

By: Duncan

S.B. No. 2071

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the adoption of a nonsubstantive revision of provisions  
3 of the Texas Probate Code relating to decedents' estates and the  
4 redesignation of certain other provisions of the Texas Probate  
5 Code, including conforming amendments and repeals.

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

7 SECTION 1. ESTATES AND GUARDIANSHIPS CODE. The Estates and  
8 Guardianships Code is adopted to read as follows:

9 ESTATES AND GUARDIANSHIPS CODE

10 TITLE 1. GENERAL PROVISIONS

11 CHAPTER 21. PURPOSE AND CONSTRUCTION

12 CHAPTER 22. DEFINITIONS

13 [Chapters 23-30 reserved for expansion]

14 TITLE 2. ESTATES OF DECEDENTS

15 SUBTITLE A. SCOPE, JURISDICTION, AND COURTS

16 [Chapters 31-50 reserved for expansion]

17 SUBTITLE B. PROCEDURAL MATTERS

18 CHAPTER 51. NOTICES AND PROCESS IN PROBATE PROCEEDINGS

19 IN GENERAL

20 CHAPTER 52. FILING AND RECORDKEEPING

21 CHAPTER 53. OTHER COURT DUTIES AND PROCEDURES

22 CHAPTER 54. PLEADINGS AND EVIDENCE IN GENERAL

23 CHAPTER 55. COMPLAINTS AND CONTESTS

1 CHAPTER 56. CHANGE AND RESIGNATION OF RESIDENT AGENT OF PERSONAL  
2 REPRESENTATIVE FOR SERVICE OF PROCESS  
3 [Chapters 57-100 reserved for expansion]  
4 SUBTITLE C. PASSAGE OF TITLE AND DISTRIBUTION  
5 OF DECEDENTS' PROPERTY IN GENERAL  
6 CHAPTER 101. ESTATE ASSETS IN GENERAL  
7 CHAPTER 102. PROBATE ASSETS: DECEDENT'S HOMESTEAD  
8 [Chapters 103-110 reserved for expansion]  
9 CHAPTER 111. NONPROBATE ASSETS IN GENERAL  
10 CHAPTER 112. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP  
11 CHAPTER 113. MULTIPLE-PARTY ACCOUNTS  
12 [Chapters 114-120 reserved for expansion]  
13 CHAPTER 121. SURVIVAL REQUIREMENTS  
14 CHAPTER 122. DISCLAIMERS AND ASSIGNMENTS  
15 CHAPTER 123. DISSOLUTION OF MARRIAGE  
16 CHAPTER 124. VALUATION AND TAXATION OF ESTATE PROPERTY  
17 [Chapters 125-150 reserved for expansion]  
18 SUBTITLE D. PROCEEDINGS BEFORE ADMINISTRATION OF ESTATE  
19 CHAPTER 151. EXAMINATION OF DOCUMENTS AND SAFE DEPOSIT BOXES  
20 CHAPTER 152. EMERGENCY INTERVENTION  
21 [Chapters 153-200 reserved for expansion]  
22 SUBTITLE E. INTESTATE SUCCESSION  
23 CHAPTER 201. DESCENT AND DISTRIBUTION  
24 CHAPTER 202. DETERMINATION OF HEIRSHIP  
25 CHAPTER 203. NONJUDICIAL EVIDENCE OF HEIRSHIP  
26 CHAPTER 204. GENETIC TESTING IN PROCEEDINGS TO DECLARE HEIRSHIP  
27 CHAPTER 205. SMALL ESTATE AFFIDAVIT

1 [Chapters 206-250 reserved for expansion]  
2 SUBTITLE F. WILLS  
3 CHAPTER 251. FUNDAMENTAL REQUIREMENTS AND PROVISIONS  
4 RELATING TO WILLS  
5 CHAPTER 252. SAFEKEEPING AND CUSTODY OF WILLS  
6 CHAPTER 253. CHANGE AND REVOCATION OF WILLS  
7 CHAPTER 254. VALIDITY OF CERTAIN PROVISIONS IN, AND CONTRACTS  
8 RELATING TO, WILLS  
9 CHAPTER 255. CONSTRUCTION AND INTERPRETATION OF WILLS  
10 CHAPTER 256. PROBATE OF WILLS GENERALLY  
11 CHAPTER 257. PROBATE OF WILL AS MUNIMENT OF TITLE  
12 CHAPTER 258. CITATIONS AND NOTICES RELATING TO PROBATE OF WILL  
13 [Chapters 259-300 reserved for expansion]  
14 SUBTITLE G. INITIAL APPOINTMENT OF PERSONAL REPRESENTATIVE  
15 AND OPENING OF ADMINISTRATION  
16 CHAPTER 301. APPLICATION FOR LETTERS TESTAMENTARY  
17 OR OF ADMINISTRATION  
18 [Chapter 302 reserved for expansion]  
19 CHAPTER 303. CITATIONS AND NOTICES IN GENERAL ON OPENING  
20 OF ADMINISTRATION  
21 CHAPTER 304. PERSONS WHO MAY SERVE AS PERSONAL REPRESENTATIVES  
22 CHAPTER 305. QUALIFICATION OF PERSONAL REPRESENTATIVES  
23 CHAPTER 306. GRANTING AND ISSUANCE OF LETTERS  
24 CHAPTER 307. VALIDITY OF CERTAIN ACTS OF EXECUTORS AND  
25 ADMINISTRATORS  
26 CHAPTER 308. NOTICE TO BENEFICIARIES AND CLAIMANTS  
27 CHAPTER 309. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

1 CHAPTER 310. ALLOCATION OF ESTATE INCOME AND EXPENSES  
2 [Chapters 311-350 reserved for expansion]  
3 SUBTITLE H. CONTINUATION OF ADMINISTRATION  
4 CHAPTER 351. POWERS AND DUTIES OF PERSONAL REPRESENTATIVES  
5 IN GENERAL  
6 CHAPTER 352. COMPENSATION AND EXPENSES OF PERSONAL  
7 REPRESENTATIVES AND OTHERS  
8 CHAPTER 353. EXEMPT PROPERTY AND FAMILY ALLOWANCE  
9 CHAPTER 354. SUMMARY PROCEEDINGS FOR, OR WITHDRAWAL FROM  
10 ADMINISTRATION OF, CERTAIN ESTATES  
11 CHAPTER 355. PRESENTMENT AND PAYMENT OF CLAIMS  
12 CHAPTER 356. SALE OF ESTATE PROPERTY  
13 CHAPTER 357. RENTING ESTATE PROPERTY  
14 CHAPTER 358. MATTERS RELATING TO MINERAL PROPERTIES  
15 CHAPTER 359. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS  
16 CHAPTER 360. PARTITION AND DISTRIBUTION OF ESTATE  
17 CHAPTER 361. DEATH, RESIGNATION, OR REMOVAL OF PERSONAL  
18 REPRESENTATIVES; APPOINTMENT OF SUCCESSORS  
19 CHAPTER 362. CLOSING ADMINISTRATION OF ESTATE  
20 [Chapters 363-400 reserved for expansion]  
21 SUBTITLE I. INDEPENDENT ADMINISTRATION  
22 [Chapters 401-450 reserved for expansion]  
23 SUBTITLE J. ADDITIONAL MATTERS RELATING TO THE ADMINISTRATION  
24 OF CERTAIN ESTATES  
25 CHAPTER 451. ORDER OF NO ADMINISTRATION  
26 CHAPTER 452. TEMPORARY ADMINISTRATION OF ESTATES  
27 CHAPTER 453. ADMINISTRATION OF COMMUNITY PROPERTY

1 CHAPTER 454. ADMINISTRATION OF ESTATE OF PERSON PRESUMED DEAD

2 [Chapters 455-500 reserved for expansion]

3 SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY

4 INSTRUMENTS, AND FIDUCIARIES

5 CHAPTER 501. ANCILLARY PROBATE OF FOREIGN WILL

6 CHAPTER 502. ORIGINAL PROBATE OF FOREIGN WILL

7 CHAPTER 503. RECORDING OF FOREIGN TESTAMENTARY INSTRUMENT

8 CHAPTER 504. CONTEST OF OR OTHER CHALLENGE TO FOREIGN

9 TESTAMENTARY INSTRUMENT

10 CHAPTER 505. FOREIGN PERSONAL REPRESENTATIVES, TRUSTEES,

11 AND FIDUCIARIES

12 [Chapters 506-550 reserved for expansion]

13 SUBTITLE L. PAYMENT OF ESTATES INTO TREASURY

14 CHAPTER 551. PAYMENT OF CERTAIN ESTATES TO STATE

15 [Chapters 552-600 reserved for expansion]

16 SUBTITLE M. DURABLE POWERS OF ATTORNEY

17 [Chapters 601-650 reserved for expansion]

18 [Subtitles N-W reserved for expansion]

19 SUBTITLE X. TEXAS PROBATE CODE: SCOPE, JURISDICTION,

20 AND COURTS

21 CHAPTER I. GENERAL PROVISIONS

22 [Reserved for expansion]

23 SUBTITLE Y. TEXAS PROBATE CODE: INDEPENDENT ADMINISTRATION

24 CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION

25 PART 4. INDEPENDENT ADMINISTRATION

26 [Reserved for expansion]

1           SUBTITLE Z. TEXAS PROBATE CODE: DURABLE POWERS OF ATTORNEY

2                           [Reserved for expansion]

3                           [Titles 3-24 reserved for expansion]

4           TITLE 25. TEXAS PROBATE CODE: GUARDIANSHIP

5                           [Reserved for expansion]

6                           TITLE 1. GENERAL PROVISIONS

7                           CHAPTER 21. PURPOSE AND CONSTRUCTION

8   Sec. 21.001. PURPOSE OF CODE

9   Sec. 21.002. CONSTRUCTION

10 Sec. 21.003. STATUTORY REFERENCES

11 Sec. 21.004. EFFECT OF DIVISION OF LAW

12 Sec. 21.005. APPLICABILITY OF CERTAIN LAWS

13 Sec. 21.006. APPLICABILITY TO PROBATE PROCEEDINGS

14                           CHAPTER 21. PURPOSE AND CONSTRUCTION

15           Sec. 21.001. PURPOSE OF CODE. (a) This title and Subtitles  
16 A through M, Title 2, are enacted as a part of the state's  
17 continuing statutory revision program, begun by the Texas  
18 Legislative Council in 1963 as directed by the legislature in the  
19 law codified as Section 323.007, Government Code. The program  
20 contemplates a topic-by-topic revision of the state's general and  
21 permanent statute law without substantive change.

