

1-1 By: Hartnett (Senate Sponsor - Watson) H.B. No. 3350
1-2 (In the Senate - Received from the House May 18, 2009;
1-3 May 19, 2009, read first time and referred to Committee on
1-4 Jurisprudence; May 23, 2009, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 23, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to decedents' estates.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 59, Texas Probate Code, is amended by
1-11 adding Subsection (a-1) and amending Subsection (b) to read as
1-12 follows:

1-13 (a-1) As an alternative to the self-proving of a last will
1-14 and testament by the affidavits of the testator and the attesting
1-15 witnesses under Subsection (a) of this section, a last will and
1-16 testament may be simultaneously executed, attested, and made
1-17 self-proved before an officer authorized to administer oaths under
1-18 the laws of this state, and the testimony of the witnesses in the
1-19 probate of the will and testament may be made unnecessary, with the
1-20 inclusion in the will and testament of the following in form and
1-21 contents substantially as follows:

1-22 I, _____, as testator, after being duly
1-23 sworn, declare to the undersigned witnesses and to the undersigned
1-24 authority that this instrument is my last will and testament, that I
1-25 have willingly made and executed it in the presence of the
1-26 undersigned witnesses, all of whom were present at the same time, as
1-27 my free act and deed, and that I have requested each of the
1-28 undersigned witnesses to sign this will and testament in my
1-29 presence and in the presence of each other. I now sign this will and
1-30 testament in the presence of the attesting witnesses and the
1-31 undersigned authority on this _____ day of _____,
1-32 20_____.

1-33 _____
1-34 Testator

1-35 The undersigned, _____ and _____, each being above
1-36 fourteen years of age, after being duly sworn, declare to the
1-37 testator and to the undersigned authority that the testator
1-38 declared to us that this instrument is the testator's last will and
1-39 testament and that the testator requested us to act as witnesses to
1-40 the testator's will and testament and signature. The testator then
1-41 signed this will and testament in our presence, all of us being
1-42 present at the same time. The testator is eighteen years of age or
1-43 over (or being under such age, is or has been lawfully married, or
1-44 is a member of the armed forces of the United States or of an
1-45 auxiliary thereof or of the Maritime Service), and we believe the
1-46 testator to be of sound mind. We now sign our names as attesting
1-47 witnesses in the presence of the testator, each other, and the
1-48 undersigned authority on this _____ day of _____,
1-49 20_____.

1-50 _____
1-51 Witness

1-52 _____
1-53 Witness

1-54 Subscribed and sworn to before me by the said _____,
1-55 testator, and by the said _____ and _____,
1-56 witnesses, this _____ day of _____, 20_____.

1-57 (SEAL)

1-58 _____
1-59 (Signed)
(Official Capacity of Officer)

1-60 (b) An affidavit in form and content substantially as
1-61 provided by Subsection (a) of this section is a "self-proving
1-62 affidavit." A will with a self-proving affidavit subscribed and
1-63 sworn to by the testator and witnesses attached or annexed to the
1-64 will, or a will simultaneously executed, attested, and made

2-1 self-proved as provided by Subsection (a-1) of this section, is a
 2-2 "self-proved will." Substantial compliance with the form of the
 2-3 affidavit provided by Subsection (a) of this section [~~form of such~~
 2-4 ~~affidavit~~] shall suffice to cause the will to be self-proved. For
 2-5 this purpose, an affidavit that is subscribed and acknowledged by
 2-6 the testator and subscribed and sworn to by the witnesses would
 2-7 suffice as being in substantial compliance. A signature on a
 2-8 self-proving affidavit as provided by Subsection (a) of this
 2-9 section is considered a signature to the will if necessary to prove
 2-10 that the will was signed by the testator or witnesses, or both, but
 2-11 in that case, the will may not be considered a self-proved will.

2-12 SECTION 2. Section 471, Texas Probate Code, is amended by
 2-13 adding Subdivisions (1-a), (2-a), and (2-b) and amending
 2-14 Subdivision (2) to read as follows:

2-15 (1-a) "Dissolution" means the termination of a marriage
 2-16 by divorce, annulment, or a declaration that the marriage is void.

2-17 (2) "Divorced individual" means an individual whose
 2-18 marriage has been dissolved[, regardless of whether by divorce or
 2-19 annulment].

