

By: Hartnett

H.B. No. 3085

A BILL TO BE ENTITLED

AN ACT

relating to the independent administration of a decedent's estate.

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

ARTICLE 1. INDEPENDENT ADMINISTRATION: TEXAS PROBATE CODE

SECTION 1.01. The Texas Probate Code is amended by adding Chapter VI-1 to read as follows:

CHAPTER VI-1. INDEPENDENT ADMINISTRATION

PART 1. CREATION

Sec. 177A. EXPRESSION OF TESTATOR'S INTENT IN WILL. (a)

Any person capable of making a will may provide in the person's will that no other action shall 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) Any person capable of making a will may provide in the person's will that no independent administration of his or her estate may be allowed. In such case the person's estate, if administered, shall 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)

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

1 the distributees of the decedent may agree on the advisability of
2 having an independent administration and collectively designate in
3 the application for probate of the decedent's will the executor
4 named in the will to serve as independent executor and request in
5 the application that no other action shall be had in the probate
6 court in relation to the settlement of the decedent's estate other
7 than the probating and recording of the decedent's will and the
8 return of an inventory, appraisement, and list of claims of the
9 decedent's estate. In such case the probate court shall enter an
10 order granting independent administration and appointing the
11 person, firm, or corporation designated in the application as
12 independent executor, unless the court finds that it would not be in
13 the best interest of the estate to do so.

14 (b) Except as provided in Section 177A(b) of this code, in
15 situations where no executor is named in the decedent's will, or in
16 situations where each executor named in the will is deceased or is
17 disqualified to serve as executor or indicates by affidavit filed
18 with the application for administration of the decedent's estate
19 the executor's inability or unwillingness to serve as executor, all
20 of the distributees of the decedent may agree on the advisability of
21 having an independent administration and collectively designate in
22 the application for probate of the decedent's will a qualified
23 person, firm, or corporation to serve as independent administrator
24 and request in the application that no other action shall be had in
25 the probate court in relation to the settlement of the decedent's
26 estate other than the probating and recording of the decedent's
27 will and the return of an inventory, appraisement, and list of

1 claims of the decedent's estate. In such case the probate court
2 shall enter an order granting independent administration and
3 appointing the person, firm, or corporation designated in the
4 application as independent administrator, unless the court finds
5 that it would not be in the best interest of the estate to do so.

6 Sec. 177C. CREATION IN INTESTATE ESTATE BY AGREEMENT. (a)

7 All of the distributees of a decedent dying intestate may agree on
8 the advisability of having an independent administration and
9 collectively designate in the application for administration of the
10 decedent's estate a qualified person, firm, or corporation to serve
11 as independent administrator and request in the application that no
12 other action shall be had in the probate court in relation to the
13 settlement of the decedent's estate other than the return of an
14 inventory, appraisement, and list of claims of the decedent's
15 estate. In such case the probate court shall enter an order
16 granting independent administration and appointing the person,
17 firm, or corporation designated in the application as independent
18 administrator, unless the court finds that it would not be in the
19 best interest of the estate to do so.

20 (b) The court shall not appoint an independent
21 administrator to serve in an intestate administration unless and
22 until the parties seeking appointment of the independent
23 administrator have been determined, through a proceeding to declare
24 heirship under Chapter III of this code, to constitute all of the
25 decedent's heirs.

26 Sec. 177D. MEANS OF ESTABLISHING DISTRIBUTE CONSENT. (a)

27 This section applies to the creation of an independent

1 administration under Section 177B or 177C of this code.

2 (b) All distributees shall be served with citation and
3 notice of the application for independent administration unless the
4 distributee waives the issuance or service of citation or enters an
5 appearance in court.

6 (c) If a distributee is an incapacitated person, the
7 guardian of the person of the distributee may sign the application
8 on behalf of the distributee. If the probate court finds that
9 either the granting of independent administration or the
10 appointment of the person, firm, or corporation designated in the
11 application as independent executor would not be in the best
12 interest of the incapacitated person, then, notwithstanding
13 anything to the contrary in Section 177B or 177C of this code, the
14 court shall not enter an order granting independent administration
15 of the estate. If a distributee who is an incapacitated person has
16 no guardian of the person, the probate court may appoint a guardian
17 ad litem to make application on behalf of the incapacitated person
18 if the court considers such an appointment necessary to protect the
19 interest of the distributees. Alternatively, if the distributee who
20 is an incapacitated person is a minor and has no guardian of the
21 person, the natural guardian or guardians of such minor may consent
22 on behalf of such incapacitated person if there is no conflict of
23 interest between the minor and such natural guardian or guardians.

24 (d) If a trust is created in the decedent's will, the person
25 or class of persons first eligible to receive the income from the
26 trust, when determined as if the trust were to be in existence on
27 the date of the decedent's death, shall, for the purposes of Section

1 177B of this code, be considered to be the distributee or
2 distributees on behalf of such trust, and any other trust or trusts
3 coming into existence on the termination of such trust, and are
4 authorized to apply for independent administration on behalf of the
5 trusts without the consent or agreement of the trustee or any other
6 beneficiary of the trust, or the trustee or any beneficiary of any
7 other trust which may come into existence on the termination of such
8 trust. If a person who is a trust beneficiary and who is considered
9 to be a distributee under this subsection is an incapacitated
10 person, then such trustee or cotrustee may file the application or
11 give the consent, provided that such trustee or cotrustee is not the
12 person proposed to serve as the independent executor.

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

21 (f) If a decedent's will contains a provision that a
22 distributee must survive the decedent by a prescribed period of
23 time in order to take under the decedent's will, then, for the
24 purposes of determining who shall be the distributee under Section
25 177B of this code and under Subsection (c) of this section, it shall
26 be presumed that the distributees living at the time of the filing
27 of the application for probate of the decedent's will survived the

1 decedent by the prescribed period.

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

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

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

26 Sec. 177F. GRANTING POWER OF SALE BY AGREEMENT. In a
27 situation in which a decedent does not have a will or the will does

1 not contain or insufficiently contains language authorizing the
2 personal representative to sell real property, the court may
3 include in an order appointing an independent executor under
4 Section 177B or 177C of this code such general or specific authority
5 regarding the power of the independent executor to sell real
6 property as may be consented to by the beneficiaries who are to
7 receive any such real property in their consents to the independent
8 administration. The independent executor, in such event, may sell
9 the real property under the authority granted in the court order
10 without the further consent of those beneficiaries.

11 Sec. 177G. NO LIABILITY OF JUDGE. Absent proof of fraud or
12 collusion on the part of a judge, no judge may be held civilly
13 liable for the commission of misdeeds or the omission of any
14 required act of any person, firm, or corporation designated as an
15 independent executor under Section 177B or 177C of this code.
16 Section 36 of this code does not apply to the appointment of an
17 independent executor under Section 177B or 177C of this code.

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

23 PART 2. ADMINISTRATION

24 Sec. 177I. GENERAL SCOPE AND EXERCISE OF POWERS. When an
25 independent administration has been created, and the order
26 appointing an independent executor has been entered by the probate
27 court, and the inventory, appraisement, and list of claims has been

1 filed by the independent executor and approved by the court, as long
2 as the estate is represented by an independent executor, further
3 action of any nature shall not be had in the probate court except
4 where this code specifically and explicitly provides for some
5 action in such court.

6 Sec. 177J. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT
7 APPROVAL. Unless this code specifically provides otherwise, any
8 action that a personal representative subject to court supervision
9 may do with or without a court order may be taken by an independent
10 executor without a court order. The other provisions of this
11 chapter are designed to provide additional guidance regarding
12 independent administrations in specified situations, and are not
13 designed to limit by omission or otherwise the application of the
14 general principles set forth in this part.

15 Sec. 177K. POWER OF SALE. (a) General. (1) An independent
16 executor has the power of sale set forth in the will, if applicable,
17 exercisable without court approval as otherwise provided for
18 independent administrations.

19 (2) Unless limited by the terms of a will, an
20 independent executor has, in addition to any power of sale given in
21 the will, the same power of sale for the same purposes as personal
22 representatives have in a supervised administration, but without
23 the requirement of court approval. The procedural requirements
24 applicable to a supervised administration do not apply.

25 (b) Protection of Person Purchasing Estate Property. (1) A
26 person who is not a devisee or heir is not required to inquire into
27 the independent executor's power of sale or the propriety of the

1 exercise of the power of sale if the person deals with the
2 independent executor in good faith and:

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

6 (B) the independent executor provides an
7 affidavit, sworn to under oath and recorded in the deed records of
8 the county where the property is located, that the sale is necessary
9 or advisable for any of the purposes described in Section 341(1) of
10 this code.

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

22 (3) This section does not relieve the independent
23 executor of any duty owing to a devisee or heir related directly or
24 indirectly to the sale.

25 (c) No Limitations. This section does not limit the
26 authority of an independent executor to take other actions without
27 court supervision or approval with respect to estate assets that

1 may take place in a supervised administration, for purposes and
2 within the scope otherwise authorized by this code, including
3 leases and borrowing money.