22           (b) Consistent with the objectives of the statutory  
23 revision program, the purpose of this title and Subtitles A through  
24 M, Title 2, is to make the law encompassed by this title and  
25 Subtitles A through M, Title 2, more accessible and understandable  
26 by:

27                           (1) rearranging the statutes into a more logical

1 order;

2 (2) employing a format and numbering system designed  
3 to facilitate citation of the law and to accommodate future  
4 expansion of the law;

5 (3) eliminating repealed, duplicative,  
6 unconstitutional, expired, executed, and other ineffective  
7 provisions; and

8 (4) restating the law in modern American English to  
9 the greatest extent possible.

10 (c) The provisions of Subtitles X, Y, and Z of Title 2 and  
11 Title 25 are transferred from the Texas Probate Code and  
12 redesignated as part of this code, but are not revised as part of  
13 the state's continuing statutory revision program. (New.)

14 Sec. 21.002. CONSTRUCTION. Except as provided by Section  
15 22.027, Chapter 311, Government Code (Code Construction Act),  
16 applies to the construction of a provision of this title or Subtitle  
17 A, B, C, D, E, F, G, H, I, J, K, L, or M, Title 2. That chapter does  
18 not apply to the construction of a provision of Subtitle X, Y, or Z  
19 of Title 2 or Title 25. (New.)

20 Sec. 21.003. STATUTORY REFERENCES. (a) A reference in a law  
21 other than in this code to a statute or a part of a statute revised  
22 by, or redesignated as part of, this code is considered to be a  
23 reference to the part of this code that revises that statute or part  
24 of that statute or contains the redesignated statute or part of the  
25 statute, as applicable.

26 (b) A reference in Subtitle X, Y, or Z, Title 2, or Title 25  
27 to a chapter, a part, a subpart, a section, or any portion of a

1 section "of this code" is a reference to the chapter, part, subpart,  
2 section, or portion of a section as redesignated in the Estates and  
3 Guardianships Code, except that:

4 (1) a reference in Subtitle X, Y, or Z, Title 2, or  
5 Title 25 to Chapter I is a reference to Chapter I, Estates and  
6 Guardianships Code, and to the revision of sections derived from  
7 Chapter I, Texas Probate Code, and any reenactments and amendments  
8 to those sections; and

9 (2) a reference in Subtitle X, Y, or Z, Title 2, or  
10 Title 25 to a chapter, part, subpart, section, or portion of a  
11 section that does not exist in the Estates and Guardianships Code is  
12 a reference to the revision of the corresponding chapter, part,  
13 subpart, section, or portion of a section of the Texas Probate Code  
14 and any reenactments or amendments. (New.)

15 Sec. 21.004. EFFECT OF DIVISION OF LAW. The division of  
16 this code into titles, subtitles, chapters, subchapters, parts,  
17 subparts, sections, subsections, subdivisions, paragraphs, and  
18 subparagraphs is for convenience and does not have any legal  
19 effect. (Tex. Prob. Code, Sec. 2(c); New.)

20 Sec. 21.005. APPLICABILITY OF CERTAIN LAWS.  
21 Notwithstanding Section 21.002 of this code and Section 311.002,  
22 Government Code:

23 (1) Section 311.032(c), Government Code, applies to  
24 Subtitles X, Y, and Z of Title 2 and Title 25; and

25 (2) Sections 311.005(4) and 311.012(b) and (c),  
26 Government Code, apply to Subtitles X, Y, and Z of Title 2. (New.)

27 Sec. 21.006. APPLICABILITY TO PROBATE PROCEEDINGS. The



1 procedure prescribed by Title 2 governs all probate proceedings.  
2 (Tex. Prob. Code, Sec. 2(a) (part).)

3 CHAPTER 22. DEFINITIONS

- 4 Sec. 22.001. APPLICABILITY OF DEFINITIONS  
5 Sec. 22.002. AUTHORIZED CORPORATE SURETY  
6 Sec. 22.003. CHARITABLE ORGANIZATION  
7 Sec. 22.004. CHILD  
8 Sec. 22.005. CLAIMS  
9 Sec. 22.006. CORPORATE FIDUCIARY  
10 Sec. 22.007. COURT; COUNTY COURT, PROBATE COURT, AND  
11 STATUTORY PROBATE COURT  
12 Sec. 22.008. DEVISE  
13 Sec. 22.009. DEVISEE  
14 Sec. 22.010. DISTRIBUTE  
15 Sec. 22.011. DOCKET  
16 Sec. 22.012. ESTATE  
17 Sec. 22.013. EXEMPT PROPERTY  
18 Sec. 22.014. GOVERNMENTAL AGENCY OF THE STATE  
19 Sec. 22.015. HEIR  
20 Sec. 22.016. INCAPACITATED PERSON  
21 Sec. 22.017. INDEPENDENT EXECUTOR  
22 Sec. 22.018. INTERESTED PERSON; PERSON INTERESTED  
23 Sec. 22.019. JUDGE  
24 Sec. 22.020. LEGACY  
25 Sec. 22.021. LEGATEE  
26 Sec. 22.022. MINOR  
27 Sec. 22.023. MINUTES

- 1 Sec. 22.024. MORTGAGE; LIEN
- 2 Sec. 22.025. NET ESTATE
- 3 Sec. 22.026. NEXT OF KIN
- 4 Sec. 22.027. PERSON
- 5 Sec. 22.028. PERSONAL PROPERTY
- 6 Sec. 22.029. PROBATE MATTER; PROBATE PROCEEDINGS;
- 7                               PROCEEDING IN PROBATE; PROCEEDINGS FOR
- 8                               PROBATE
- 9 Sec. 22.030. REAL PROPERTY
- 10 Sec. 22.031. REPRESENTATIVE; PERSONAL REPRESENTATIVE
- 11 Sec. 22.032. SURETY
- 12 Sec. 22.033. WARD
- 13 Sec. 22.034. WILL

14                               CHAPTER 22. DEFINITIONS

15               Sec. 22.001. APPLICABILITY OF DEFINITIONS. (a) Except as  
16 provided by Subsection (b), the definition for a term provided by  
17 this chapter applies in this code unless a different meaning of the  
18 term is otherwise apparent from the context in which the term is  
19 used.

20               (b) If Chapter XIII provides a definition for a term that is  
21 different from the definition provided by this chapter, the  
22 definition for the term provided by Chapter XIII applies in that  
23 chapter. (Tex. Prob. Code, Sec. 3 (part).)

24               Sec. 22.002. AUTHORIZED CORPORATE SURETY. "Authorized  
25 corporate surety" means a domestic or foreign corporation  
26 authorized to engage in business in this state for the purpose of  
27 issuing surety, guaranty, or indemnity bonds that guarantee the

1 fidelity of an executor or administrator. (Tex. Prob. Code, Sec.  
2 3(a).)

3 Sec. 22.003. CHARITABLE ORGANIZATION. "Charitable  
4 organization" means:

5 (1) a nonprofit corporation, trust, community chest,  
6 fund, foundation, or other entity that is:

7 (A) exempt from federal income tax under Section  
8 501(a), Internal Revenue Code of 1986, by being described by  
9 Section 501(c)(3) of that code; and

10 (B) organized and operated exclusively for:

11 (i) religious, charitable, scientific,  
12 educational, or literary purposes;

13 (ii) testing for public safety;

14 (iii) preventing cruelty to children or  
15 animals; or

16 (iv) promoting amateur sports competition;

17 or

18 (2) any other entity that is organized and operated  
19 exclusively for the purposes listed in Section 501(c)(3), Internal  
20 Revenue Code of 1986. (Tex. Prob. Code, Sec. 3(kk).)

21 Sec. 22.004. CHILD. (a) "Child" includes an adopted child,  
22 regardless of whether the adoption occurred through:

23 (1) an existing or former statutory procedure; or

24 (2) acts of estoppel.

25 (b) The term "child" does not include a child who does not  
26 have a presumed father unless a provision of this code expressly  
27 states that a child who does not have a presumed father is included.

1 (Tex. Prob. Code, Sec. 3(b).)

