

By: Hartnett

H.B. No. 1968

A BILL TO BE ENTITLED

AN ACT

relating to the estates of decedents.

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

SECTION 1. Section 149B(a), Texas Probate Code, is amended to read as follows:

(a) In addition to or in lieu of the right to an accounting provided by Section 149A of this code, at any time after the expiration of two years from the date the clerk of the court first issues letters testamentary or of administration to any personal representative of the estate [~~that an independent administration was created and the order appointing an independent executor was entered~~], a person interested in an [~~the~~] estate then subject to independent administration may petition the county court, as that term is defined by Section 3 of this code, for an accounting and distribution. The court may order an accounting to be made with the court by the independent executor at such time as the court deems proper. The accounting shall include the information that the court deems necessary to determine whether any part of the estate should be distributed.

SECTION 2. The heading to Part 5, Chapter VII, Texas Probate Code, is amended to read as follows:

PART 5. ~~GENERAL~~ POWERS, DUTIES, AND LIABILITIES OF PERSONAL REPRESENTATIVES

SECTION 3. Part 5, Chapter VII, Texas Probate Code, is

1 amended by adding Sections 236 and 236A to read as follows:

2 Sec. 236. LIABILITY OF PERSONAL REPRESENTATIVE. A personal
3 representative who commits a breach of fiduciary duty and the
4 sureties on the personal representative's bond are chargeable with
5 any damages resulting from the breach, including:

6 (1) any loss or depreciation in value of the estate as
7 a result of the breach;

8 (2) any profit made by the personal representative as
9 a result of the breach;

10 (3) any profit that would have accrued to the estate if
11 there had been no breach;

12 (4) exemplary damages; or

13 (5) costs and fees described by Section 245 of this
14 code.

15 Sec. 236A. REMEDIES FOR BREACH OF FIDUCIARY DUTY. (a) To
16 remedy a breach of fiduciary duty by a personal representative, a
17 court may:

18 (1) compel the personal representative to perform the
19 personal representative's duty or duties;

20 (2) enjoin the personal representative from
21 continuing to commit a breach of fiduciary duty or committing an
22 additional breach of fiduciary duty;

23 (3) compel the personal representative to redress a
24 breach of fiduciary duty, including compelling the representative
25 to pay money or to restore property;

26 (4) order a personal representative to account;

27 (5) appoint a receiver to take possession of estate

1 property and administer the estate;

2 (6) suspend the personal representative;

3 (7) remove the personal representative as provided by
4 Section 222 of this code;

5 (8) reduce or deny compensation to the personal
6 representative;

7 (9) void an act of the personal representative;

8 (10) impose a lien or a constructive trust on estate
9 property;

10 (11) trace estate property that the personal
11 representative wrongfully disposed of and recover the property or
12 the proceeds from the property; or

13 (12) order any other appropriate relief.

14 (b) A certified copy of an order that imposes a lien or
15 constructive trust on real property under Subsection (a)(10) of
16 this section may be filed in the real property records of each
17 county in which the real property is located. On the recording of
18 the certified copy, the order is constructive notice of the
19 existence of the lien or constructive trust.

20 SECTION 4. Section 70, Texas Probate Code, is repealed.

21 SECTION 5. (a) The change in law made by this Act to Section
22 149B, Texas Probate Code, applies only to a petition for an
23 accounting and distribution filed on or after the effective date of
24 this Act. A petition for an accounting and distribution filed
25 before the effective date of this Act is covered by the law in
26 effect on the date the petition was filed, and that law is continued
27 in effect for that purpose.

1 (b) Sections 236 and 236A, Texas Probate Code, as added by
2 this Act, apply only to conduct that occurs on or after the
3 effective date of this Act. Conduct that occurs before the
4 effective date of this Act is governed by the law in effect on the
5 date the conduct occurred, and the former law is continued in effect
6 for that purpose.

7 SECTION 6. This Act takes effect September 1, 2009.