successor's predecessor independent executor.

(b) Authorizes the guardian of the person of the distributee, if a distributee described in this section is an incapacitated person, to sign the application on behalf of the distributee. Prohibits the probate court, if the probate court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the incapacitated person, then, notwithstanding Subsection (a), from entering an order continuing independent administration of the estate. Authorizes the court, if the distributee is an incapacitated person and has no guardian of the person, to appoint a guardian

ad litem to make application on behalf of the incapacitated person if the probate court considers such an appointment necessary to protect the interest of such distributee.

(c) Requires the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, if a trust is created in the decedent's will, for the purposes of this section, to be considered to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence on the termination of such trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of such trust.

(d) Requires the life tenant or life tenants, if a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, for the purposes of this section, to be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) Provides that if a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who is required to be the distributee under this section, it is required to be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) Provides that in the case of all decedents, for the purposes of determining who is required to be the distributees under this section, it is required to be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is filed is required to subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(g) Authorizes the deceased distributee's personal representative, if a distributee of a decedent's estate should die, and if by virtue of such distributee's death such distributee's share of the decedent's estate is required to become payable to such distributee's estate, to sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) Requires the successor independent executor, if a successor independent executor is appointed under this section, unless the probate court is required to waive bond on application for waiver, to be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in an amount that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(i) Prohibits a judge, absent proof of fraud or collusion on the part of the judge, from being held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent executor under this section. Provides that Section 351.354 does not apply to an appointment of a successor independent executor under this section.

CHAPTER 405. CLOSING AND DISTRIBUTIONS

Sec. 405.001. ACCOUNTING AND DISTRIBUTION. (a) Authorizes a person interested in the estate, in addition to or in lieu of the right to an accounting provided by Section 404.001, at any time after the expiration of two years after the date that an independent administration was created and the order appointing an independent executor was entered, to petition the court for an accounting and distribution. Authorizes the court to order an accounting to be made with the court by the independent executor at such time as the court considers proper. Requires that the accounting include the information that the court considers necessary to determine whether any part of the estate should be distributed.

(b) Requires the court, on receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, to order its distribution by the independent executor to the distributees entitled to the property. Requires the court, if the court finds there is a continued necessity for administration of the estate, to order the distribution of any portion of the estate that the court finds should not be subject to further administration by the independent executor. Requires the court, if any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, to order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates.

(c) Authorizes the court, if all the property in the estate is ordered distributed by the court and the estate is fully administered, to also order the independent executor to file a final account with the court and is authorized to enter an order closing the administration and terminating the power of the independent executor to act as executor.

Sec. 405.002. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY INDEPENDENT EXECUTOR. (a) Prohibits an independent executor from being required to deliver tangible or intangible personal property to a distributee unless the independent executor shall receive, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee.

(b) Prohibits an independent executor from requiring a waiver or release from the distributee as a condition of delivery of property to a distributee.

Sec. 405.003. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR. (a) Authorizes the independent executor of the estate, after an estate has been administered and if there is no further need for an independent administration of the estate, to file an action for declaratory judgment under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.

(b) Requires each beneficiary of the estate, on the filing of an action under this section, to be personally served with citation, except for a beneficiary who has waived the issuance and service of citation.

(c) Authorizes the court, in a proceeding under this section, to require the independent executor to file a final account that includes any information the court considers necessary to adjudicate the independent executor's request for a discharge of liability. Authorizes the court to audit, settle, or approve a final account filed under this subsection.

(d) Requires the independent executor, on or before filing an action under this section, to distribute to the beneficiaries of the estate any of the remaining assets or property of the estate that remains in the independent executor's possession after all of the estate's debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending

court approval of the final account. Authorizes the court to review the amount of assets on reserve and is authorized to order the independent executor to make further distributions under this section.

(e) Entitles the independent executor, except as ordered by the court, to pay from the estate legal fees, expenses, or other costs incurred in relation to a proceeding for judicial discharge filed under this section. Requires the independent executor to be personally liable to refund any amount of such fees, expenses, or other costs not approved by the court as a proper charge against the estate.