2 Sec. 22.005. CLAIMS. "Claims" includes:

3 (1) liabilities of a decedent that survive the  
4 decedent's death, including taxes, regardless of whether the  
5 liabilities arise in contract or tort or otherwise;

6 (2) funeral expenses;

7 (3) the expense of a tombstone;

8 (4) expenses of administration;

9 (5) estate and inheritance taxes; and

10 (6) debts due such estates. (Tex. Prob. Code, Sec.  
11 3(c).)

12 Sec. 22.006. CORPORATE FIDUCIARY. "Corporate fiduciary"  
13 means a financial institution, as defined by Section 201.101,  
14 Finance Code, that:

15 (1) is existing or engaged in business under the laws  
16 of this state, another state, or the United States;

17 (2) has trust powers; and

18 (3) is authorized by law to act under the order or  
19 appointment of a court of record, without giving bond, as receiver,  
20 trustee, executor, administrator, or, although the financial  
21 institution does not have general depository powers, depository for  
22 any money paid into the court, or to become sole guarantor or surety  
23 in or on any bond required to be given under the laws of this state.

24 (Tex. Prob. Code, Sec. 3(d).)

25 Sec. 22.007. COURT; COUNTY COURT, PROBATE COURT, AND  
26 STATUTORY PROBATE COURT. (a) "Court" means and includes:

27 (1) a county court in the exercise of its probate

1 jurisdiction;

2 (2) a court created by statute and authorized to  
3 exercise original probate jurisdiction; and

4 (3) a district court exercising original probate  
5 jurisdiction in a contested matter.

6 (b) The terms "county court" and "probate court" are  
7 synonymous and mean:

8 (1) a county court in the exercise of its probate  
9 jurisdiction;

10 (2) a court created by statute and authorized to  
11 exercise original probate jurisdiction; and

12 (3) a district court exercising probate jurisdiction  
13 in a contested matter.

14 (c) "Statutory probate court" means a court created by  
15 statute and designated as a statutory probate court under Chapter  
16 25, Government Code. For purposes of this code, the term does not  
17 include a county court at law exercising probate jurisdiction  
18 unless the court is designated a statutory probate court under  
19 Chapter 25, Government Code. (Tex. Prob. Code, Secs. 3(e), (g),  
20 (ii).)

21 Sec. 22.008. DEVISE. "Devise":

22 (1) used as a noun, includes a testamentary  
23 disposition of real property, personal property, or both; and

24 (2) used as a verb, means to dispose of real property,  
25 personal property, or both, by will. (Tex. Prob. Code, Sec. 3(h).)

26 Sec. 22.009. DEVISEE. "Devisee" includes a legatee. (Tex.  
27 Prob. Code, Sec. 3(i).)

1           Sec. 22.010. DISTRIBUTE. "Distributee" means a person who  
2 is entitled to a part of the estate of a decedent under a lawful will  
3 or the statutes of descent and distribution. (Tex. Prob. Code, Sec.  
4 3(j).)

5           Sec. 22.011. DOCKET. "Docket" means the probate docket.  
6 (Tex. Prob. Code, Sec. 3(k).)

7           Sec. 22.012. ESTATE. "Estate" means a decedent's property,  
8 as that property:

9                   (1) exists originally and as the property changes in  
10 form by sale, reinvestment, or otherwise;

11                   (2) is augmented by any accretions and other additions  
12 to the property, including any property to be distributed to the  
13 decedent's representative by the trustee of a trust that terminates  
14 on the decedent's death, and substitutions for the property; and

15                   (3) is diminished by any decreases in or distributions  
16 from the property. (Tex. Prob. Code, Sec. 3(l).)

17           Sec. 22.013. EXEMPT PROPERTY. "Exempt property" means the  
18 property in a decedent's estate that is exempt from execution or  
19 forced sale by the constitution or laws of this state, and any  
20 allowance paid instead of that property. (Tex. Prob. Code, Sec.  
21 3(m).)

22           Sec. 22.014. GOVERNMENTAL AGENCY OF THE STATE.  
23 "Governmental agency of the state" means:

24                   (1) a municipality;

25                   (2) a county;

26                   (3) a public school district;

27                   (4) a special-purpose district or authority;

1           (5) a board, commission, department, office, or other  
2 agency in the executive branch of state government, including an  
3 institution of higher education, as defined by Section 61.003,  
4 Education Code;

5           (6) the legislature or a legislative agency;

6           (7) the supreme court, the court of criminal appeals,  
7 a court of appeals, or a district, county, or justice of the peace  
8 court;

9           (8) a judicial agency having statewide jurisdiction;  
10 and

11           (9) the State Bar of Texas. (Tex. Prob. Code, Sec.  
12 3(11).)

13           Sec. 22.015. HEIR. "Heir" means a person who is entitled  
14 under the statutes of descent and distribution to a part of the  
15 estate of a decedent who dies intestate. The term includes the  
16 decedent's surviving spouse. (Tex. Prob. Code, Sec. 3(o).)

17           Sec. 22.016. INCAPACITATED PERSON. A person is  
18 "incapacitated" if the person:

19           (1) is a minor;

20           (2) is an adult who, because of a physical or mental  
21 condition, is substantially unable to:

22                   (A) provide food, clothing, or shelter for  
23 himself or herself;

24                   (B) care for the person's own physical health; or

25                   (C) manage the person's own financial affairs; or

26           (3) must have a guardian appointed for the person to  
27 receive funds due the person from a governmental source. (Tex.

1 Prob. Code, Sec. 3(p).)

2           Sec. 22.017. INDEPENDENT EXECUTOR. "Independent executor"  
3 means the personal representative of an estate under independent  
4 administration as provided by Section 145. The term includes an  
5 independent administrator. (Tex. Prob. Code, Sec. 3(q).)

6           Sec. 22.018. INTERESTED PERSON; PERSON INTERESTED.

7 "Interested person" or "person interested" means:

8           (1) an heir, devisee, spouse, creditor, or any other  
9 having a property right in or claim against an estate being  
10 administered; and

11           (2) anyone interested in the welfare of an  
12 incapacitated person, including a minor. (Tex. Prob. Code, Sec.  
13 3(r).)

14           Sec. 22.019. JUDGE. "Judge" means the presiding judge of  
15 any court having original jurisdiction over probate proceedings,  
16 regardless of whether the court is:

17           (1) a county court in the exercise of its probate  
18 jurisdiction;

19           (2) a court created by statute and authorized to  
20 exercise probate jurisdiction; or

21           (3) a district court exercising probate jurisdiction  
22 in a contested matter. (Tex. Prob. Code, Sec. 3(f).)

23           Sec. 22.020. LEGACY. "Legacy" includes a gift or devise of  
24 real or personal property made by a will. (Tex. Prob. Code, Sec.  
25 3(s) (part).)

26           Sec. 22.021. LEGATEE. "Legatee" includes a person who is  
27 entitled to a legacy under a will. (Tex. Prob. Code, Sec. 3(s)



1 (part).)

2           Sec. 22.022. MINOR. "Minor" means a person younger than 18  
3 years of age who:

4                 (1) has never been married; and

5                 (2) has not had the disabilities of minority removed  
6 for general purposes. (Tex. Prob. Code, Sec. 3(t).)

7           Sec. 22.023. MINUTES. "Minutes" means the probate minutes.  
8 (Tex. Prob. Code, Sec. 3(u).)

9           Sec. 22.024. MORTGAGE; LIEN. "Mortgage" and "lien"  
10 include:

11                 (1) a deed of trust;

12                 (2) a vendor's lien, a mechanic's, materialman's, or  
13 laborer's lien, an attachment or garnishment lien, and a federal or  
14 state tax lien;

15                 (3) a chattel mortgage;

16                 (4) a judgment; and

17                 (5) a pledge by hypothecation. (Tex. Prob. Code, Sec.  
18 3(v).)

19           Sec. 22.025. NET ESTATE. "Net estate" means a decedent's  
20 property excluding:

21                 (1) homestead rights;

22                 (2) exempt property;

23                 (3) the family allowance; and

24                 (4) an enforceable claim against the decedent's  
25 estate. (Tex. Prob. Code, Sec. 3(w).)

26           Sec. 22.026. NEXT OF KIN. "Next of kin" includes:

27                 (1) an adopted child or the adopted child's

1 descendants; and

2 (2) the adoptive parent of the adopted child. (Tex.  
3 Prob. Code, Sec. 3(jj).)

4 Sec. 22.027. PERSON. (a) "Person" includes a natural  
5 person and a corporation.

6 (b) The definition of "person" assigned by Section 311.005,  
7 Government Code, does not apply to any provision in this code.  
8 (Tex. Prob. Code, Sec. 3(x); New.)

9 Sec. 22.028. PERSONAL PROPERTY. "Personal property"  
10 includes an interest in:

11 (1) goods;

12 (2) money;

13 (3) a chose in action;

14 (4) an evidence of debt; and

15 (5) a real chattel. (Tex. Prob. Code, Sec. 3(z).)

16 Sec. 22.029. PROBATE MATTER; PROBATE PROCEEDINGS;  
17 PROCEEDING IN PROBATE; PROCEEDINGS FOR PROBATE. The terms "probate  
18 matter," "probate proceedings," "proceeding in probate," and  
19 "proceedings for probate" are synonymous and include a matter or  
20 proceeding relating to a decedent's estate. (Tex. Prob. Code, Sec.  
21 3(bb).)

