

By: Hartnett

H.B. No. 3350

A BILL TO BE ENTITLED

AN ACT

relating to decedents' estates.

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

SECTION 1. Section 59, Texas Probate Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) As an alternative to the self-proving of a last will and testament by the affidavits of the testator and the attesting witnesses under Subsection (a) of this section, a last will and testament may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths under the laws of this state, and the testimony of the witnesses in the probate of the will and testament may be made unnecessary, with the inclusion in the will and testament of the following in form and contents substantially as follows:

I, _____, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my last will and testament, that I have willingly made and executed it in the presence of the undersigned witnesses, all of whom were present at the same time, as my free act and deed, and that I have requested each of the undersigned witnesses to sign this will and testament in my presence and in the presence of each other. I now sign this will and testament in the presence of the attesting witnesses and the

1 undersigned authority on this _____ day of _____,
2 20_____.

3 _____
4 Testator

5 The undersigned, _____ and _____, each being above
6 fourteen years of age, after being duly sworn, declare to the
7 testator and to the undersigned authority that the testator
8 declared to us that this instrument is the testator's last will and
9 testament and that the testator requested us to act as witnesses to
10 the testator's will and testament and signature. The testator then
11 signed this will and testament in our presence, all of us being
12 present at the same time. The testator is eighteen years of age or
13 over (or being under such age, is or has been lawfully married, or
14 is a member of the armed forces of the United States or of an
15 auxiliary thereof or of the Maritime Service), and we believe the
16 testator to be of sound mind. We now sign our names as attesting
17 witnesses in the presence of the testator, each other, and the
18 undersigned authority on this _____ day of _____,
19 20_____.

20 _____
21 Witness

22 _____
23 Witness

24 Subscribed and sworn to before me by the said _____,
25 testator, and by the said _____ and _____,
26 witnesses, this _____ day of _____, 20_____.

27 (SEAL)

1 (Signed)

2 (Official Capacity of Officer)

3 (b) An affidavit in form and content substantially as
4 provided by Subsection (a) of this section is a "self-proving
5 affidavit." A will with a self-proving affidavit subscribed and
6 sworn to by the testator and witnesses attached or annexed to the
7 will, or a will simultaneously executed, attested, and made
8 self-proved as provided by Subsection (a-1) of this section, is a
9 "self-proved will." Substantial compliance with the form of the
10 affidavit provided by Subsection (a) of this section [~~form of such~~
11 ~~affidavit~~] shall suffice to cause the will to be self-proved. For
12 this purpose, an affidavit that is subscribed and acknowledged by
13 the testator and subscribed and sworn to by the witnesses would
14 suffice as being in substantial compliance. A signature on a
15 self-proving affidavit as provided by Subsection (a) of this
16 section is considered a signature to the will if necessary to prove
17 that the will was signed by the testator or witnesses, or both, but
18 in that case, the will may not be considered a self-proved will.

19 SECTION 2. Section 471, Texas Probate Code, is amended by
20 adding Subdivisions (1-a), (2-a), and (2-b) and amending
21 Subdivision (2) to read as follows:

22 (1-a) "Dissolution" means the termination of a marriage
23 by divorce, annulment, or a declaration that the marriage is void.

24 (2) "Divorced individual" means an individual whose
25 marriage has been dissolved [~~regardless of whether by divorce or~~
26 ~~annulment~~].

27 (2-a) "Relative" means an individual who is related to

1 another individual by consanguinity or affinity, as determined
2 under Sections 573.022 and 573.024, Government Code, respectively.

3 (2-b) "Relative of the former spouse" means a relative
4 of the former spouse who is not a relative of the divorced
5 individual.

6 SECTION 3. Chapter XI-A, Texas Probate Code, is amended by
7 adding Section 471A to read as follows:

8 Sec. 471A. DISSOLUTION OF MARRIAGE. For the purposes of
9 this chapter, a marriage has been "dissolved" if the marriage
10 terminates as a result of dissolution.

11 SECTION 4. Sections 472 and 473, Texas Probate Code, are
12 amended to read as follows:

13 Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS
14 ON DISSOLUTION OF MARRIAGE. (a) Except as otherwise provided by a
15 premarital agreement or marital property agreement or by a court
16 order that is a final judgment, including a judgment dissolving the
17 marriage and dividing marital property and an order for payment of
18 child support in a suit affecting the parent-child relationship,
19 the express terms of a trust instrument executed by a divorced
20 individual before the individual's marriage was dissolved, or an
21 express provision of a contract relating to the division of the
22 marital estate entered into between a divorced individual and the
23 individual's former spouse before, during, or after the marriage,
24 the dissolution of the marriage revokes the following:

25 (1) a revocable disposition or appointment of property
26 made by a divorced individual to the individual's former spouse or
27 any relative of the former spouse in a trust instrument executed

1 before the dissolution of the marriage;

2 (2) a provision in a trust instrument executed by a
3 divorced individual before the dissolution of the marriage that
4 confers a general or special power of appointment on the
5 individual's former spouse or any relative of the former spouse;
6 and

7 (3) a nomination in a trust instrument executed by a
8 divorced individual before the dissolution of the marriage that
9 nominates the individual's former spouse or any relative of the
10 former spouse to serve in a fiduciary or representative capacity,
11 including as a personal representative, executor, trustee,
12 conservator, agent, or guardian.

13 (b) After the dissolution of a marriage, an interest granted
14 in a provision of a trust instrument that is revoked under
15 Subsection (a)(1) or (2) of this section passes as if the former
16 spouse of the divorced individual who executed the trust instrument
17 or any relative of the former spouse, as applicable, disclaimed the
18 interest granted in the provision, and an interest granted in a
19 provision of a trust instrument that is revoked under Subsection
20 (a)(3) of this section passes as if the former spouse or any
21 relative of the former spouse, as applicable, died immediately
22 before the dissolution of the marriage.

23 Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND
24 PROPERTY. (a) A bona fide purchaser of property from a divorced
25 individual's former spouse or any relative of the former spouse or a
26 person who receives from a divorced individual's former spouse or
27 any relative of the former spouse a payment, benefit, or property in

1 partial or full satisfaction of an enforceable obligation:

2 (1) is not required by this chapter to return the
3 payment, benefit, or property; and

4 (2) is not liable under this chapter for the amount of
5 the payment or the value of the property or benefit.

6 (b) A divorced individual's former spouse or any relative of
7 the former spouse who, not for value, receives a payment, benefit,
8 or property to which the former spouse or the relative of the former
9 spouse is not entitled as a result of Section 472(a) of this code:

10 (1) shall return the payment, benefit, or property to
11 the person who is otherwise entitled to the payment, benefit, or
12 property as provided by this chapter; or

13 (2) is personally liable to the person described by
14 Subdivision (1) of this subsection for the amount of the payment or
15 the value of the benefit or property received.

16 SECTION 5. Section 70, Texas Probate Code, is repealed.

17 SECTION 6. The changes in law made by this Act to Sections
18 471, 472, and 473, Texas Probate Code, as amended by this Act, and
19 Section 471A, Texas Probate Code, as added by this Act, apply only
20 to a divorced individual who dies on or after the effective date of
21 this Act.

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