4 PART 3. CLAIMS; EXEMPTIONS AND ALLOWANCES

5 Sec. 177L. SETTING ASIDE EXEMPT PROPERTY AND ALLOWANCES.

6 The independent executor shall set aside and deliver to those
7 entitled exempt property and allowances for support, and allowances
8 in lieu of exempt property, as prescribed in this code, to the same
9 extent and result as if the independent executor's actions had been
10 accomplished in, and under orders of, the court.

11 Sec. 177M. CLAIMS. (a) Duty of the Independent Executor.

12 An independent executor, in the administration of an estate,
13 independently of and without application to, or any action in or by
14 the court:

15 (1) shall give the notices required under Sections 294
16 and 295 of this code;

17 (2) may give the notice to an unsecured creditor with a
18 claim for money permitted under Section 294(d) of this code and bar
19 a claim under Subsection (e) of this section; and

20 (3) may approve or reject any claim, or take no action
21 on a claim, and shall classify and pay claims approved or
22 established by suit against the estate in the same order of
23 priority, classification, and proration prescribed in this code.

24 (a-1) Statement in Notice of Claim. In order to be
25 effective, the notice described by Subsection (a)(2) of this
26 section must include, in addition to the other information required
27 by Section 294(d) of this code, a statement that a claim may be

1 effectively presented only by one of the methods described in this
2 section.

3 (b) Secured Claims for Money. Within six months after the
4 date letters are granted or within four months after the date notice
5 is received under Section 295 of this code, whichever is later, a
6 creditor with a claim for money secured by real or personal property
7 of the estate must give notice to the independent executor of the
8 creditor's election to have the creditor's claim approved as a
9 matured secured claim to be paid in due course of administration.
10 In addition to such notice, such creditor whose claim is secured by
11 real property shall record a notice of such election in the deed
12 records of the county in which such real property is located. If no
13 election to be a matured secured creditor is made, or is made but
14 not within the required period, or is made within the required
15 period but the creditor has a lien against real property and fails
16 to record notice of the claim in the deed records as described above
17 within the required period, the claim shall be a preferred debt and
18 lien against the specific property securing the indebtedness and
19 shall be paid according to the terms of the contract that secured
20 the lien, and the claim may not be asserted against other assets of
21 the estate. The independent executor may pay the claim prior to
22 maturity if it is determined to be in the best interest of the
23 estate to do so.

24 (c) Matured Secured Claims. (1) A claim approved as a
25 matured secured claim under Subsection (b) of this section shall
26 remain secured by any lien or security interest against the
27 specific property securing its payment but subordinated to the

1 payment from the property of claims having a higher classification
2 under Section 322 of this code. However, the secured creditor:

3 (A) shall not be entitled to exercise any
4 remedies in a manner that prevents the payment of such higher
5 priority claims and allowances; and

6 (B) during the administration of the estate,
7 shall not be entitled to exercise any contractual collection
8 rights, including the power to foreclose, without either the prior
9 written approval of the independent executor or court approval.

10 (1-a) Nothing in Subdivision (1) of this subsection
11 shall be construed to suspend or otherwise prevent a creditor with a
12 matured secured claim from seeking judicial relief of any kind or
13 executing on any judgment against an independent executor. Except
14 with respect to real property, any third party acting in good faith
15 may obtain good title with respect to an estate asset acquired
16 through a secured creditor's extrajudicial collection rights,
17 without regard to whether such creditor had the right to collect or
18 whether the creditor acted improperly in exercising such rights
19 during an estate administration due to having elected matured
20 secured status.

21 (2) If a claim approved or established by suit as a
22 matured secured claim is secured by property passing to one or more
23 devisees in accordance with Section 71A of this code, the
24 independent executor shall collect from the devisees the amount of
25 the debt and pay that amount to the claimant or sell the property
26 and pay out of the sale proceeds the claim and associated expenses
27 of sale consistent with the provisions of Section 306(c-1) of this

1 code applicable in court supervised administrations.

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

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

16 (f) Notices Required by Creditors. Notice to the personal
17 representative required by Subsections (b) and (e) of this section
18 must be contained in:

19 (1) a written instrument that is hand-delivered with
20 proof of receipt, or mailed by certified mail, return receipt
21 requested with proof of receipt, to the independent executor or the
22 executor's attorney;

23 (2) a pleading filed in a lawsuit with respect to the
24 claim; or

25 (3) a written instrument or pleading filed in the
26 court in which the administration of the estate is pending.

27 (f-1) Filing Requirements Applicable. Nothing in

1 Subsection (f) of this section shall relieve a creditor who elects
2 matured secured status from the filing requirements in Subsection
3 (b) of this section, to the extent applicable.

4 (g) Statute of Limitations. Except as otherwise provided in
5 Section 16.062, Civil Practice and Remedies Code, the running of
6 the statute of limitations shall be tolled only by a written
7 approval of a claim signed by an independent executor, a pleading
8 filed in a suit pending at the time of the decedent's death, or a
9 suit brought by the creditor against the independent executor. In
10 particular, the presentation of a statement or claim, or a notice
11 with respect to a claim, to an independent executor shall not toll
12 the running of the statute of limitations with respect to that
13 claim.

14 (h) Other Claim Procedures of Code Generally Do Not Apply.
15 Except as otherwise provided in this section, the procedural
16 provisions of this code governing creditor claims in supervised
17 administrations do not apply in independent administrations. By way
18 of example only and not of limitation:

19 (1) Section 313 of this code does not apply in
20 independent administrations, and consequently a creditor's claim
21 shall not be barred solely because the creditor failed to file a
22 suit within 90 days after a claim has been rejected by an
23 independent executor or with respect to which the independent
24 executor takes no action; and

25 (2) Sections 306(f)-(k) of this code do not apply in
26 independent administrations.

27 (i) Liability of Independent Executor. An independent

1 executor, in the administration of an estate, may pay at any time
2 and without personal liability a claim for money against the estate
3 to the extent approved and classified by the personal
4 representative if:

- 5 (1) the claim is not barred by limitations; and
6 (2) at the time of payment, the independent executor
7 reasonably believes the estate will have sufficient assets to pay
8 all claims against the estate.

9 Sec. 177N. ENFORCEMENT OF CLAIMS BY SUIT. Any person having
10 a debt or claim against the estate may enforce the payment of the
11 same by suit against the independent executor; and, when judgment
12 is recovered against the independent executor, the execution shall
13 run against the estate of the decedent in the possession of the
14 independent executor that is subject to such debt. The independent
15 executor shall not be required to plead to any suit brought against
16 the executor for money until after six months after the date that an
17 independent administration was created and the order appointing the
18 executor was entered by the probate court.

19 Sec. 177O. REQUIRING HEIRS TO GIVE BOND. When an
20 independent administration is created and the order appointing an
21 independent executor is entered by the probate court, any person
22 having a debt against such estate may, by written complaint filed in
23 the probate court in which such order was entered, cause all
24 distributees of the estate, heirs at law, and other persons
25 entitled to any portion of such estate under the will, if any, to be
26 cited by personal service to appear before such probate court and
27 execute a bond for an amount equal to the amount of the creditor's

1 claim or the full value of such estate, as shown by the inventory
2 and list of claims, whichever is the smaller, such bond to be
3 payable to the judge, and the judge's successors, and to be approved
4 by the judge, and conditioned that all obligors shall pay all debts
5 that shall be established against such estate in the manner
6 provided by law. On the return of the citation served, unless such
7 person so entitled to any portion of the estate, or some of them, or
8 some other person for them, shall execute such bond to the
9 satisfaction of the probate court, such estate shall be
10 administered and settled under the direction of the probate court
11 as other estates are required to be settled. If the bond is
12 executed and approved, the independent administration shall
13 proceed. Creditors of the estate may sue on such bond, and shall be
14 entitled to judgment on the bond for the amount of their debt, or
15 they may have their action against those in possession of the
16 estate.

17 PART 4. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

18 Sec. 177P. ACCOUNTING. (a) Interested Person May Demand
19 Accounting. At any time after the expiration of 15 months after the
20 date that an independent administration was created and the order
21 appointing an independent executor was entered by the probate
22 court, any person interested in the estate may demand an accounting
23 from the independent executor. The independent executor shall
24 furnish to the person or persons making the demand an exhibit in
25 writing, sworn and subscribed by the independent executor, setting
26 forth in detail:

27 (1) the property belonging to the estate that has come

1 into the executor's possession as executor;

2 (2) the disposition that has been made of such
3 property;

4 (3) the debts that have been paid;

5 (4) the debts and expenses, if any, still owing by the
6 estate;

7 (5) the property of the estate, if any, still
8 remaining in the executor's possession;

9 (6) such other facts as may be necessary to a full and
10 definite understanding of the exact condition of the estate; and

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

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

17 (b) Enforcement of Demand. Should the independent executor
18 not comply with a demand for an accounting authorized by this
19 section within 60 days after receipt of the demand, the person
20 making the demand may compel compliance by an action in the probate
21 court. After a hearing, the court shall enter an order requiring the
22 accounting to be made at such time as it considers proper under the
23 circumstances.