22 Sec. 22.030. REAL PROPERTY. "Real property" includes  
23 estates and interests in land, whether corporeal or incorporeal or  
24 legal or equitable. The term does not include a real chattel.  
25 (Tex. Prob. Code, Sec. 3(dd).)

26 Sec. 22.031. REPRESENTATIVE; PERSONAL REPRESENTATIVE. (a)  
27 "Representative" and "personal representative" include:

- 1           (1) an executor and independent executor;
- 2           (2) an administrator, independent administrator, and
- 3 temporary administrator; and
- 4           (3) a successor to an executor or administrator listed
- 5 in Subdivision (1) or (2).

6           (b) The inclusion of an independent executor in Subsection

7 (a) may not be construed to subject an independent executor to the

8 control of the courts in probate matters with respect to settlement

9 of estates, except as expressly provided by law. (Tex. Prob. Code,

10 Sec. 3(aa).)

11           Sec. 22.032. SURETY. "Surety" includes a personal surety

12 and a corporate surety. (Tex. Prob. Code, Sec. 3(ee).)

13           Sec. 22.033. WARD. "Ward" means a person for whom a

14 guardian has been appointed. (Tex. Prob. Code, Sec. 3(mm).)

15           Sec. 22.034. WILL. "Will" includes:

- 16           (1) a codicil; and
- 17           (2) a testamentary instrument that merely:
- 18                   (A) appoints an executor or guardian;
- 19                   (B) directs how property may not be disposed of;
- 20 or
- 21                   (C) revokes another will. (Tex. Prob. Code, Sec.

22 3(ff).)

23                   [Chapters 23-30 reserved for expansion]

24                   TITLE 2. ESTATES OF DECEDENTS

25                   SUBTITLE A. SCOPE, JURISDICTION, AND COURTS

26                   [Chapters 31-50 reserved for expansion]

1                   SUBTITLE B. PROCEDURAL MATTERS

2    CHAPTER 51. NOTICES AND PROCESS IN PROBATE PROCEEDINGS IN GENERAL

3                   SUBCHAPTER A. ISSUANCE AND FORM OF NOTICE OR PROCESS

4    Sec. 51.001.   ISSUANCE OF NOTICE OR PROCESS IN GENERAL

5    Sec. 51.002.   DIRECTION OF WRIT OR OTHER PROCESS

6    Sec. 51.003.   CONTENTS OF CITATION OR NOTICE

7                   [Sections 51.004-51.050 reserved for expansion]

8                   SUBCHAPTER B. METHODS OF SERVING CITATION OR NOTICE; PERSONS

9                                   TO BE SERVED

10   Sec. 51.051.   PERSONAL SERVICE

11   Sec. 51.052.   SERVICE BY MAIL

12   Sec. 51.053.   SERVICE BY POSTING

13   Sec. 51.054.   SERVICE BY PUBLICATION

14   Sec. 51.055.   SERVICE ON PARTY'S ATTORNEY OF RECORD

15   Sec. 51.056.   SERVICE ON PERSONAL REPRESENTATIVE OR

16                                   RECEIVER

17                   [Sections 51.057-51.100 reserved for expansion]

18                   SUBCHAPTER C. RETURN AND PROOF OF SERVICE OF CITATION OR NOTICE

19   Sec. 51.101.   REQUIREMENTS FOR RETURN ON CITATION OR

20                                   NOTICE SERVED BY PERSONAL SERVICE

21   Sec. 51.102.   VALIDITY OF SERVICE AND RETURN ON

22                                   CITATION OR NOTICE SERVED BY POSTING

23   Sec. 51.103.   PROOF OF SERVICE

24   Sec. 51.104.   RETURN TO COURT

25                   [Sections 51.105-51.150 reserved for expansion]

1 SUBCHAPTER D. ALTERNATIVE MANNER OF ISSUANCE, SERVICE, AND RETURN

2 Sec. 51.151. COURT-ORDERED ISSUANCE, SERVICE, AND

3 RETURN UNDER CERTAIN CIRCUMSTANCES

4 [Sections 51.152-51.200 reserved for expansion]

5 SUBCHAPTER E. ADDITIONAL NOTICE PROVISIONS

6 Sec. 51.201. WAIVER OF NOTICE OF HEARING

7 Sec. 51.202. REQUEST FOR NOTICE OF FILING OF PLEADING

8 Sec. 51.203. SERVICE OF NOTICE OF INTENTION TO TAKE

9 DEPOSITIONS IN CERTAIN MATTERS

10 CHAPTER 51. NOTICES AND PROCESS IN PROBATE PROCEEDINGS IN GENERAL

11 SUBCHAPTER A. ISSUANCE AND FORM OF NOTICE OR PROCESS

12 Sec. 51.001. ISSUANCE OF NOTICE OR PROCESS IN GENERAL. (a)

13 Except as provided by Subsection (b), a person is not required to be  
14 cited or otherwise given notice except in a situation in which this  
15 title expressly provides for citation or the giving of notice.

16 (b) If this title does not expressly provide for citation or  
17 the issuance or return of notice in a probate matter, the court may  
18 require that notice be given. A court that requires that notice be  
19 given may prescribe the form and manner of service of the notice and  
20 the return of service.

21 (c) Unless a court order is required by this title, the  
22 county clerk without a court order shall issue:

23 (1) necessary citations, writs, and other process in a  
24 probate matter; and

25 (2) all notices not required to be issued by a personal  
26 representative. (Tex. Prob. Code, Secs. 33(a), (b).)

27 Sec. 51.002. DIRECTION OF WRIT OR OTHER PROCESS. (a) A

1 writ or other process other than a citation or notice must be  
2 directed "To any sheriff or constable within the State of Texas."

3 (b) Notwithstanding Subsection (a), a writ or other process  
4 other than a citation or notice may not be held defective because  
5 the process is directed to the sheriff or a constable of a named  
6 county if the process is properly served within that county by the  
7 sheriff or constable. (Tex. Prob. Code, Sec. 33(c) (part).)

8 Sec. 51.003. CONTENTS OF CITATION OR NOTICE. (a) A  
9 citation or notice must:

- 10 (1) be directed to the person to be cited or notified;
- 11 (2) be dated;
- 12 (3) state the style and number of the proceeding;
- 13 (4) state the court in which the proceeding is  
14 pending;
- 15 (5) describe generally the nature of the proceeding or  
16 matter to which the citation or notice relates;
- 17 (6) direct the person being cited or notified to  
18 appear by filing a written contest or answer or to perform another  
19 required action; and
- 20 (7) state when and where the appearance or performance  
21 described by Subdivision (6) is required.

22 (b) A citation or notice issued by the county clerk must be  
23 styled "The State of Texas" and be signed by the clerk under the  
24 clerk's seal.

25 (c) A notice required to be given by a personal  
26 representative must be in writing and be signed by the  
27 representative in the representative's official capacity.

1 (d) A citation or notice is not required to contain a  
2 precept directed to an officer, but may not be held defective  
3 because the citation or notice contains a precept directed to an  
4 officer authorized to serve the citation or notice. (Tex. Prob.  
5 Code, Sec. 33(c) (part).)

6 [Sections 51.004-51.050 reserved for expansion]

7 SUBCHAPTER B. METHODS OF SERVING CITATION OR NOTICE; PERSONS  
8 TO BE SERVED

9 Sec. 51.051. PERSONAL SERVICE. (a) Except as otherwise  
10 provided by Subsection (b), if personal service of citation or  
11 notice is required, the citation or notice must be served on the  
12 attorney of record for the person to be cited or notified.  
13 Notwithstanding the requirement of personal service, service may be  
14 made on that attorney by any method specified by Section 51.055 for  
15 service on an attorney of record.

16 (b) If the person to be cited or notified does not have an  
17 attorney of record in the proceeding, or if an attempt to serve the  
18 person's attorney is unsuccessful:

19 (1) the sheriff or constable shall serve the citation  
20 or notice by delivering a copy of the citation or notice to the  
21 person to be cited or notified, in person, if the person to whom the  
22 citation or notice is directed is in this state; or

23 (2) any disinterested person competent to make an oath  
24 that the citation or notice was served may serve the citation or  
25 notice, if the person to be cited or notified is absent from or is  
26 not a resident of this state.

27 (c) The return day of the citation or notice served under

1 Subsection (b) must be at least 10 days after the date of service,  
2 excluding the date of service.

3 (d) If citation or notice attempted to be served as provided  
4 by Subsection (b) is returned with the notation that the person  
5 sought to be served, whether inside or outside this state, cannot be  
6 found, the county clerk shall issue a new citation or notice.  
7 Service of the new citation or notice must be made by publication.  
8 (Tex. Prob. Code, Sec. 33(f)(1) (part).)

9 Sec. 51.052. SERVICE BY MAIL. (a) The county clerk, or the  
10 personal representative if required by statute or court order,  
11 shall serve a citation or notice required or permitted to be served  
12 by regular mail by mailing the original citation or notice to the  
13 person to be cited or notified.

14 (b) Except as provided by Subsection (c), the county clerk  
15 shall issue a citation or notice required or permitted to be served  
16 by registered or certified mail and shall serve the citation or  
17 notice by mailing the original citation or notice by registered or  
18 certified mail.

19 (c) A personal representative shall issue a notice required  
20 to be given by the representative by registered or certified mail  
21 and shall serve the notice by mailing the original notice by  
22 registered or certified mail.

