

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:

SECTION 1. 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 the distributees of the decedent may agree on the advisability of

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

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

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

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

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

19 (b) The court shall not appoint an independent
20 administrator to serve in an intestate administration unless and
21 until the parties seeking appointment of the independent
22 administrator offer clear and convincing evidence to the court that
23 they constitute all of the decedent's heirs.

24 Sec. 177D. MEANS OF ESTABLISHING DISTRIBUTEES CONSENT. (a)

25 This section applies to the creation of an independent
26 administration under Section 177B or 177C of this code.

27 (b) All distributees shall be served with citation and

1 notice of the application for independent administration unless the
2 distributee waives the issuance or service of citation or enters an
3 appearance in court.

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

22 (d) If a trust is created in the decedent's will, the person
23 or class of persons first eligible to receive the income from the
24 trust, when determined as if the trust were to be in existence on
25 the date of the decedent's death, shall, for the purposes of Section
26 177B of this code, be considered to be the distributee or
27 distributees on behalf of such trust, and any other trust or trusts

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

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

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

27 (g) In the case of all decedents, whether dying testate or

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

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

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

24 Sec. 177F. GRANTING POWER OF SALE BY AGREEMENT. In a
25 situation in which a decedent does not have a will or the will does
26 not contain or insufficiently contains language authorizing the
27 personal representative to sell real property, the court may

1 include in an order appointing an independent executor under
2 Section 177B or 177C of this code such general or specific authority
3 regarding the power of the independent executor to sell real
4 property as may be consented to by the beneficiaries who are to
5 receive any such real property in their consents to the independent
6 administration. The independent executor, in such event, may sell
7 the real property under the authority granted in the court order
8 without the further consent of those beneficiaries.

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

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

21 PART 2. ADMINISTRATION

22 Sec. 177I. GENERAL SCOPE AND EXERCISE OF POWERS. When an
23 independent administration has been created, and the order
24 appointing an independent executor has been entered by the probate
25 court, and the inventory, appraisement, and list of claims has been
26 filed by the independent executor and approved by the court, as long
27 as the estate is represented by an independent executor, further

1 action of any nature shall not be had in the probate court except
2 where this code specifically and explicitly provides for some
3 action in such court.

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

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

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

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

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

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

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

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

23 (c) No Limitations. This section does not limit the
24 authority of an independent executor to take other actions without
25 court supervision or approval with respect to estate assets that
26 may take place in a supervised administration, for purposes and
27 within the scope otherwise authorized by this code, including

1 leases and borrowing money.

2 PART 3. CLAIMS; EXEMPTIONS AND ALLOWANCES

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

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

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

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

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

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

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

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

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

22 (c) Matured Secured Claims. (1) A claim approved as a
23 matured secured claim under Subsection (b) of this section shall
24 remain secured by any lien or security interest against the
25 specific property securing its payment but subordinated to the
26 payment from the property of claims having a higher classification
27 under Section 322 of this code. However, the secured creditor:

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

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

8 (1-a) Nothing in Subdivision (1) of this subsection
9 shall be construed to suspend or otherwise prevent a creditor with a
10 matured secured claim from seeking judicial relief of any kind or
11 executing on any judgment against an independent executor. Except
12 with respect to real property, any third party acting in good faith
13 may obtain good title with respect to an estate asset acquired
14 through a secured creditor's extrajudicial collection rights,
15 without regard to whether such creditor had the right to collect or
16 whether the creditor acted improperly in exercising such rights
17 during an estate administration due to having elected matured
18 secured status.

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

27 (d) Preferred Debt and Lien Claims. During an independent

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

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

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

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

21 (2) a pleading filed in a lawsuit with respect to the
22 claim; or

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

25 (f-1) Filing Requirements Applicable. Nothing in
26 Subsection (f) of this section shall relieve a creditor who elects
27 matured secured status from the filing requirements in Subsection

1 (b) of this section, to the extent applicable.

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

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

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

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

25 (i) Liability of Independent Executor. An independent
26 executor, in the administration of an estate, may pay at any time
27 and without personal liability a claim for money against the estate

1 to the extent approved and classified by the personal
2 representative if:

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

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

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

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

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

15 PART 4. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

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

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

27 (2) the disposition that has been made of such

1 property;

2 (3) the debts that have been paid;

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

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

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

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

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

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

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

27 (d) Remedies Cumulative. The right to an accounting

1 accorded by this section is cumulative of any other remedies which
2 persons interested in an estate may have against the independent
3 executor of the estate.