24 (c) Subsequent Demands. After an initial accounting has
25 been given by an independent executor, any person interested in an
26 estate may demand subsequent periodic accountings at intervals of
27 not less than 12 months, and such subsequent demands may be enforced

1 in the same manner as an initial demand.

2 (d) Remedies Cumulative. The right to an accounting
3 accorded by this section is cumulative of any other remedies which
4 persons interested in an estate may have against the independent
5 executor of the estate.

6 Sec. 177Q. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND.

7 When it has been provided by will, regularly probated, that an
8 independent executor appointed by such will shall not be required
9 to give bond for the management of the estate devised by such will,
10 or the independent executor is not required to give bond because
11 bond has been waived by court order as authorized under Section 177E
12 of this code, then such independent executor may be required to give
13 bond, on proper proceedings had for that purpose as in the case of
14 personal representatives in a supervised administration, if it be
15 made to appear at any time that such independent executor is
16 mismanaging the property, or has betrayed or is about to betray the
17 independent executor's trust, or has in some other way become
18 disqualified.

19 Sec. 177R. REMOVAL OF INDEPENDENT EXECUTOR. (a) The
20 probate court, on its own motion or on motion of any interested
21 person, after the independent executor has been cited by personal
22 service to answer at a time and place fixed in the notice, may
23 remove an independent executor when:

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

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

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

7 (4) the independent executor fails to timely file the
8 affidavit or certificate required by Section 128A of this code;

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

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

16 (b) The order of removal shall state the cause of removal
17 and shall direct by order the disposition of the assets remaining in
18 the name or under the control of the removed executor. The order of
19 removal shall require that letters issued to the removed executor
20 shall be surrendered and that all letters shall be canceled of
21 record. If an independent executor is removed by the court under
22 this section, the court may, on application, appoint a successor
23 independent executor as provided by Section 177T of this code.

24 (c) An independent executor who defends an action for the
25 independent executor's removal in good faith, whether successful or
26 not, shall be allowed out of the estate the independent executor's
27 necessary expenses and disbursements, including reasonable

1 attorney's fees, in the removal proceedings.

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

6 Sec. 177S. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN
7 INDEPENDENT EXECUTOR. (a) Grant of Powers by Court. Whenever a
8 person has died, or shall die, testate, owning property in this
9 state, and such person's will has been or shall be admitted to
10 probate by the court, and such probated will names an independent
11 executor or executors, or trustees acting in the capacity of
12 independent executors, to execute the terms and provisions of said
13 will, and such will grants to such independent executor, or
14 executors, or trustees acting in the capacity of independent
15 executors, the power to raise or borrow money and to mortgage, and
16 such independent executor, or executors, or trustees, have died or
17 shall die, resign, fail to qualify, or be removed from office,
18 leaving unexecuted parts or portions of the will of the testator,
19 and an administrator with the will annexed is appointed by the
20 probate court, and an administrator's bond is filed and approved by
21 the court, then in all such cases, the court may, in addition to the
22 powers conferred on such administrator under other provisions of
23 the laws of this state, authorize, direct, and empower such
24 administrator to do and perform the acts and deeds, clothed with the
25 rights, powers, authorities, and privileges, and subject to the
26 limitations, set forth in the subsequent provisions of this
27 section.

1 (b) Power to Borrow Money and Mortgage or Pledge Property.

2 The court, on application, citation, and hearing, may, by its
3 order, authorize, direct, and empower such administrator to raise
4 or borrow such sums of money and incur such obligations and debts as
5 the court shall, in its said order, direct, and to renew and extend
6 same from time to time, as the court, on application and order,
7 shall provide; and, if authorized by the court's order, to secure
8 such loans, obligations, and debts, by pledge or mortgage on
9 property or assets of the estate, real, personal, or mixed, on such
10 terms and conditions, and for such duration of time, as the court
11 shall consider to be in the best interests of the estate, and by its
12 order shall prescribe; and all such loans, obligations, debts,
13 pledges, and mortgages shall be valid and enforceable against the
14 estate and against such administrator in the administrator's
15 official capacity.

16 (c) Powers Limited to Those Granted by the Will. The court
17 may order and authorize such administrator to have and exercise the
18 powers and privileges set forth in Subsection (a) or (b) of this
19 section only to the extent that same are granted to or possessed by
20 the independent executor, or executors, or trustees acting in the
21 capacity of independent executors, under the terms of the probated
22 will of such deceased person, and then only in such cases as it
23 appears, at the hearing of the application, that at the time of the
24 appointment of such administrator, there are outstanding and unpaid
25 obligations and debts of the estate, or of the independent
26 executor, or executors, or trustees, chargeable against the estate,
27 or unpaid expenses of administration, or when the court appointing

1 such administrator orders the business of such estate to be carried
2 on and it becomes necessary, from time to time, under orders of the
3 court, for such administrator to borrow money and incur obligations
4 and indebtedness in order to protect and preserve the estate.

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

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

22 (f) Citation. On the filing of such application, the clerk
23 shall issue citation to all persons interested in the estate,
24 stating the nature of the application, and requiring such persons
25 to appear on the return day named in such citation and show cause
26 why such application should not be granted, should they choose to do
27 so. Such citation shall be served by posting.

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

7 Sec. 177T. COURT-APPOINTED SUCCESSOR INDEPENDENT EXECUTOR.

8 (a) If the will of a person who dies testate names an independent
9 executor who, having qualified, fails for any reason to continue to
10 serve, or is removed for cause by the court, and the will does not
11 name a successor independent executor or if each successor executor
12 named in the will fails for any reason to qualify as executor or
13 indicates by affidavit filed with the application for an order
14 continuing independent administration the successor executor's
15 inability or unwillingness to serve as successor independent
16 executor, all of the distributees of the decedent as of the filing
17 of the application for an order continuing independent
18 administration may apply to the probate court for the appointment
19 of a qualified person, firm, or corporation to serve as successor
20 independent executor. If the probate court finds that continued
21 administration of the estate is necessary, the probate court shall
22 enter an order continuing independent administration and
23 appointing the person, firm, or corporation designated in the
24 application as successor independent executor, unless the probate
25 court finds that it would not be in the best interests of the estate
26 to do so. Such successor shall serve with all of the powers and
27 privileges granted to the successor's predecessor independent

1 executor.

2 (b) If a distributee described in this section is an
3 incapacitated person, the guardian of the person of the distributee
4 may sign the application on behalf of the distributee. If the
5 probate court finds that either the continuing of independent
6 administration or the appointment of the person, firm, or
7 corporation designated in the application as successor independent
8 executor would not be in the best interest of the incapacitated
9 person, then, notwithstanding Subsection (a) of this section, the
10 probate court may not enter an order continuing independent
11 administration of the estate. If the distributee is an
12 incapacitated person and has no guardian of the person, the court
13 may appoint a guardian ad litem to make application on behalf of the
14 incapacitated person if the probate court considers such an
15 appointment necessary to protect the interest of such distributee.

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

1 such trust.

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

13 (e) If a decedent's will contains a provision that a
14 distributee must survive the decedent by a prescribed period of
15 time in order to take under the decedent's will, for the purposes of
16 determining who shall be the distributee under this section, it
17 shall be presumed that the distributees living at the time of the
18 filing of the application for an order continuing independent
19 administration of the decedent's estate survived the decedent for
20 the prescribed period.

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

27 (g) If a distributee of a decedent's estate should die, and

1 if by virtue of such distributee's death such distributee's share of
2 the decedent's estate shall become payable to such distributee's
3 estate, then the deceased distributee's personal representative
4 may sign the application for an order continuing independent
5 administration of the decedent's estate under this section.

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

14 (i) Absent proof of fraud or collusion on the part of a
15 judge, the judge may not be held civilly liable for the commission
16 of misdeeds or the omission of any required act of any person, firm,
17 or corporation designated as a successor independent executor under
18 this section. Section 36 of this code does not apply to an
19 appointment of a successor independent executor under this section.

20 PART 5. CLOSING AND DISTRIBUTIONS

21 Sec. 177U. ACCOUNTING AND DISTRIBUTION. (a) In addition to
22 or in lieu of the right to an accounting provided by Section 177P of
23 this code, at any time after the expiration of two years after the
24 date that an independent administration was created and the order
25 appointing an independent executor was entered, a person interested
26 in the estate may petition the court for an accounting and
27 distribution. The court may order an accounting to be made with the

1 court by the independent executor at such time as the court
2 considers proper. The accounting shall include the information that
3 the court considers necessary to determine whether any part of the
4 estate should be distributed.