23 (d) The county clerk or personal representative, as  
24 applicable, shall mail a citation or notice under Subsection (b) or  
25 (c) with an instruction to deliver the citation or notice to the  
26 addressee only and with return receipt requested. The clerk or  
27 representative, as applicable, shall address the envelope



1 containing the citation or notice to:

2 (1) the attorney of record in the proceeding for the  
3 person to be cited or notified; or

4 (2) the person to be cited or notified, if the citation  
5 or notice to the attorney is returned undelivered or the person to  
6 be cited or notified has no attorney of record in the proceeding.

7 (e) Service by mail shall be made at least 20 days before the  
8 return day of the service, excluding the date of service. The date  
9 of service by mail is the date of mailing.

10 (f) A copy of a citation or notice served under Subsection  
11 (a), (b), or (c), together with a certificate of the person serving  
12 the citation or notice showing that the citation or notice was  
13 mailed and the date of the mailing, shall be filed and recorded. A  
14 returned receipt for a citation or notice served under Subsection  
15 (b) or (c) shall be attached to the certificate.

16 (g) If a citation or notice served by mail is returned  
17 undelivered, a new citation or notice shall be issued. Service of  
18 the new citation or notice must be made by posting. (Tex. Prob.  
19 Code, Sec. 33(f)(4).)

20 Sec. 51.053. SERVICE BY POSTING. (a) The county clerk  
21 shall deliver the original and a copy of a citation or notice  
22 required to be posted to the sheriff or a constable of the county in  
23 which the proceeding is pending. The sheriff or constable shall  
24 post the copy at the door of the county courthouse or the location  
25 in or near the courthouse where public notices are customarily  
26 posted.

27 (b) Citation or notice under this section must be posted for

1 at least 10 days before the return day of the service, excluding the  
2 date of posting, except as provided by Section 51.102(b). The date  
3 of service of citation or notice by posting is the date of posting.

4 (c) A sheriff or constable who posts a citation or notice  
5 under this section shall return the original citation or notice to  
6 the county clerk and state the date and location of the posting in a  
7 written return on the citation or notice.

8 (d) The method of service prescribed by this section applies  
9 when a personal representative is required or permitted to post a  
10 notice. The notice must be:

- 11 (1) issued in the name of the representative;
- 12 (2) addressed and delivered to, and posted and  
13 returned by, the appropriate officer; and
- 14 (3) filed with the county clerk. (Tex. Prob. Code,  
15 Sec. 33(f)(2).)

16 Sec. 51.054. SERVICE BY PUBLICATION. (a) Citation or  
17 notice to a person to be served by publication shall be published  
18 one time in a newspaper of general circulation in the county in  
19 which the proceeding is pending. The publication must be made at  
20 least 10 days before the return day of the service, excluding the  
21 date of publication.

22 (b) The date of service of citation or notice by publication  
23 is the date of publication printed on the newspaper in which the  
24 citation or notice is published.

25 (c) If no newspaper is published, printed, or of general  
26 circulation in the county in which the citation or notice is to be  
27 published, the citation or notice under Subsection (a) shall be

1 served by posting. (Tex. Prob. Code, Sec. 33(f)(3).)

2           Sec. 51.055. SERVICE ON PARTY'S ATTORNEY OF RECORD. (a) If  
3 a party is represented by an attorney of record in a probate  
4 proceeding, each citation or notice required to be served on the  
5 party in that proceeding shall be served instead on that attorney.  
6 A notice under this subsection may be served by delivery to the  
7 attorney in person or by registered or certified mail.

8           (b) A notice may be served on an attorney of record under  
9 this section by:

- 10                   (1) another party to the proceeding;
- 11                   (2) the attorney of record for another party to the  
12 proceeding;
- 13                   (3) the appropriate sheriff or constable; or
- 14                   (4) any other person competent to testify.

15           (c) Each of the following is prima facie evidence of the  
16 fact that service has been made under this section:

- 17                   (1) the written statement of an attorney of record  
18 showing service;
- 19                   (2) the return of the officer showing service; and
- 20                   (3) the affidavit of any other person showing service.

21 (Tex. Prob. Code, Sec. 34.)

22           Sec. 51.056. SERVICE ON PERSONAL REPRESENTATIVE OR  
23 RECEIVER. Unless this title expressly provides for another method  
24 of service, the county clerk who issues a citation or notice  
25 required to be served on a personal representative or receiver  
26 shall serve the citation or notice by mailing the original citation  
27 or notice by registered or certified mail to:

1           (1) the representative's or receiver's attorney of  
2 record; or

3           (2) the representative or receiver, if the  
4 representative or receiver does not have an attorney of record.  
5 (Tex. Prob. Code, Sec. 33(e).)

6           [Sections 51.057-51.100 reserved for expansion]

7       SUBCHAPTER C. RETURN AND PROOF OF SERVICE OF CITATION OR NOTICE

8           Sec. 51.101. REQUIREMENTS FOR RETURN ON CITATION OR NOTICE  
9 SERVED BY PERSONAL SERVICE. The return of the person serving a  
10 citation or notice under Section 51.051 must:

11           (1) be endorsed on or attached to the citation or  
12 notice;

13           (2) state the date and place of service;

14           (3) certify that a copy of the citation or notice was  
15 delivered to the person directed to be served;

16           (4) be subscribed and sworn to before, and under the  
17 hand and official seal of, an officer authorized by the laws of this  
18 state to take an affidavit; and

19           (5) be returned to the county clerk who issued the  
20 citation or notice. (Tex. Prob. Code, Sec. 33(f)(1) (part).)

21           Sec. 51.102. VALIDITY OF SERVICE AND RETURN ON CITATION OR  
22 NOTICE SERVED BY POSTING. (a) A citation or notice in a probate  
23 matter that is required to be served by posting and is issued in  
24 conformity with this title, and the service and return of service of  
25 the citation or notice, is valid if:

26           (1) a sheriff or constable posts a copy of the citation  
27 or notice at the location or locations prescribed by this title; and

1           (2) the posting occurs on a day preceding the return  
2 day of service specified in the citation or notice that provides  
3 sufficient time for the period the citation or notice must be posted  
4 to expire before the specified return day.

5           (b) The fact that a sheriff or constable, as applicable,  
6 makes the return of service on the citation or notice described by  
7 Subsection (a) and returns the citation or notice on which the  
8 return has been made to the court before the expiration of the  
9 period the citation or notice must be posted does not affect the  
10 validity of the citation or notice or the service or return of  
11 service. This subsection applies even if the sheriff or constable  
12 makes the return of service and returns the citation or notice on  
13 which the return is made to the court on the same day the citation or  
14 notice is issued. (Tex. Prob. Code, Sec. 33(h).)

15           Sec. 51.103. PROOF OF SERVICE. (a) Proof of service in  
16 each case requiring citation or notice must be filed before the  
17 hearing.

18           (b) Proof of service consists of:

19               (1) if the service is made by a sheriff or constable,  
20 the return of service;

21               (2) if the service is made by a private person, the  
22 person's affidavit;

23               (3) if the service is made by mail:

24                       (A) the certificate of the county clerk making  
25 the service, or the affidavit of the personal representative or  
26 other person making the service, stating that the citation or  
27 notice was mailed and the date of the mailing; and

1 (B) the return receipt attached to the  
2 certificate or affidavit, as applicable, if the mailing was by  
3 registered or certified mail and a receipt has been returned; and

4 (4) if the service is made by publication, an  
5 affidavit:

6 (A) made by the publisher of the newspaper in  
7 which the citation or notice was published or an employee of the  
8 publisher;

9 (B) that contains or to which is attached a copy  
10 of the published citation or notice; and

11 (C) that states the date of publication printed  
12 on the newspaper in which the citation or notice was published.  
13 (Tex. Prob. Code, Sec. 33(i).)

14 Sec. 51.104. RETURN TO COURT. A citation or notice issued  
15 by a county clerk must be returned to the court from which the  
16 citation or notice was issued on the first Monday after the service  
17 is perfected. (Tex. Prob. Code, Sec. 33(g).)

18 [Sections 51.105-51.150 reserved for expansion]

19 SUBCHAPTER D. ALTERNATIVE MANNER OF ISSUANCE, SERVICE, AND RETURN

20 Sec. 51.151. COURT-ORDERED ISSUANCE, SERVICE, AND RETURN  
21 UNDER CERTAIN CIRCUMSTANCES. (a) A citation or notice required by  
22 this title shall be issued, served, and returned in the manner  
23 specified by written order of the court in accordance with this  
24 title and the Texas Rules of Civil Procedure if:

25 (1) an interested person requests that action;

26 (2) a specific method is not provided by this title for  
27 giving the citation or notice;

1           (3) a specific method is not provided by this title for  
2 the service and return of citation or notice; or

3           (4) a provision relating to a matter described by  
4 Subdivision (2) or (3) is inadequate.

5           (b) Citation or notice issued, served, and returned in the  
6 manner specified by a court order as provided by Subsection (a) has  
7 the same effect as if the manner of service and return had been  
8 specified by this title. (Tex. Prob. Code, Sec. 33(d).)

9           [Sections 51.152-51.200 reserved for expansion]

10           SUBCHAPTER E. ADDITIONAL NOTICE PROVISIONS

11           Sec. 51.201. WAIVER OF NOTICE OF HEARING. (a) A legally  
12 competent person who is interested in a hearing in a probate  
13 proceeding may waive notice of the hearing in writing either in  
14 person or through an attorney.