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

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

17 Sec. 177R. REMOVAL OF INDEPENDENT EXECUTOR. (a) The

18 probate court, on its own motion or on motion of any interested
19 person, after the independent executor has been cited by personal
20 service to answer at a time and place fixed in the notice, may
21 remove an independent executor when:

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

26 (2) sufficient grounds appear to support belief that
27 the independent executor has misapplied or embezzled, or that the

1 independent executor is about to misapply or embezzle, all or any
2 part of the property committed to the independent executor's care;

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

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

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

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

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

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

27 (d) Costs and expenses incurred by the party seeking removal

1 incident to removal of an independent executor appointed without
2 bond, including reasonable attorney's fees and expenses, may be
3 paid out of the estate.

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

26 (b) Power to Borrow Money and Mortgage or Pledge Property.
27 The court, on application, citation, and hearing, may, by its

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

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

1 court, for such administrator to borrow money and incur obligations
2 and indebtedness in order to protect and preserve the estate.

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

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

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

26 (g) Hearing and Order. The court shall hear such
27 application and evidence on the application, on or after the return

1 day named in the citation, and, if satisfied a necessity exists and
2 that it would be to the best interest of the estate to grant said
3 application in whole or in part, the court shall so order;
4 otherwise, the court shall refuse said application.

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

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

26 (b) If a distributee described in this section is an
27 incapacitated person, the guardian of the person of the distributee

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

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

26 (d) If a life estate is created either in the decedent's
27 will or by law, and if a life tenant is living at the time of the

1 filing of the application for an order continuing independent
2 administration, then the life tenant or life tenants, determined as
3 if the life estate were to commence on the date of the filing of the
4 application for an order continuing independent administration,
5 shall, for the purposes of this section, be considered to be the
6 distributee or distributees on behalf of the entire estate created,
7 and are authorized to apply for an order continuing independent
8 administration on behalf of the estate without the consent or
9 approval of any remainderman.

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

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

24 (g) If a distributee of a decedent's estate should die, and
25 if by virtue of such distributee's death such distributee's share of
26 the decedent's estate shall become payable to such distributee's
27 estate, then the deceased distributee's personal representative

1 may sign the application for an order continuing independent
2 administration of the decedent's estate under this section.

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

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

17 PART 5. CLOSING AND DISTRIBUTIONS

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

1 estate should be distributed.

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

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

22 Sec. 177V. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY
23 INDEPENDENT EXECUTOR. (a) An independent executor may not be
24 required to deliver tangible or intangible personal property to a
25 distributee unless the independent executor shall receive, at or
26 before the time of delivery of the property, a signed receipt or
27 other proof of delivery of the property to the distributee.

1 (b) An independent executor may not require a waiver or
2 release from the distributee as a condition of delivery of property
3 to a distributee.

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

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

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

22 (d) On or before filing an action under this section, the
23 independent executor must distribute to the beneficiaries of the
24 estate any of the remaining assets or property of the estate that
25 remains in the independent executor's possession after all of the
26 estate's debts have been paid, except for a reasonable reserve of
27 assets that the independent executor may retain in a fiduciary

1 capacity pending court approval of the final account. The court may
2 review the amount of assets on reserve and may order the independent
3 executor to make further distributions under this section.

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

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

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

22 (1) shows:

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

25 (B) the debts that have been paid;

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

27 (D) the property of the estate, if any, remaining

1 on hand after payment of debts; and

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

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

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

12 (A) that all debts known to exist against the
13 estate have been paid or that the debts have been paid so far as the
14 assets in the hands of the independent executor will permit;

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

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

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

26 (c) Effect of Filing Closing Report or Notice of Closing
27 Estate. (1) The independent administration of an estate shall be

1 considered closed 30 days after the filing of a closing report or
2 notice of closing estate unless an interested person files an
3 objection within the 30-day period. If an interested person files
4 an objection, the independent administration of the estate shall be
5 closed when the objection has been disposed of or the court signs an
6 order closing the estate.

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

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

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

27 (5) An independent executor's closing report or notice

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

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

24 Sec. 177Z. CLOSING INDEPENDENT ADMINISTRATION ON
25 APPLICATION BY DISTRIBUTE. (a) At any time after an estate has
26 been fully administered and there is no further need for an
27 independent administration of such estate, any distributee may file

1 an application to close the administration; and, after citation on
2 the independent executor, and on hearing, the court may enter an
3 order:

4 (1) requiring the independent executor to file a
5 closing report meeting the requirements of Section 177X of this
6 code;

7 (2) closing the administration;

8 (3) terminating the power of the independent executor
9 to act as such; and

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

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

25 Sec. 177AA. ISSUANCE OF LETTERS. At any time before the
26 authority of an independent executor has been terminated in the
27 manner set forth in this chapter, the clerk shall issue such number

1 of letters testamentary as the independent executor shall request.

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

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

9 SECTION 2. Sections 145, 146, 147, 148, 149, 149A, 149B,
10 149C, 149D, 149E, 149F, 149G, 150, 151, 152, 153, 154, and 154A,
11 Texas Probate Code, are repealed.

12 SECTION 3. This Act takes effect September 1, 2009.