5 (b) On receipt of the accounting and, after notice to the
6 independent executor and a hearing, unless the court finds a
7 continued necessity for administration of the estate, the court
8 shall order its distribution by the independent executor to the
9 distributees entitled to the property. If the court finds there is
10 a continued necessity for administration of the estate, the court
11 shall order the distribution of any portion of the estate that the
12 court finds should not be subject to further administration by the
13 independent executor. If any portion of the estate that is ordered
14 to be distributed is incapable of distribution without prior
15 partition or sale, the court shall order partition and
16 distribution, or sale, in the manner provided for the partition and
17 distribution of property incapable of division in supervised
18 estates.

19 (c) If all the property in the estate is ordered distributed
20 by the court and the estate is fully administered, the court may
21 also order the independent executor to file a final account with the
22 court and may enter an order closing the administration and
23 terminating the power of the independent executor to act as
24 executor.

25 Sec. 177V. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY
26 INDEPENDENT EXECUTOR. (a) An independent executor may not be
27 required to deliver tangible or intangible personal property to a

1 distributee unless the independent executor shall receive, at or
2 before the time of delivery of the property, a signed receipt or
3 other proof of delivery of the property to the distributee.

4 (b) An independent executor may not require a waiver or
5 release from the distributee as a condition of delivery of property
6 to a distributee.

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

15 (b) On the filing of an action under this section, each
16 beneficiary of the estate shall be personally served with citation,
17 except for a beneficiary who has waived the issuance and service of
18 citation.

19 (c) In a proceeding under this section, the court may
20 require the independent executor to file a final account that
21 includes any information the court considers necessary to
22 adjudicate the independent executor's request for a discharge of
23 liability. The court may audit, settle, or approve a final account
24 filed under this subsection.

25 (d) On or before filing an action under this section, the
26 independent executor must distribute to the beneficiaries of the
27 estate any of the remaining assets or property of the estate that

1 remains in the independent executor's possession after all of the
2 estate's debts have been paid, except for a reasonable reserve of
3 assets that the independent executor may retain in a fiduciary
4 capacity pending court approval of the final account. The court may
5 review the amount of assets on reserve and may order the independent
6 executor to make further distributions under this section.

7 (e) Except as ordered by the court, the independent executor
8 is entitled to pay from the estate legal fees, expenses, or other
9 costs incurred in relation to a proceeding for judicial discharge
10 filed under this section. The independent executor shall be
11 personally liable to refund any amount of such fees, expenses, or
12 other costs not approved by the court as a proper charge against the
13 estate.

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

23 (a) Closing Report. An independent executor may file a
24 closing report verified by affidavit that:

25 (1) shows:

26 (A) the property of the estate that came into the
27 independent executor's possession;

1 (B) the debts that have been paid;

2 (C) the debts, if any, still owing by the estate;

3 (D) the property of the estate, if any, remaining
4 on hand after payment of debts; and

5 (E) the names and addresses of the distributees
6 to whom the property of the estate, if any, remaining on hand after
7 payment of debts has been distributed; and

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

12 (b) Notice of Closing Estate. (1) An independent executor
13 is not required to but may file a notice of closing estate verified
14 by affidavit that states:

15 (A) that all debts known to exist against the
16 estate have been paid or that the debts have been paid so far as the
17 assets in the possession of the independent executor will permit;

18 (B) that all remaining assets of the estate, if
19 any, have been distributed; and

20 (C) the names and addresses of the distributees
21 to whom the property of the estate, if any, remaining on hand after
22 payment of debts has been distributed.

23 (2) Before filing the notice, the independent executor
24 shall provide all distributees of the estate with a copy of the
25 notice of closing estate. The notice of closing estate filed by the
26 independent executor shall include signed receipts or other proof
27 that all distributees have received a copy of the notice of closing

1 estate.

2 (c) Effect of Filing Closing Report or Notice of Closing
3 Estate. (1) The independent administration of an estate shall be
4 considered closed 30 days after the filing of a closing report or
5 notice of closing estate unless an interested person files an
6 objection within the 30-day period. If an interested person files
7 an objection, the independent administration of the estate shall be
8 closed when the objection has been disposed of or the court signs an
9 order closing the estate.

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

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

24 (4) If the independent executor is required to give
25 bond, the independent executor's filing of the closing report and
26 proof of delivery, if required, automatically releases the sureties
27 on the bond from all liability for the future acts of the principal.

1 The filing of a notice of closing estate does not release the
2 sureties on the bond of an independent executor.

3 (5) An independent executor's closing report or notice
4 of closing estate shall constitute sufficient legal authority to
5 all persons owing any money, having custody of any property, or
6 acting as registrar or transfer agent or trustee of any evidence of
7 interest, indebtedness, property, or right that belongs to the
8 estate, for payment or transfer without additional administration
9 to the distributees described in the will as entitled to receive the
10 particular asset or who as heirs at law are entitled to receive the
11 asset. The distributees described in the will as entitled to
12 receive the particular asset or the heirs at law entitled to receive
13 the asset may enforce their right to the payment or transfer by
14 suit.

15 Sec. 177Y. PARTITION AND DISTRIBUTION OR SALE OF PROPERTY
16 INCAPABLE OF DIVISION. If the will does not distribute the entire
17 estate of the testator or provide a means for partition of the
18 estate, or if no will was probated, the independent executor may,
19 but may not be required to, petition the probate court for either a
20 partition and distribution of the estate or an order of sale of any
21 portion of the estate alleged by the independent executor and found
22 by the court to be incapable of a fair and equal partition and
23 distribution, or both. The estate or portion of the estate shall
24 either be partitioned and distributed or sold, or both, in the
25 manner provided for the partition and distribution of property and
26 the sale of property incapable of division in supervised estates.

27 Sec. 177Z. CLOSING INDEPENDENT ADMINISTRATION ON

1 APPLICATION BY DISTRIBUTEES. (a) At any time after an estate has
2 been fully administered and there is no further need for an
3 independent administration of such estate, any distributee may file
4 an application to close the administration; and, after citation on
5 the independent executor, and on hearing, the court may enter an
6 order:

7 (1) requiring the independent executor to file a
8 closing report meeting the requirements of Section 177X of this
9 code;

10 (2) closing the administration;

11 (3) terminating the power of the independent executor
12 to act as such; and

13 (4) releasing the sureties on any bond the independent
14 executor was required to give from all liability for the future acts
15 of the principal.

16 (b) The order of the court closing the independent
17 administration shall constitute sufficient legal authority to all
18 persons owing any money, having custody of any property, or acting
19 as registrar or transfer agent or trustee of any evidence of
20 interest, indebtedness, property, or right that belongs to the
21 estate, for payment or transfer without additional administration
22 to the distributees described in the will as entitled to receive the
23 particular asset or who as heirs at law are entitled to receive the
24 asset. The distributees described in the will as entitled to
25 receive the particular asset or the heirs at law entitled to receive
26 the asset may enforce their right to the payment or transfer by
27 suit.

1 Sec. 177AA. ISSUANCE OF LETTERS. At any time before the
2 authority of an independent executor has been terminated in the
3 manner set forth in this chapter, the clerk shall issue such number
4 of letters testamentary as the independent executor shall request.

5 Sec. 177BB. RIGHTS AND REMEDIES CUMULATIVE. The rights and
6 remedies conferred by this part are cumulative of other rights and
7 remedies to which a person interested in the estate may be entitled
8 under law.

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

12 SECTION 1.02. Section 3(q), Texas Probate Code, is amended
13 to read as follows:

14 (q) "Independent executor" means the personal
15 representative of an estate under independent administration as
16 provided in Chapter VI-1 [~~Section 145~~] of this Code. The term
17 "independent executor" includes the term "independent
18 administrator."

19 SECTION 1.03. Section 5A(b), Texas Probate Code, is amended
20 to read as follows:

21 (b) In proceedings in the statutory probate courts, the
22 phrases "appertaining to estates" and "incident to an estate" in
23 this Code include the probate of wills, the issuance of letters
24 testamentary and of administration, and the determination of
25 heirship, and also include, but are not limited to, all claims by or
26 against an estate, all actions for trial of title to land and for
27 the enforcement of liens thereon, all actions for trial of the right

1 of property, all actions to construe wills, the interpretation and
2 administration of testamentary trusts and the applying of
3 constructive trusts, and generally all matters relating to the
4 collection, settlement, partition, and distribution of estates of
5 deceased persons. All statutory probate courts may, in the
6 exercise of their jurisdiction, notwithstanding any other
7 provisions of this Code, hear all suits, actions, and applications
8 filed against or on behalf of any heirship proceeding or decedent's
9 estate, including estates administered by an independent executor;
10 all such suits, actions, and applications are appertaining to and
11 incident to an estate. This subsection shall be construed in
12 conjunction with and in harmony with Chapter VI-1 of this Code
13 [~~Section 145~~] and all other sections of this Code dealing with
14 independent executors, but shall not be construed so as to increase
15 permissible judicial control over independent executors. Except
16 for situations in which the jurisdiction of a statutory probate
17 court is concurrent with that of a district court as provided by
18 Section 5(e) of this Code or any other court, any cause of action
19 appertaining to estates or incident to an estate shall be brought in
20 a statutory probate court.