15           (b) A trustee of a trust may waive notice under Subsection  
16 (a) on behalf of a beneficiary of the trust as provided by that  
17 subsection.

18           (c) A consul or other representative of a foreign government  
19 whose appearance has been entered as provided by law on behalf of a  
20 person residing in a foreign country may waive notice under  
21 Subsection (a) on the person's behalf as provided by that  
22 subsection.

23           (d) A person who submits to the jurisdiction of the court in  
24 a hearing is considered to have waived notice of the hearing. (Tex.  
25 Prob. Code, Sec. 35.)

26           Sec. 51.202. REQUEST FOR NOTICE OF FILING OF PLEADING. (a)  
27 At any time after an application is filed to commence a probate

1 proceeding, including a proceeding for the probate of a will, the  
2 grant of letters testamentary or of administration, or a  
3 determination of heirship, a person interested in the estate may  
4 file with the county clerk a written request to be notified of all,  
5 or any specified, motions, applications, or pleadings filed with  
6 respect to the proceeding by any person or by one or more persons  
7 specifically named in the request. A person filing a request under  
8 this section is responsible for payment of the fees and other costs  
9 of providing a requested notice, and the clerk may require a deposit  
10 to cover the estimated costs of providing the notice. Thereafter,  
11 the clerk shall send to the requestor by regular mail a copy of any  
12 requested document.

13 (b) A county clerk's failure to comply with a request under  
14 this section does not invalidate any proceeding. (Tex. Prob. Code,  
15 Sec. 33(j).)

16 Sec. 51.203. SERVICE OF NOTICE OF INTENTION TO TAKE  
17 DEPOSITIONS IN CERTAIN MATTERS. (a) If a will is to be probated, or  
18 in another probate matter in which there is no opposing party or  
19 attorney of record on whom to serve notice and copies of  
20 interrogatories, service may be made by posting notice of the  
21 intention to take depositions for a period of 10 days as provided by  
22 Section 51.053 governing a posting of notice.

23 (b) When notice by posting under Subsection (a) is filed  
24 with the county clerk, a copy of the interrogatories must also be  
25 filed.

26 (c) At the expiration of the 10-day period prescribed by  
27 Subsection (a):



1           (1) commission may issue for taking the depositions  
2 for which the notice was posted; and

3           (2) the judge may file cross-interrogatories if no  
4 person appears. (Tex. Prob. Code, Sec. 22 (part).)

5                   CHAPTER 52. FILING AND RECORDKEEPING

6                   SUBCHAPTER A. RECORDKEEPING REQUIREMENTS

7 Sec. 52.001. PROBATE DOCKET

8 Sec. 52.002. CLAIM DOCKET

9 Sec. 52.003. PROBATE FEE BOOK

10 Sec. 52.004. ALTERNATE RECORDKEEPING

11           [Sections 52.005-52.050 reserved for expansion]

12                   SUBCHAPTER B. FILES; INDEX

13 Sec. 52.051. FILING PROCEDURES

14 Sec. 52.052. CASE FILES

15 Sec. 52.053. INDEX

16                   CHAPTER 52. FILING AND RECORDKEEPING

17                   SUBCHAPTER A. RECORDKEEPING REQUIREMENTS

18           Sec. 52.001. PROBATE DOCKET. (a) The county clerk shall  
19 maintain a record book titled "Judge's Probate Docket" and shall  
20 record in the book:

21           (1) the name of each person with respect to whom, or  
22 with respect to whose estate, proceedings are commenced or sought  
23 to be commenced;

24           (2) the name of each executor, administrator, or  
25 applicant for letters testamentary or of administration;

26           (3) the date each original application for probate  
27 proceedings is filed;

1           (4) a minute of each order, judgment, decree, and  
2 proceeding that occurs in each estate, including the date it  
3 occurs; and

4           (5) the docket number of each estate as assigned under  
5 Subsection (b).

6           (b) The county clerk shall assign a docket number to each  
7 estate in the order proceedings are commenced. (Tex. Prob. Code,  
8 Sec. 13 (part).)

9           Sec. 52.002. CLAIM DOCKET. (a) The county clerk shall  
10 maintain a record book titled "Claim Docket" and shall record in the  
11 book each claim that is presented against an estate for the court's  
12 approval.

13           (b) The county clerk shall assign one or more pages of the  
14 record book to each estate.

15           (c) The claim docket must be ruled in 16 columns at proper  
16 intervals from top to bottom, with a short note of the contents at  
17 the top of each column. The county clerk shall record for each  
18 claim, in the order claims are filed, the following information in  
19 the respective columns, beginning with the first or marginal  
20 column:

- 21           (1) the name of the claimant;
- 22           (2) the amount of the claim;
- 23           (3) the date of the claim;
- 24           (4) the date the claim is filed;
- 25           (5) the date the claim is due;
- 26           (6) the date the claim begins bearing interest;
- 27           (7) the interest rate;

1           (8) the date the claim is allowed by the executor or  
2 administrator, if applicable;

3           (9) the amount allowed by the executor or  
4 administrator, if applicable;

5           (10) the date the claim is rejected, if applicable;

6           (11) the date the claim is approved, if applicable;

7           (12) the amount approved for the claim, if applicable;

8           (13) the date the claim is disapproved, if applicable;

9           (14) the class to which the claim belongs;

10          (15) the date the claim is established by a judgment of  
11 a court, if applicable; and

12          (16) the amount of the judgment established under  
13 Subdivision (15), if applicable. (Tex. Prob. Code, Sec. 14.)

14          Sec. 52.003. PROBATE FEE BOOK. (a) The county clerk shall  
15 maintain a record book titled "Probate Fee Book" and shall record in  
16 the book each item of cost that accrues to the officers of the court  
17 and any witness fees.

18          (b) Each record entry must include:

19           (1) the party to whom the cost or fee is due;

20           (2) the date the cost or fee accrued;

21           (3) the estate or party liable for the cost or fee; and

22           (4) the date the cost or fee is paid. (Tex. Prob. Code,  
23 Sec. 16.)

24          Sec. 52.004. ALTERNATE RECORDKEEPING. Instead of  
25 maintaining the record books described by Sections 52.001, 52.002,  
26 and 52.003, the county clerk may maintain the information described  
27 by those sections relating to a person's or estate's probate

1 proceedings:

- 2 (1) on a computer file;
- 3 (2) on microfilm;
- 4 (3) in the form of a digitized optical image; or
- 5 (4) in another similar form of data compilation.

6 (Tex. Prob. Code, Sec. 17.)

7 [Sections 52.005-52.050 reserved for expansion]

8 SUBCHAPTER B. FILES; INDEX

9 Sec. 52.051. FILING PROCEDURES. (a) An application for a  
10 probate proceeding, complaint, petition, or other paper permitted  
11 or required by law to be filed with a court in a probate matter must  
12 be filed with the county clerk of the appropriate county.

13 (b) Each paper filed in an estate must be given the docket  
14 number assigned to the estate.

15 (c) On receipt of a paper described by Subsection (a), the  
16 county clerk shall:

- 17 (1) file the paper; and
- 18 (2) endorse on the paper:
  - 19 (A) the date the paper is filed;
  - 20 (B) the docket number; and
  - 21 (C) the clerk's official signature. (Tex. Prob.

22 Code, Secs. 11, 13(e) (part).)

23 Sec. 52.052. CASE FILES. (a) The county clerk shall  
24 maintain a case file for the estate of each decedent for which a  
25 probate proceeding has been filed.

26 (b) Each case file must contain each order, judgment, and  
27 proceeding of the court and any other probate filing with the court,

1 including each:

2 (1) application for the probate of a will;

3 (2) application for the granting of administration;

4 (3) citation and notice, whether published or posted,  
5 including the return on the citation or notice;

6 (4) will and the testimony on which the will is  
7 admitted to probate;

8 (5) bond and official oath;

9 (6) inventory, appraisement, and list of claims;

10 (7) exhibit and account;

11 (8) report of renting;

12 (9) application for sale or partition of real estate;

13 (10) report of sale;

14 (11) report of the commissioners of partition;

15 (12) application for authority to execute a lease for  
16 mineral development, or for pooling or unitization of lands,  
17 royalty, or other interest in minerals, or to lend or invest money;  
18 and

19 (13) report of lending or investing money.

20 (c) Only the substance of a deposition must be recorded  
21 under Subsection (b)(4). (Tex. Prob. Code, Sec. 15.)

22 Sec. 52.053. INDEX. (a) The county clerk shall properly  
23 index the records required under this chapter.

24 (b) The county clerk shall keep the index open for public  
25 inspection, but may not release the index from the clerk's custody.  
26 (Tex. Prob. Code, Sec. 17A.)