2-20 (2-a) "Relative" means an individual who is related to
 2-21 another individual by consanguinity or affinity, as determined
 2-22 under Sections 573.022 and 573.024, Government Code, respectively.

2-23 (2-b) "Relative of the former spouse" means a relative
 2-24 of the former spouse who is not a relative of the divorced
 2-25 individual.

2-26 SECTION 3. Chapter XI-A, Texas Probate Code, is amended by
 2-27 adding Section 471A to read as follows:

2-28 Sec. 471A. DISSOLUTION OF MARRIAGE. For the purposes of
 2-29 this chapter, a marriage has been "dissolved" if the marriage
 2-30 terminates as a result of dissolution.

2-31 SECTION 4. Sections 472 and 473, Texas Probate Code, are
 2-32 amended to read as follows:

2-33 Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS
 2-34 ON DISSOLUTION OF MARRIAGE. (a) Except as otherwise provided by a
 2-35 premarital agreement or marital property agreement or by a court
 2-36 order that is a final judgment, including a judgment dissolving the
 2-37 marriage and dividing marital property and an order for payment of
 2-38 child support in a suit affecting the parent-child relationship,
 2-39 the express terms of a trust instrument executed by a divorced
 2-40 individual before the individual's marriage was dissolved, or an
 2-41 express provision of a contract relating to the division of the
 2-42 marital estate entered into between a divorced individual and the
 2-43 individual's former spouse before, during, or after the marriage,
 2-44 the dissolution of the marriage revokes the following:

2-45 (1) a revocable disposition or appointment of property
 2-46 made by a divorced individual to the individual's former spouse or
 2-47 any relative of the former spouse in a trust instrument executed
 2-48 before the dissolution of the marriage;

2-49 (2) a provision in a trust instrument executed by a
 2-50 divorced individual before the dissolution of the marriage that
 2-51 confers a general or special power of appointment on the
 2-52 individual's former spouse or any relative of the former spouse;
 2-53 and

2-54 (3) a nomination in a trust instrument executed by a
 2-55 divorced individual before the dissolution of the marriage that
 2-56 nominates the individual's former spouse or any relative of the
 2-57 former spouse to serve in a fiduciary or representative capacity,
 2-58 including as a personal representative, executor, trustee,
 2-59 conservator, agent, or guardian.

2-60 (b) After the dissolution of a marriage, an interest granted
 2-61 in a provision of a trust instrument that is revoked under
 2-62 Subsection (a)(1) or (2) of this section passes as if the former
 2-63 spouse of the divorced individual who executed the trust instrument
 2-64 or any relative of the former spouse, as applicable, disclaimed the
 2-65 interest granted in the provision, and an interest granted in a
 2-66 provision of a trust instrument that is revoked under Subsection
 2-67 (a)(3) of this section passes as if the former spouse or any
 2-68 relative of the former spouse, as applicable, died immediately
 2-69 before the dissolution of the marriage.

3-1 Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND
3-2 PROPERTY. (a) A bona fide purchaser of property from a divorced
3-3 individual's former spouse or any relative of the former spouse or a
3-4 person who receives from a divorced individual's former spouse or
3-5 any relative of the former spouse a payment, benefit, or property in
3-6 partial or full satisfaction of an enforceable obligation:

3-7 (1) is not required by this chapter to return the
3-8 payment, benefit, or property; and

3-9 (2) is not liable under this chapter for the amount of
3-10 the payment or the value of the property or benefit.

3-11 (b) A divorced individual's former spouse or any relative of
3-12 the former spouse who, not for value, receives a payment, benefit,
3-13 or property to which the former spouse or the relative of the former
3-14 spouse is not entitled as a result of Section 472(a) of this code:

3-15 (1) shall return the payment, benefit, or property to
3-16 the person who is otherwise entitled to the payment, benefit, or
3-17 property as provided by this chapter; or

3-18 (2) is personally liable to the person described by
3-19 Subdivision (1) of this subsection for the amount of the payment or
3-20 the value of the benefit or property received.

3-21 SECTION 5. Section 70, Texas Probate Code, is repealed.

3-22 SECTION 6. The changes in law made by this Act to Sections
3-23 471, 472, and 473, Texas Probate Code, as amended by this Act, and
3-24 Section 471A, Texas Probate Code, as added by this Act, apply only
3-25 to a divorced individual who dies on or after the effective date of
3-26 this Act.

3-27 SECTION 7. This Act takes effect September 1, 2009.

3-28 * * * * *