21 SECTION 1.04. Section 5C(a), Texas Probate Code, is amended
22 to read as follows:

- 23 (a) This section applies only to a decedent's estate that:
- 24 (1) is being administered in a pending probate
25 proceeding;
- 26 (2) owns or claims an interest in property against
27 which a taxing unit has imposed ad valorem taxes that are

1 delinquent; and

2 (3) is not being administered as an independent
3 administration under Chapter VI-1 [~~Section 145~~] of this code.

4 SECTION 1.05. Section 110, Texas Probate Code, is amended
5 to read as follows:

6 Sec. 110. REQUIREMENTS FOR EMERGENCY INTERVENTION. An
7 applicant may file an emergency application with the court under
8 Section 108 of this code only if an application has not been filed
9 and is not pending under Section 81, 82, or 137 of this code [~~7~~] or
10 Part 1, Chapter VI-1 [~~145~~] of this code and the applicant:

11 (1) needs to obtain funds for the funeral and burial of
12 the decedent; or

13 (2) needs to gain access to rental accommodations in
14 which the decedent's personal property is located and the applicant
15 has been denied access to those accommodations.

16 SECTION 1.06. Section 241(a), Texas Probate Code, is
17 amended to read as follows:

18 (a) Executors, administrators, and temporary
19 administrators shall be entitled to receive a commission of five
20 per cent (5%) on all sums they may actually receive in cash, and the
21 same per cent on all sums they may actually pay out in cash, in the
22 administration of the estate on a finding by the court that the
23 executor or administrator has taken care of and managed the estate
24 in compliance with the standards of this code; provided, no
25 commission shall be allowed for receiving funds belonging to the
26 testator or intestate which were on hand or were held for the
27 testator or intestate at the time of his death in a financial

1 institution or a brokerage firm, including cash or a cash
2 equivalent held in a checking account, savings account, certificate
3 of deposit, or money market account; nor for collecting the
4 proceeds of any life insurance policy; nor for paying out cash to
5 the heirs or legatees as such; provided, further, however, that in
6 no event shall the executor or administrator be entitled in the
7 aggregate to more than five per cent (5%) of the gross fair market
8 value of the estate subject to administration. If the executor or
9 administrator manages a farm, ranch, factory, or other business of
10 the estate, or if the compensation as calculated above is
11 unreasonably low, the court may allow him reasonable compensation
12 for his services, including unusual effort to collect funds or life
13 insurance. For this purpose, the county court shall have
14 jurisdiction to receive, consider, and act on applications from
15 independent executors. The court may, on application of an
16 interested person or on its own motion, deny a commission allowed by
17 this subsection in whole or in part if:

18 (1) the court finds that the executor or administrator
19 has not taken care of and managed estate property prudently; or

20 (2) the executor or administrator has been removed
21 under Section [~~149C or~~] 222 of this code or Part 4, Chapter VI-1 of
22 this code.

23 SECTION 1.07. Notwithstanding the transfer of Sections 145,
24 146, 147, 148, 149, 149A, 149B, 149C, 149D, 149E, 149F, 149G, 150,
25 151, 152, 153, 154, and 154A, Texas Probate Code, to the Estates and
26 Guardianships Code, as adopted by H.B. No. 2502 or S.B. No. 2071,
27 Acts of the 81st Legislature, Regular Session, 2009, by one of those

1 Acts, Sections 145, 146, 147, 148, 149, 149A, 149B, 149C, 149D,
2 149E, 149F, 149G, 150, 151, 152, 153, 154, and 154A, Texas Probate
3 Code, are repealed.

4 SECTION 1.08. The changes in law made by this article apply
5 only to the estate of a decedent who dies on or after the effective
6 date of this Act. The estate of a decedent who dies before the
7 effective date of this Act is governed by the law in effect on the
8 date of the decedent's death, and the former law is continued in
9 effect for that purpose.

10 ARTICLE 2. INDEPENDENT ADMINISTRATION: ESTATES AND GUARDIANSHIPS
11 CODE

12 SECTION 2.01. Effective January 1, 2014, Subtitle I, Title
13 2, Estates and Guardianships Code, as adopted by H.B. 2502 or S.B.
14 2071, Acts of the 81st Legislature, Regular Session, 2009, is
15 amended by adding Chapters 401, 402, 403, 404, and 405 to read as
16 follows:

17 CHAPTER 401. CREATION

18 Sec. 401.001. EXPRESSION OF TESTATOR'S INTENT IN WILL. (a)
19 Any person capable of making a will may provide in the person's will
20 that no other action shall be had in the probate court in relation
21 to the settlement of the person's estate than the probating and
22 recording of the will and the return of an inventory, appraisement,
23 and list of claims of the person's estate.

24 (b) Any person capable of making a will may provide in the
25 person's will that no independent administration of his or her
26 estate may be allowed. In such case the person's estate, if
27 administered, shall be administered and settled under the direction

1 of the probate court as other estates are required to be settled and
2 not as an independent administration.

3 Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT. (a)
4 Except as provided in Section 401.001(b), if a decedent's will
5 names an executor but the will does not provide for independent
6 administration as provided in Section 401.001(a), all of the
7 distributees of the decedent may agree on the advisability of
8 having an independent administration and collectively designate in
9 the application for probate of the decedent's will the executor
10 named in the will to serve as independent executor and request in
11 the application that no other action shall be had in the probate
12 court in relation to the settlement of the decedent's estate other
13 than the probating and recording of the decedent's will and the
14 return of an inventory, appraisement, and list of claims of the
15 decedent's estate. In such case the probate court shall enter an
16 order granting independent administration and appointing the
17 person, firm, or corporation designated in the application as
18 independent executor, unless the court finds that it would not be in
19 the best interest of the estate to do so.

20 (b) Except as provided in Section 401.001(b), in situations
21 where no executor is named in the decedent's will, or in situations
22 where each executor named in the will is deceased or is disqualified
23 to serve as executor or indicates by affidavit filed with the
24 application for administration of the decedent's estate the
25 executor's inability or unwillingness to serve as executor, all of
26 the distributees of the decedent may agree on the advisability of
27 having an independent administration and collectively designate in

1 the application for probate of the decedent's will a qualified
2 person, firm, or corporation to serve as independent administrator
3 and request in the application that no other action shall be had in
4 the probate court in relation to the settlement of the decedent's
5 estate other than the probating and recording of the decedent's
6 will and the return of an inventory, appraisement, and list of
7 claims of the decedent's estate. In such case the probate court
8 shall enter an order granting independent administration and
9 appointing the person, firm, or corporation designated in the
10 application as independent administrator, unless the court finds
11 that it would not be in the best interest of the estate to do so.

12 Sec. 401.003. CREATION IN INTESTATE ESTATE BY AGREEMENT.

13 (a) All of the distributees of a decedent dying intestate may agree
14 on the advisability of having an independent administration and
15 collectively designate in the application for administration of the
16 decedent's estate a qualified person, firm, or corporation to serve
17 as independent administrator and request in the application that no
18 other action shall be had in the probate court in relation to the
19 settlement of the decedent's estate other than the return of an
20 inventory, appraisement, and list of claims of the decedent's
21 estate. In such case the probate court shall enter an order
22 granting independent administration and appointing the person,
23 firm, or corporation designated in the application as independent
24 administrator, unless the court finds that it would not be in the
25 best interest of the estate to do so.

26 (b) The court shall not appoint an independent
27 administrator to serve in an intestate administration unless and

1 until the parties seeking appointment of the independent
2 administrator have been determined, through a proceeding to declare
3 heirship under Chapter 202, to constitute all of the decedent's
4 heirs.

5 Sec. 401.004. MEANS OF ESTABLISHING DISTRIBUTEES CONSENT.

6 (a) This section applies to the creation of an independent
7 administration under Section 401.002 or 401.003.

8 (b) All distributees shall be served with citation and
9 notice of the application for independent administration unless the
10 distributee waives the issuance or service of citation or enters an
11 appearance in court.

12 (c) If a distributee is an incapacitated person, the
13 guardian of the person of the distributee may sign the application
14 on behalf of the distributee. If the probate court finds that
15 either the granting of independent administration or the
16 appointment of the person, firm, or corporation designated in the
17 application as independent executor would not be in the best
18 interest of the incapacitated person, then, notwithstanding
19 anything to the contrary in Section 401.002 or 401.003, the court
20 shall not enter an order granting independent administration of the
21 estate. If a distributee who is an incapacitated person has no
22 guardian of the person, the probate court may appoint a guardian ad
23 litem to make application on behalf of the incapacitated person if
24 the court considers such an appointment necessary to protect the
25 interest of the distributees. Alternatively, if the distributee who
26 is an incapacitated person is a minor and has no guardian of the
27 person, the natural guardian or guardians of such minor may consent

1 on behalf of such incapacitated person if there is no conflict of
2 interest between the minor and such natural guardian or guardians.