1 CHAPTER 53. OTHER COURT DUTIES AND PROCEDURES

2 SUBCHAPTER A. ENFORCEMENT OF ORDERS

3 Sec. 53.001. ENFORCEMENT OF JUDGE'S ORDERS

4 [Sections 53.002-53.050 reserved for expansion]

5 SUBCHAPTER B. COSTS AND SECURITY

6 Sec. 53.051. APPLICABILITY OF CERTAIN LAWS

7 Sec. 53.052. SECURITY FOR CERTAIN COSTS

8 Sec. 53.053. EXEMPTION FROM PROBATE FEES FOR ESTATES

9 OF CERTAIN MILITARY SERVICEMEMBERS

10 [Sections 53.054-53.100 reserved for expansion]

11 SUBCHAPTER C. PROCEDURES FOR PROBATE MATTERS

12 Sec. 53.101. CALLING OF DOCKETS

13 Sec. 53.102. SETTING OF CERTAIN HEARINGS BY CLERK

14 Sec. 53.103. RENDERING OF DECISIONS, ORDERS, DECREES,

15 AND JUDGMENTS

16 Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM

17 Sec. 53.105. SIGNING OF MINUTES

18 Sec. 53.106. EXECUTIONS IN PROBATE MATTERS

19 CHAPTER 53. OTHER COURT DUTIES AND PROCEDURES

20 SUBCHAPTER A. ENFORCEMENT OF ORDERS

21 Sec. 53.001. ENFORCEMENT OF JUDGE'S ORDERS. A judge may  
22 enforce the judge's lawful orders against an executor or  
23 administrator by attachment and confinement. Unless this title  
24 expressly provides otherwise, the term of confinement for any one  
25 offense under this section may not exceed three days. (Tex. Prob.  
26 Code, Sec. 24.)

27 [Sections 53.002-53.050 reserved for expansion]

1                   SUBCHAPTER B. COSTS AND SECURITY

2           Sec. 53.051. APPLICABILITY OF CERTAIN LAWS.     A law  
3 regulating costs in ordinary civil cases applies to a probate  
4 matter when not expressly provided for in this title. (Tex. Prob.  
5 Code, Sec. 12(a).)

6           Sec. 53.052. SECURITY FOR CERTAIN COSTS. (a) The clerk may  
7 require a person who files an application, complaint, or opposition  
8 relating to an estate, other than the personal representative of  
9 the estate, to provide security for the probable costs of the  
10 proceeding before filing the application, complaint, or  
11 opposition.

12           (b) At any time before the trial of an application,  
13 complaint, or opposition described by Subsection (a), anyone  
14 interested in the estate or an officer of the court may, by written  
15 motion, obtain from the court an order requiring the person who  
16 filed the application, complaint, or opposition to provide security  
17 for the probable costs of the proceeding. The rules governing civil  
18 suits in the county court with respect to giving security for the  
19 probable costs of a proceeding control in cases described by  
20 Subsection (a) and this subsection.

21           (c) An executor or administrator appointed by a court of  
22 this state may not be required to provide security for costs in an  
23 action brought by the executor or administrator in the executor's  
24 or administrator's fiduciary capacity. (Tex. Prob. Code, Secs.  
25 12(b), (c).)

26           Sec. 53.053. EXEMPTION FROM PROBATE FEES FOR ESTATES OF  
27 CERTAIN MILITARY SERVICEMEMBERS. (a) In this section, "combat

1 zone" means an area that the president of the United States by  
2 executive order designates for purposes of 26 U.S.C. Section 112 as  
3 an area in which armed forces of the United States are or have  
4 engaged in combat.

5 (b) Notwithstanding any other law, the clerk of a county  
6 court may not charge, or collect from, the estate of a decedent any  
7 of the following fees if the decedent died while in active service  
8 as a member of the armed forces of the United States in a combat  
9 zone:

10 (1) a fee for or associated with the filing of the  
11 decedent's will for probate; and

12 (2) a fee for any service rendered by the probate court  
13 regarding the administration of the decedent's estate. (Tex. Prob.  
14 Code, Sec. 11A.)

15 [Sections 53.054-53.100 reserved for expansion]

16 SUBCHAPTER C. PROCEDURES FOR PROBATE MATTERS

17 Sec. 53.101. CALLING OF DOCKETS. The judge in whose court  
18 probate proceedings are pending, at times determined by the judge,  
19 shall:

20 (1) call the estates of decedents in the estates'  
21 regular order on both the probate and claim dockets; and

22 (2) issue orders as necessary. (Tex. Prob. Code, Sec.  
23 19.)

24 Sec. 53.102. SETTING OF CERTAIN HEARINGS BY CLERK. (a) If  
25 a judge is unable to designate the time and place for hearing a  
26 probate matter pending in the judge's court because the judge is  
27 absent from the county seat or is on vacation, disqualified, ill, or



1 deceased, the county clerk of the county in which the matter is  
2 pending may:

- 3 (1) designate the time and place for hearing;
- 4 (2) enter the setting on the judge's docket; and
- 5 (3) certify on the docket the reason that the judge is  
6 not acting to set the hearing.

7 (b) If, after the perfection of the service of notices and  
8 citations required by law concerning the time and place of hearing,  
9 a qualified judge is not present for a hearing set under Subsection  
10 (a), the hearing is automatically continued from day to day until a  
11 qualified judge is present to hear and determine the matter. (Tex.  
12 Prob. Code, Sec. 20.)

13 Sec. 53.103. RENDERING OF DECISIONS, ORDERS, DECREES, AND  
14 JUDGMENTS. The county court shall render all decisions, orders,  
15 decrees, and judgments in probate matters in open court, except as  
16 otherwise specially provided. (Tex. Prob. Code, Sec. 23 (part).)

17 Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Except  
18 as provided by Section 202.009(b), the judge of a probate court may  
19 appoint an attorney ad litem in any probate proceeding to represent  
20 the interests of:

- 21 (1) a person who has a legal disability;
- 22 (2) a nonresident;
- 23 (3) an unborn or unascertained person; or
- 24 (4) an unknown heir.

25 (b) An attorney ad litem appointed under this section is  
26 entitled to reasonable compensation for services provided in the  
27 amount set by the court, to be taxed as costs in the proceeding.

1 (Tex. Prob. Code, Sec. 34A.)

2           Sec. 53.105. SIGNING OF MINUTES. (a) Except as provided by  
3 Subsection (b), the judge shall approve and sign the minutes on the  
4 first day of each month.

5           (b) If the first day of the month falls on a Sunday, the  
6 judge's approval must be entered on the preceding or succeeding  
7 day. (Tex. Prob. Code, Sec. 23 (part).)

8           Sec. 53.106. EXECUTIONS IN PROBATE MATTERS. (a) An  
9 execution in a probate matter must be:

10           (1) directed "to any sheriff or any constable within  
11 the State of Texas";

12           (2) attested and signed by the clerk officially under  
13 court seal; and

14           (3) made returnable in 60 days.

15           (b) A proceeding under an execution described by Subsection  
16 (a) is governed, to the extent applicable, by the laws regulating a  
17 proceeding under an execution issued by a district court.

18           (c) Notwithstanding Subsection (a), an execution directed  
19 to the sheriff or a constable of a specific county in this state may  
20 not be held defective if properly executed within that county by the  
21 sheriff or constable to whom the execution is directed. (Tex. Prob.  
22 Code, Sec. 25.)

23           CHAPTER 54. PLEADINGS AND EVIDENCE IN GENERAL

24                           SUBCHAPTER A. PLEADINGS

25           Sec. 54.001. EFFECT OF FILING OR CONTESTING PLEADING

26           Sec. 54.002. DEFECT IN PLEADING

27                           [Sections 54.003-54.050 reserved for expansion]

1 SUBCHAPTER B. EVIDENCE

2 Sec. 54.051. APPLICABILITY OF CERTAIN RULES RELATING  
3 TO WITNESSES AND EVIDENCE

4 Sec. 54.052. USE OF CERTAIN RECORDS AS EVIDENCE

5 CHAPTER 54. PLEADINGS AND EVIDENCE IN GENERAL

6 SUBCHAPTER A. PLEADINGS

7 Sec. 54.001. EFFECT OF FILING OR CONTESTING PLEADING. (a)  
8 The filing or contesting in probate court of a pleading relating to  
9 a decedent's estate does not constitute tortious interference with  
10 inheritance of the estate.

11 (b) This section does not abrogate any right of a person  
12 under Rule 13, Texas Rules of Civil Procedure, or Chapter 10, Civil  
13 Practice and Remedies Code. (Tex. Prob. Code, Sec. 10C.)

14 Sec. 54.002. DEFECT IN PLEADING. A court may not invalidate  
15 a pleading in probate, or an order based on the pleading, on the  
16 basis of a defect of form or substance in the pleading unless a  
17 timely objection has been made against the defect and the defect has  
18 been called to the attention of the court in which the proceeding  
19 was or is pending. (Tex. Prob. Code, Sec. 9.)

20 [Sections 54.003-54.050 reserved for expansion]

21 SUBCHAPTER B. EVIDENCE

22 Sec. 54.051. APPLICABILITY OF CERTAIN RULES RELATING TO  
23 WITNESSES AND EVIDENCE. Except as provided by Section 51.203, the  
24 rules relating to witnesses and evidence that apply in the district  
25 court apply in a proceeding arising under this title to the extent  
26 practicable. (Tex. Prob. Code, Sec. 22 (part).)

27 Sec. 54.052. USE OF CERTAIN RECORDS AS EVIDENCE. The

1 following are admissible as evidence in any court of this state:

2 (1) record books described by Sections 52.001, 52.002,  
3 and 52.003 and individual case files described by Section 52.052,  
4 including records maintained in a manner allowed under Section  
5 52.004; and

6 (2) certified copies or reproductions of the records.  
7 (Tex. Prob. Code, Sec. 18.)