Sec. 405.004. CLOSING INDEPENDENT ADMINISTRATION BY CLOSING REPORT OR NOTICE OF CLOSING ESTATE. Authorizes the independent executor, when all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the independent executor's possession will permit, when there is no pending litigation, and when the independent executor has distributed to the distributees entitled to the estate all assets of the estate, if any, remaining after payment of debts, to file with the court a closing report or a notice of closing of the estate.

(a) Closing Report. Authorizes an independent executor to file a closing report verified by affidavit that:

(1) shows the property of the estate that came into the independent executor's possession; the debts that have been paid; the debts, if any, still owing by the estate; the property of the estate, if any, remaining on hand after payment of debts; and the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

(b) Notice of Closing Estate. (1) Provides that an independent executor is not required to but is authorized to file a notice of closing estate verified by affidavit that states that all debts known to exist against the estate have been paid or that the debts have been paid so far as the assets in the possession of the independent executor will permit; that all remaining assets of the estate, if any, have been distributed; and the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(2) Requires the independent executor, before filing the notice, to provide all distributees of the estate with a copy of the notice of closing estate. Requires that the notice of closing estate filed by the independent executor include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

(c) Effect of Filing Closing Report or Notice of Closing Estate. (1) Requires that the independent administration of an estate be considered closed 30 days after the filing of a closing report or notice of closing estate unless an interested person files an objection within the 30-day period. Provides that if an interested person files an objection, the independent administration of the estate is required to be closed when the objection has been disposed of or the court signs an order closing the estate.

(2) Provides that the closing of an independent administration by filing of a closing report or notice of closing estate terminates the power and authority of the independent executor, but does not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice.

(3) Requires persons dealing with properties of the estate, or with claims against the estate, when a closing report or notice of closing estate has been filed, to deal directly with the distributees of the estate; and the acts of such distributees with respect to such properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in such report or notice.

(4) Provides that if the independent executor is required to give bond, the independent executor's filing of the closing report and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. Provides that the filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(5) Requires that an independent executor's closing report or notice of closing estate constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. Authorizes the distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset to enforce their right to the payment or transfer by suit.

Sec. 405.005. PARTITION AND DISTRIBUTION OR SALE OF PROPERTY INCAPABLE OF DIVISION. Authorizes the independent executor, if the will does not distribute the entire estate of the testator or provide a means for partition of the estate, or if no will was probated, to, but is not authorized to be required to, petition the probate court for either a partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both. Requires that the estate or portion of the estate either be partitioned and distributed or sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in supervised estates.

Sec. 405.006. CLOSING INDEPENDENT ADMINISTRATION ON APPLICATION BY DISTRIBUTE. (a) Authorizes any distributee, at any time after an estate has been fully administered and there is no further need for an independent administration of such estate, to file an application to close the administration; and, after citation on the independent executor, and on hearing, authorizes the court to enter an order requiring the independent executor to file a closing report meeting the requirements of Section 405.004; closing the administration; terminating the power of the independent executor to act as such; and releasing the sureties on any bond the independent executor was required to give from all liability for the future acts of the principal.

(b) Requires that the order of the court closing the independent administration constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. Authorizes the distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset to enforce their right to the payment or transfer by suit.

Sec. 405.007. ISSUANCE OF LETTERS. Requires the clerk, at any time before the authority of an independent executor has been terminated in the manner set forth in this subtitle, to issue such number of letters testamentary as the independent executor is required to request.

Sec. 405.008. RIGHTS AND REMEDIES CUMULATIVE. Provides that the rights and remedies conferred by this chapter are cumulative of other rights and remedies to which a person interested in the estate is authorized to be entitled under law.

Sec. 405.009. CLOSING PROCEDURES NOT REQUIRED. Provides that an independent executor is not required to close the independent administration of an estate under Section 405.003 or 405.004.

SECTION 2.02. Repealer: Chapter VI-1, Texas Probate Code, as added by Article 1 of this Act.

SECTION 2.03. (a) Effective date, except as provided by Subsection (b) of this section: January 1, 2014.

(b) Provides that the changes in law made by this article take effect only if H.B. No. 2502 or S.B. 2071, Acts of the 81st Legislature, Regular Session, 2009, are enacted and become law. Provides that if neither bill becomes law, this article has no effect.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date, except as otherwise provided by this Act: September 1, 2009.