3 (d) If a trust is created in the decedent's will, the person
4 or class of persons first eligible to receive the income from the
5 trust, when determined as if the trust were to be in existence on
6 the date of the decedent's death, shall, for the purposes of Section
7 401.002, be considered to be the distributee or distributees on
8 behalf of such trust, and any other trust or trusts coming into
9 existence on the termination of such trust, and are authorized to
10 apply for independent administration on behalf of the trusts
11 without the consent or agreement of the trustee or any other
12 beneficiary of the trust, or the trustee or any beneficiary of any
13 other trust which may come into existence on the termination of such
14 trust. If a person who is a trust beneficiary and who is considered
15 to be a distributee under this subsection is an incapacitated
16 person, then such trustee or cotrustee may file the application or
17 give the consent, provided that such trustee or cotrustee is not the
18 person proposed to serve as the independent executor.

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

27 (f) If a decedent's will contains a provision that a

1 distributee must survive the decedent by a prescribed period of
2 time in order to take under the decedent's will, then, for the
3 purposes of determining who shall be the distributee under Section
4 401.002 and under Subsection (c), it shall be presumed that the
5 distributees living at the time of the filing of the application for
6 probate of the decedent's will survived the decedent by the
7 prescribed period.

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

15 (h) If a distributee of a decedent's estate should die and
16 if by virtue of such distributee's death such distributee's share of
17 the decedent's estate shall become payable to such distributee's
18 estate, then the deceased distributee's personal representative
19 may sign the application for independent administration of the
20 decedent's estate under Section 401.002 or 401.003 and under
21 Subsection (c).

22 Sec. 401.005. BOND; WAIVER OF BOND. If an independent
23 administration of a decedent's estate is created under Section
24 401.002 or 401.003, then, unless the probate court waives bond on
25 application for waiver, the independent executor shall be required
26 to enter into bond payable to and to be approved by the judge and the
27 judge's successors in a sum that is found by the judge to be

1 adequate under all circumstances, or a bond with one surety in a sum
2 that is found by the judge to be adequate under all circumstances,
3 if the surety is an authorized corporate surety. This section does
4 not repeal any other section of this title.

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

17 Sec. 401.007. NO LIABILITY OF JUDGE. Absent proof of fraud
18 or collusion on the part of a judge, no judge may be held civilly
19 liable for the commission of misdeeds or the omission of any
20 required act of any person, firm, or corporation designated as an
21 independent executor under Section 401.002 or 401.003. Section
22 351.354 does not apply to the appointment of an independent
23 executor under Section 401.002 or 401.003.

24 Sec. 401.008. PERSON DECLINING TO SERVE. A person who
25 declines to serve or resigns as independent executor of a
26 decedent's estate may be appointed an executor or administrator of
27 the estate if the estate will be administered and settled under the

1 direction of the court.

2 CHAPTER 402. ADMINISTRATION

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

12 Sec. 402.002. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT
13 APPROVAL. Unless this title specifically provides otherwise, any
14 action that a personal representative subject to court supervision
15 may do with or without a court order may be taken by an independent
16 executor without a court order. The other provisions of this
17 subtitle are designed to provide additional guidance regarding
18 independent administrations in specified situations, and are not
19 designed to limit by omission or otherwise the application of the
20 general principles set forth in this chapter.

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

25 (2) Unless limited by the terms of a will, an
26 independent executor has, in addition to any power of sale given in
27 the will, the same power of sale for the same purposes as personal

1 representatives have in a supervised administration, but without
2 the requirement of court approval. The procedural requirements
3 applicable to a supervised administration do not apply.

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

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

12 (B) the independent executor provides an
13 affidavit, sworn to under oath and recorded in the deed records of
14 the county where the property is located, that the sale is necessary
15 or advisable for any of the purposes described in Section
16 356.251(1).

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

27 (3) This section does not relieve the independent

1 executor of any duty owing to a devisee or heir related directly or
2 indirectly to the sale.

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

9 CHAPTER 403. CLAIMS; EXEMPTIONS AND ALLOWANCES

10 Sec. 403.001. SETTING ASIDE EXEMPT PROPERTY AND ALLOWANCES.

11 The independent executor shall set aside and deliver to those
12 entitled exempt property and allowances for support, and allowances
13 in lieu of exempt property, as prescribed in this title, to the same
14 extent and result as if the independent executor's actions had been
15 accomplished in, and under orders of, the court.

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

20 (1) shall give the notices required under Sections
21 308.051, 308.052, 308.053, and 308.054;

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

25 (3) may approve or reject any claim, or take no action
26 on a claim, and shall classify and pay claims approved or
27 established by suit against the estate in the same order of

1 priority, classification, and proration prescribed in this title.

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

7 (b) Secured Claims for Money. Within six months after the
8 date letters are granted or within four months after the date notice
9 is received under Section 308.053, whichever is later, a creditor
10 with a claim for money secured by real or personal property of the
11 estate must give notice to the independent executor of the
12 creditor's election to have the creditor's claim approved as a
13 matured secured claim to be paid in due course of administration.
14 In addition to such notice, such creditor whose claim is secured by
15 real property shall record a notice of such election in the deed
16 records of the county in which such real property is located. If no
17 election to be a matured secured creditor is made, or is made but
18 not within the required period, or is made within the required
19 period but the creditor has a lien against real property and fails
20 to record notice of the claim in the deed records as described above
21 within the required period, the claim shall be a preferred debt and
22 lien against the specific property securing the indebtedness and
23 shall be paid according to the terms of the contract that secured
24 the lien, and the claim may not be asserted against other assets of
25 the estate. The independent executor may pay the claim prior to
26 maturity if it is determined to be in the best interest of the
27 estate to do so.

1 (c) Matured Secured Claims. (1) A claim approved as a
2 matured secured claim under Subsection (b) shall remain secured by
3 any lien or security interest against the specific property
4 securing its payment but subordinated to the payment from the
5 property of claims having a higher classification under Section
6 355.102. However, the secured creditor:

7 (A) shall not be entitled to exercise any
8 remedies in a manner that prevents the payment of such higher
9 priority claims and allowances; and

10 (B) during the administration of the estate,
11 shall not be entitled to exercise any contractual collection
12 rights, including the power to foreclose, without either the prior
13 written approval of the independent executor or court approval.

14 (1-a) Nothing in Subdivision (1) shall be construed to
15 suspend or otherwise prevent a creditor with a matured secured
16 claim from seeking judicial relief of any kind or executing on any
17 judgment against an independent executor. Except with respect to
18 real property, any third party acting in good faith may obtain good
19 title with respect to an estate asset acquired through a secured
20 creditor's extrajudicial collection rights, without regard to
21 whether such creditor had the right to collect or whether the
22 creditor acted improperly in exercising such rights during an
23 estate administration due to having elected matured secured status.

24 (2) If a claim approved or established by suit as a
25 matured secured claim is secured by property passing to one or more
26 devisees in accordance with Subchapter G, Chapter 255, the
27 independent executor shall collect from the devisees the amount of

1 the debt and pay that amount to the claimant or sell the property
2 and pay out of the sale proceeds the claim and associated expenses
3 of sale consistent with the provisions of Sections 355.153(b), (c),
4 (d), and (e) applicable in court supervised administrations.

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

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

19 (f) Notices Required by Creditors. Notice to the personal
20 representative required by Subsections (b) and (e) must be
21 contained in:

22 (1) a written instrument that is hand-delivered with
23 proof of receipt, or mailed by certified mail, return receipt
24 requested with proof of receipt, to the independent executor or the
25 executor's attorney;

26 (2) a pleading filed in a lawsuit with respect to the
27 claim; or

1 (3) a written instrument or pleading filed in the
2 court in which the administration of the estate is pending.

3 (f-1) Filing Requirements Applicable. Nothing in
4 Subsection (f) shall relieve a creditor who elects matured secured
5 status from the filing requirements in Subsection (b), to the
6 extent applicable.

7 (g) Statute of Limitations. Except as otherwise provided in
8 Section 16.062, Civil Practice and Remedies Code, the running of
9 the statute of limitations shall be tolled only by a written
10 approval of a claim signed by an independent executor, a pleading
11 filed in a suit pending at the time of the decedent's death, or a
12 suit brought by the creditor against the independent executor. In
13 particular, the presentation of a statement or claim, or a notice
14 with respect to a claim, to an independent executor shall not toll
15 the running of the statute of limitations with respect to that
16 claim.

17 (h) Other Claim Procedures of Code Generally Do Not Apply.
18 Except as otherwise provided in this section, the procedural
19 provisions of this title governing creditor claims in supervised
20 administrations do not apply in independent administrations. By way
21 of example only and not of limitation:

22 (1) Sections 355.064 and 355.066 do not apply in
23 independent administrations, and consequently a creditor's claim
24 shall not be barred solely because the creditor failed to file a
25 suit within 90 days after a claim has been rejected by an
26 independent executor or with respect to which the independent
27 executor takes no action; and

1 (2) Sections 355.156, 355.157, 355.158, 355.159, and
2 355.160 do not apply in independent administrations.

3 (i) Liability of Independent Executor. An independent
4 executor, in the administration of an estate, may pay at any time
5 and without personal liability a claim for money against the estate
6 to the extent approved and classified by the personal
7 representative if:

8 (1) the claim is not barred by limitations; and

9 (2) at the time of payment, the independent executor
10 reasonably believes the estate will have sufficient assets to pay
11 all claims against the estate.

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

23 Sec. 403.004. REQUIRING HEIRS TO GIVE BOND. When an
24 independent administration is created and the order appointing an
25 independent executor is entered by the probate court, any person
26 having a debt against such estate may, by written complaint filed in
27 the probate court in which such order was entered, cause all

1 distributees of the estate, heirs at law, and other persons
2 entitled to any portion of such estate under the will, if any, to be
3 cited by personal service to appear before such probate court and
4 execute a bond for an amount equal to the amount of the creditor's
5 claim or the full value of such estate, as shown by the inventory
6 and list of claims, whichever is the smaller, such bond to be
7 payable to the judge, and the judge's successors, and to be approved
8 by the judge, and conditioned that all obligors shall pay all debts
9 that shall be established against such estate in the manner
10 provided by law. On the return of the citation served, unless such
11 person so entitled to any portion of the estate, or some of them, or
12 some other person for them, shall execute such bond to the
13 satisfaction of the probate court, such estate shall be
14 administered and settled under the direction of the probate court
15 as other estates are required to be settled. If the bond is
16 executed and approved, the independent administration shall
17 proceed. Creditors of the estate may sue on such bond, and shall be
18 entitled to judgment on the bond for the amount of their debt, or
19 they may have their action against those in possession of the
20 estate.

21 CHAPTER 404. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

22 Sec. 404.001. ACCOUNTING. (a) Interested Person May
23 Demand Accounting. At any time after the expiration of 15 months
24 after the date that an independent administration was created and
25 the order appointing an independent executor was entered by the
26 probate court, any person interested in the estate may demand an
27 accounting from the independent executor. The independent executor

1 shall furnish to the person or persons making the demand an exhibit
2 in writing, sworn and subscribed by the independent executor,
3 setting forth in detail:

4 (1) the property belonging to the estate that has come
5 into the executor's possession as executor;

6 (2) the disposition that has been made of such
7 property;

8 (3) the debts that have been paid;

9 (4) the debts and expenses, if any, still owing by the
10 estate;

11 (5) the property of the estate, if any, still
12 remaining in the executor's possession;

13 (6) such other facts as may be necessary to a full and
14 definite understanding of the exact condition of the estate; and

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

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

21 (b) Enforcement of Demand. Should the independent executor
22 not comply with a demand for an accounting authorized by this
23 section within 60 days after receipt of the demand, the person
24 making the demand may compel compliance by an action in the probate
25 court. After a hearing, the court shall enter an order requiring the
26 accounting to be made at such time as it considers proper under the
27 circumstances.

1 (c) Subsequent Demands. After an initial accounting has
2 been given by an independent executor, any person interested in an
3 estate may demand subsequent periodic accountings at intervals of
4 not less than 12 months, and such subsequent demands may be enforced
5 in the same manner as an initial demand.

6 (d) Remedies Cumulative. The right to an accounting
7 accorded by this section is cumulative of any other remedies which
8 persons interested in an estate may have against the independent
9 executor of the estate.

10 Sec. 404.002. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND.
11 When it has been provided by will, regularly probated, that an
12 independent executor appointed by such will shall not be required
13 to give bond for the management of the estate devised by such will,
14 or the independent executor is not required to give bond because
15 bond has been waived by court order as authorized under Section
16 401.005, then such independent executor may be required to give
17 bond, on proper proceedings had for that purpose as in the case of
18 personal representatives in a supervised administration, if it be
19 made to appear at any time that such independent executor is
20 mismanaging the property, or has betrayed or is about to betray the
21 independent executor's trust, or has in some other way become
22 disqualified.

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

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

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

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

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

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

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

20 (b) The order of removal shall state the cause of removal
21 and shall direct by order the disposition of the assets remaining in
22 the name or under the control of the removed executor. The order of
23 removal shall require that letters issued to the removed executor
24 shall be surrendered and that all letters shall be canceled of
25 record. If an independent executor is removed by the court under
26 this section, the court may, on application, appoint a successor
27 independent executor as provided by Section 404.005.

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

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

10 Sec. 404.004. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN
11 INDEPENDENT EXECUTOR. (a) Grant of Powers by Court. Whenever a
12 person has died, or shall die, testate, owning property in this
13 state, and such person's will has been or shall be admitted to
14 probate by the court, and such probated will names an independent
15 executor or executors, or trustees acting in the capacity of
16 independent executors, to execute the terms and provisions of said
17 will, and such will grants to such independent executor, or
18 executors, or trustees acting in the capacity of independent
19 executors, the power to raise or borrow money and to mortgage, and
20 such independent executor, or executors, or trustees, have died or
21 shall die, resign, fail to qualify, or be removed from office,
22 leaving unexecuted parts or portions of the will of the testator,
23 and an administrator with the will annexed is appointed by the
24 probate court, and an administrator's bond is filed and approved by
25 the court, then in all such cases, the court may, in addition to the
26 powers conferred on such administrator under other provisions of
27 the laws of this state, authorize, direct, and empower such

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

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

20 (c) Powers Limited to Those Granted by the Will. The court
21 may order and authorize such administrator to have and exercise the
22 powers and privileges set forth in Subsection (a) or (b) only to the
23 extent that same are granted to or possessed by the independent
24 executor, or executors, or trustees acting in the capacity of
25 independent executors, under the terms of the probated will of such
26 deceased person, and then only in such cases as it appears, at the
27 hearing of the application, that at the time of the appointment of

1 such administrator, there are outstanding and unpaid obligations
2 and debts of the estate, or of the independent executor, or
3 executors, or trustees, chargeable against the estate, or unpaid
4 expenses of administration, or when the court appointing such
5 administrator orders the business of such estate to be carried on
6 and it becomes necessary, from time to time, under orders of the
7 court, for such administrator to borrow money and incur obligations
8 and indebtedness in order to protect and preserve the estate.

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

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

26 (f) Citation. On the filing of such application, the clerk
27 shall issue citation to all persons interested in the estate,

1 stating the nature of the application, and requiring such persons
2 to appear on the return day named in such citation and show cause
3 why such application should not be granted, should they choose to do
4 so. Such citation shall be served by posting.

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

11 Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT
12 EXECUTOR. (a) If the will of a person who dies testate names an
13 independent executor who, having qualified, fails for any reason to
14 continue to serve, or is removed for cause by the court, and the
15 will does not name a successor independent executor or if each
16 successor executor named in the will fails for any reason to qualify
17 as executor or indicates by affidavit filed with the application
18 for an order continuing independent administration the successor
19 executor's inability or unwillingness to serve as successor
20 independent executor, all of the distributees of the decedent as of
21 the filing of the application for an order continuing independent
22 administration may apply to the probate court for the appointment
23 of a qualified person, firm, or corporation to serve as successor
24 independent executor. If the probate court finds that continued
25 administration of the estate is necessary, the probate court shall
26 enter an order continuing independent administration and
27 appointing the person, firm, or corporation designated in the

1 application as successor independent executor, unless the probate
2 court finds that it would not be in the best interest of the estate
3 to do so. Such successor shall serve with all of the powers and
4 privileges granted to the successor's predecessor independent
5 executor.

6 (b) If a distributee described in this section is an
7 incapacitated person, the guardian of the person of the distributee
8 may sign the application on behalf of the distributee. If the
9 probate court finds that either the continuing of independent
10 administration or the appointment of the person, firm, or
11 corporation designated in the application as successor independent
12 executor would not be in the best interest of the incapacitated
13 person, then, notwithstanding Subsection (a), the probate court may
14 not enter an order continuing independent administration of the
15 estate. If the distributee is an incapacitated person and has no
16 guardian of the person, the court may appoint a guardian ad litem to
17 make application on behalf of the incapacitated person if the
18 probate court considers such an appointment necessary to protect
19 the interest of such distributee.

20 (c) If a trust is created in the decedent's will, the person
21 or class of persons first eligible to receive the income from the
22 trust, determined as if the trust were to be in existence on the
23 date of the filing of the application for an order continuing
24 independent administration, shall, for the purposes of this
25 section, be considered to be the distributee or distributees on
26 behalf of such trust, and any other trust or trusts coming into
27 existence on the termination of such trust, and are authorized to

1 apply for an order continuing independent administration on behalf
2 of the trust without the consent or agreement of the trustee or any
3 other beneficiary of the trust, or the trustee or any beneficiary of
4 any other trust which may come into existence on the termination of
5 such trust.

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

17 (e) If a decedent's will contains a provision that a
18 distributee must survive the decedent by a prescribed period of
19 time in order to take under the decedent's will, for the purposes of
20 determining who shall be the distributee under this section, it
21 shall be presumed that the distributees living at the time of the
22 filing of the application for an order continuing independent
23 administration of the decedent's estate survived the decedent for
24 the prescribed period.

25 (f) In the case of all decedents, for the purposes of
26 determining who shall be the distributees under this section, it
27 shall be presumed that no distributee living at the time the

1 application for an order continuing independent administration of
2 the decedent's estate is filed shall subsequently disclaim any
3 portion of such distributee's interest in the decedent's estate.

4 (g) If a distributee of a decedent's estate should die, and
5 if by virtue of such distributee's death such distributee's share of
6 the decedent's estate shall become payable to such distributee's
7 estate, then the deceased distributee's personal representative
8 may sign the application for an order continuing independent
9 administration of the decedent's estate under this section.

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

18 (i) Absent proof of fraud or collusion on the part of a
19 judge, the judge may not be held civilly liable for the commission
20 of misdeeds or the omission of any required act of any person, firm,
21 or corporation designated as a successor independent executor under
22 this section. Section 351.354 does not apply to an appointment of a
23 successor independent executor under this section.

24 CHAPTER 405. CLOSING AND DISTRIBUTIONS

25 Sec. 405.001. ACCOUNTING AND DISTRIBUTION. (a) In
26 addition to or in lieu of the right to an accounting provided by
27 Section 404.001, at any time after the expiration of two years after

1 the date that an independent administration was created and the
2 order appointing an independent executor was entered, a person
3 interested in the estate may petition the court for an accounting
4 and distribution. The court may order an accounting to be made with
5 the court by the independent executor at such time as the court
6 considers proper. The accounting shall include the information that
7 the court considers necessary to determine whether any part of the
8 estate should be distributed.

9 (b) On receipt of the accounting and, after notice to the
10 independent executor and a hearing, unless the court finds a
11 continued necessity for administration of the estate, the court
12 shall order its distribution by the independent executor to the
13 distributees entitled to the property. If the court finds there is
14 a continued necessity for administration of the estate, the court
15 shall order the distribution of any portion of the estate that the
16 court finds should not be subject to further administration by the
17 independent executor. If any portion of the estate that is ordered
18 to be distributed is incapable of distribution without prior
19 partition or sale, the court shall order partition and
20 distribution, or sale, in the manner provided for the partition and
21 distribution of property incapable of division in supervised
22 estates.

23 (c) If all the property in the estate is ordered distributed
24 by the court and the estate is fully administered, the court may
25 also order the independent executor to file a final account with the
26 court and may enter an order closing the administration and
27 terminating the power of the independent executor to act as

1 executor.

2 Sec. 405.002. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY
3 INDEPENDENT EXECUTOR. (a) An independent executor may not be
4 required to deliver tangible or intangible personal property to a
5 distributee unless the independent executor shall receive, at or
6 before the time of delivery of the property, a signed receipt or
7 other proof of delivery of the property to the distributee.

8 (b) An independent executor may not require a waiver or
9 release from the distributee as a condition of delivery of property
10 to a distributee.

11 Sec. 405.003. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR.

12 (a) After an estate has been administered and if there is no
13 further need for an independent administration of the estate, the
14 independent executor of the estate may file an action for
15 declaratory judgment under Chapter 37, Civil Practice and Remedies
16 Code, seeking to discharge the independent executor from any
17 liability involving matters relating to the past administration of
18 the estate that have been fully and fairly disclosed.

19 (b) On the filing of an action under this section, each
20 beneficiary of the estate shall be personally served with citation,
21 except for a beneficiary who has waived the issuance and service of
22 citation.

23 (c) In a proceeding under this section, the court may
24 require the independent executor to file a final account that
25 includes any information the court considers necessary to
26 adjudicate the independent executor's request for a discharge of
27 liability. The court may audit, settle, or approve a final account

1 filed under this subsection.

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

11 (e) Except as ordered by the court, the independent executor
12 is entitled to pay from the estate legal fees, expenses, or other
13 costs incurred in relation to a proceeding for judicial discharge
14 filed under this section. The independent executor shall be
15 personally liable to refund any amount of such fees, expenses, or
16 other costs not approved by the court as a proper charge against the
17 estate.

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

27 (a) Closing Report. An independent executor may file a

1 closing report verified by affidavit that:

2 (1) shows:

3 (A) the property of the estate that came into the
4 independent executor's possession;

5 (B) the debts that have been paid;

6 (C) the debts, if any, still owing by the estate;

7 (D) the property of the estate, if any, remaining
8 on hand after payment of debts; and

9 (E) the names and addresses of the distributees
10 to whom the property of the estate, if any, remaining on hand after
11 payment of debts has been distributed; and

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

16 (b) Notice of Closing Estate. (1) An independent executor
17 is not required to but may file a notice of closing estate verified
18 by affidavit that states:

19 (A) that all debts known to exist against the
20 estate have been paid or that the debts have been paid so far as the
21 assets in the possession of the independent executor will permit;

22 (B) that all remaining assets of the estate, if
23 any, have been distributed; and

24 (C) the names and addresses of the distributees
25 to whom the property of the estate, if any, remaining on hand after
26 payment of debts has been distributed.

27 (2) Before filing the notice, the independent executor

1 shall provide all distributees of the estate with a copy of the
2 notice of closing estate. The notice of closing estate filed by the
3 independent executor shall include signed receipts or other proof
4 that all distributees have received a copy of the notice of closing
5 estate.

6 (c) Effect of Filing Closing Report or Notice of Closing
7 Estate. (1) The independent administration of an estate shall be
8 considered closed 30 days after the filing of a closing report or
9 notice of closing estate unless an interested person files an
10 objection within the 30-day period. If an interested person files
11 an objection, the independent administration of the estate shall be
12 closed when the objection has been disposed of or the court signs an
13 order closing the estate.

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

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

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

7 (5) An independent executor's closing report or notice
8 of closing estate shall constitute sufficient legal authority to
9 all persons owing any money, having custody of any property, or
10 acting as registrar or transfer agent or trustee of any evidence of
11 interest, indebtedness, property, or right that belongs to the
12 estate, for payment or transfer without additional administration
13 to the distributees described in the will as entitled to receive the
14 particular asset or who as heirs at law are entitled to receive the
15 asset. The distributees described in the will as entitled to
16 receive the particular asset or the heirs at law entitled to receive
17 the asset may enforce their right to the payment or transfer by
18 suit.

19 Sec. 405.005. PARTITION AND DISTRIBUTION OR SALE OF
20 PROPERTY INCAPABLE OF DIVISION. If the will does not distribute the
21 entire estate of the testator or provide a means for partition of
22 the estate, or if no will was probated, the independent executor
23 may, but may not be required to, petition the probate court for
24 either a partition and distribution of the estate or an order of
25 sale of any portion of the estate alleged by the independent
26 executor and found by the court to be incapable of a fair and equal
27 partition and distribution, or both. The estate or portion of the

1 estate shall either be partitioned and distributed or sold, or
2 both, in the manner provided for the partition and distribution of
3 property and the sale of property incapable of division in
4 supervised estates.

5 Sec. 405.006. CLOSING INDEPENDENT ADMINISTRATION ON
6 APPLICATION BY DISTRIBUTEES. (a) At any time after an estate has
7 been fully administered and there is no further need for an
8 independent administration of such estate, any distributee may file
9 an application to close the administration; and, after citation on
10 the independent executor, and on hearing, the court may enter an
11 order:

12 (1) requiring the independent executor to file a
13 closing report meeting the requirements of Section 405.004;

14 (2) closing the administration;

15 (3) terminating the power of the independent executor
16 to act as such; and

17 (4) releasing the sureties on any bond the independent
18 executor was required to give from all liability for the future acts
19 of the principal.

20 (b) The order of the court closing the independent
21 administration shall constitute sufficient legal authority to all
22 persons owing any money, having custody of any property, or acting
23 as registrar or transfer agent or trustee of any evidence of
24 interest, indebtedness, property, or right that belongs to the
25 estate, for payment or transfer without additional administration
26 to the distributees described in the will as entitled to receive the
27 particular asset or who as heirs at law are entitled to receive the

1 asset. The distributees described in the will as entitled to
2 receive the particular asset or the heirs at law entitled to receive
3 the asset may enforce their right to the payment or transfer by
4 suit.

5 Sec. 405.007. ISSUANCE OF LETTERS. At any time before the
6 authority of an independent executor has been terminated in the
7 manner set forth in this subtitle, the clerk shall issue such number
8 of letters testamentary as the independent executor shall request.

9 Sec. 405.008. RIGHTS AND REMEDIES CUMULATIVE. The rights
10 and remedies conferred by this chapter are cumulative of other
11 rights and remedies to which a person interested in the estate may
12 be entitled under law.

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

16 SECTION 2.02. Chapter VI-1, Texas Probate Code, as added by
17 Article 1 of this Act, is repealed.

18 SECTION 2.03. (a) Except as provided by Subsection (b) of
19 this section, this article takes effect January 1, 2014.

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

24 ARTICLE 3. EFFECTIVE DATE

25 SECTION 3.01. Except as otherwise provided by this Act,
26 this Act takes effect September 1, 2009.