8 CHAPTER 55. COMPLAINTS AND CONTESTS

9 SUBCHAPTER A. CONTEST OF PROCEEDINGS IN PROBATE COURT

10 Sec. 55.001. OPPOSITION IN PROBATE PROCEEDING

11 Sec. 55.002. TRIAL BY JURY

12 [Sections 55.003-55.050 reserved for expansion]

13 SUBCHAPTER B. INSTITUTION OF HIGHER EDUCATION OR CHARITABLE

14 ORGANIZATION AS PARTY TO CERTAIN ACTIONS

15 Sec. 55.051. DEFINITION

16 Sec. 55.052. NECESSARY PARTY

17 Sec. 55.053. SERVICE OF PROCESS

18 [Sections 55.054-55.100 reserved for expansion]

19 SUBCHAPTER C. MENTAL CAPACITY OF DECEDENT

20 Sec. 55.101. ENTITLEMENT TO PRODUCTION OF

21 COMMUNICATIONS AND RECORDS

22 Sec. 55.102. RELEASE OF RECORDS

23 [Sections 55.103-55.150 reserved for expansion]

24 SUBCHAPTER D. ATTACHMENT OF ESTATE PROPERTY

25 Sec. 55.151. ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT

26 Sec. 55.152. BOND

27 [Sections 55.153-55.200 reserved for expansion]

1 SUBCHAPTER E. SPECIFIC PERFORMANCE OF AGREEMENT TO TRANSFER TITLE

2 Sec. 55.201. COMPLAINT AND CITATION

3 Sec. 55.202. HEARING AND ORDER

4 Sec. 55.203. CONVEYANCE

5 [Sections 55.204-55.250 reserved for expansion]

6 SUBCHAPTER F. BILL OF REVIEW

7 Sec. 55.251. REVISION AND CORRECTION OF ORDER IN

8 PROBATE PROCEEDING

9 Sec. 55.252. INJUNCTION

10 CHAPTER 55. COMPLAINTS AND CONTESTS

11 SUBCHAPTER A. CONTEST OF PROCEEDINGS IN PROBATE COURT

12 Sec. 55.001. OPPOSITION IN PROBATE PROCEEDING. A person  
13 interested in an estate may, at any time before the court decides an  
14 issue in a proceeding, file written opposition regarding the issue.  
15 The person is entitled to process for witnesses and evidence, and to  
16 be heard on the opposition, as in other suits. (Tex. Prob. Code,  
17 Sec. 10.)

18 Sec. 55.002. TRIAL BY JURY. In a contested probate or  
19 mental illness proceeding in a probate court, a party is entitled to  
20 a jury trial as in other civil actions. (Tex. Prob. Code, Sec. 21.)

21 [Sections 55.003-55.050 reserved for expansion]

22 SUBCHAPTER B. INSTITUTION OF HIGHER EDUCATION OR CHARITABLE

23 ORGANIZATION AS PARTY TO CERTAIN ACTIONS

24 Sec. 55.051. DEFINITION. In this subchapter, "institution  
25 of higher education" has the meaning assigned by Section 61.003,  
26 Education Code. (Tex. Prob. Code, Sec. 10A(a) (part).)

27 Sec. 55.052. NECESSARY PARTY. An institution of higher

1 education, a private institution of higher education, or a  
2 charitable organization that is a distributee under a will is a  
3 necessary party to a will contest or will construction suit  
4 involving the will. (Tex. Prob. Code, Sec. 10A(a) (part).)

5       Sec. 55.053. SERVICE OF PROCESS. The court shall serve an  
6 institution or organization that is a necessary party under Section  
7 55.052 in the manner provided by this title for service on other  
8 parties. (Tex. Prob. Code, Sec. 10A(b).)

9       [Sections 55.054-55.100 reserved for expansion]

10       SUBCHAPTER C. MENTAL CAPACITY OF DECEDENT

11       Sec. 55.101. ENTITLEMENT TO PRODUCTION OF COMMUNICATIONS  
12 AND RECORDS. Notwithstanding Subtitle B, Title 3, Occupations  
13 Code, a person who is a party to a will contest or proceeding in  
14 which a party relies on the mental or testamentary capacity of a  
15 decedent before the decedent's death as part of the party's claim or  
16 defense is entitled to production of all communications or records  
17 relevant to the decedent's condition before the decedent's death.  
18 (Tex. Prob. Code, Sec. 10B (part).)

19       Sec. 55.102. RELEASE OF RECORDS. On receipt of a subpoena  
20 for communications or records described by Section 55.101 and a  
21 file-stamped copy of the will contest or proceeding described by  
22 that section, the appropriate physician, hospital, medical  
23 facility, custodian of records, or other person in possession of  
24 the communications or records shall release the communications or  
25 records to the requesting party without further authorization.  
26 (Tex. Prob. Code, Sec. 10B (part).)

27       [Sections 55.103-55.150 reserved for expansion]

1                   SUBCHAPTER D. ATTACHMENT OF ESTATE PROPERTY

2                   Sec. 55.151. ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT. (a)

3 If a person interested in an estate files with the judge a written  
4 complaint made under oath alleging that the executor or  
5 administrator of the estate is about to remove the estate or part of  
6 the estate outside of the state, the judge may order a writ of  
7 attachment to issue, directed "to any sheriff or any constable  
8 within the State of Texas." The writ must order the sheriff or  
9 constable to:

10                   (1) seize the estate or a part of the estate; and

11                   (2) hold that property subject to the judge's  
12 additional orders regarding the complaint.

13                   (b) Notwithstanding Subsection (a), a writ of attachment  
14 directed to the sheriff or constable of a specific county within the  
15 state is not defective if the writ was properly executed in that  
16 county by that officer. (Tex. Prob. Code, Sec. 26 (part).)

17                   Sec. 55.152. BOND. Before a writ of attachment ordered  
18 under Section 55.151 may be issued, the complainant must execute a  
19 bond that is:

20                   (1) payable to the executor or administrator of the  
21 estate;

22                   (2) in an amount set by the judge; and

23                   (3) conditioned for the payment of all damages and  
24 costs that are recovered for the wrongful suing out of the writ.  
25 (Tex. Prob. Code, Sec. 26 (part).)

26                   [Sections 55.153-55.200 reserved for expansion]

1 SUBCHAPTER E. SPECIFIC PERFORMANCE OF AGREEMENT TO TRANSFER TITLE

2 Sec. 55.201. COMPLAINT AND CITATION. (a) If a person sold  
3 property and entered into a bond or other written agreement to  
4 transfer title to the property and then died without transferring  
5 the title, the owner of the bond or agreement or the owner's legal  
6 representative may:

7 (1) file a written complaint in the court of the county  
8 in which letters testamentary or of administration on the  
9 decedent's estate were granted; and

10 (2) have the personal representative of the estate  
11 cited to appear on a date stated in the citation and show cause why  
12 specific performance of the bond or agreement should not be  
13 ordered.

14 (b) Except as provided by Subsection (c), the bond or  
15 agreement must be filed with the complaint described by Subsection  
16 (a).

17 (c) If good cause under oath is shown why the bond or written  
18 agreement cannot be filed with the complaint, the bond or agreement  
19 or the substance of the bond or agreement must be stated in the  
20 complaint. (Tex. Prob. Code, Sec. 27 (part).)

21 Sec. 55.202. HEARING AND ORDER. (a) After service of the  
22 citation under Section 55.201, the court shall hear the complaint  
23 and the evidence on the complaint.

24 (b) The court shall order the personal representative to  
25 transfer title to the property, according to the tenor of the bond  
26 or agreement, to the complainant if the judge is satisfied from the  
27 proof that:





1 stayed only by writ of injunction. (Tex. Prob. Code, Sec. 31  
2 (part).)

3 CHAPTER 56. CHANGE AND RESIGNATION OF RESIDENT AGENT OF PERSONAL  
4 REPRESENTATIVE FOR SERVICE OF PROCESS

5 Sec. 56.001. CHANGE OF RESIDENT AGENT

6 Sec. 56.002. RESIGNATION OF RESIDENT AGENT

7 CHAPTER 56. CHANGE AND RESIGNATION OF RESIDENT AGENT OF PERSONAL  
8 REPRESENTATIVE FOR SERVICE OF PROCESS

9 Sec. 56.001. CHANGE OF RESIDENT AGENT. (a) A personal  
10 representative of an estate may change the representative's  
11 resident agent to accept service of process in a probate proceeding  
12 or other action relating to the estate by filing with the court in  
13 which the probate proceeding is pending a statement titled  
14 "Designation of Successor Resident Agent" that states the names and  
15 addresses of:

- 16 (1) the representative;  
17 (2) the resident agent; and  
18 (3) the successor resident agent.

19 (b) The designation of a successor resident agent takes  
20 effect on the date a statement under Subsection (a) is filed with  
21 the court. (Tex. Prob. Code, Sec. 221A.)

22 Sec. 56.002. RESIGNATION OF RESIDENT AGENT. (a) A resident  
23 agent of a personal representative may resign as resident agent by  
24 giving notice to the representative and filing with the court in  
25 which the probate proceeding is pending a statement titled  
26 "Resignation of Resident Agent" that states:

- 27 (1) the name of the representative;

1           (2) the representative's address most recently known  
2 by the resident agent;

3           (3) that notice of the resignation has been given to  
4 the representative and the date that notice was given; and

5           (4) that the representative has not designated a  
6 successor resident agent.

7           (b) The resident agent shall send, by certified mail, return  
8 receipt requested, a copy of a resignation statement filed under  
9 Subsection (a) to:

10           (1) the personal representative at the address most  
11 recently known by the resident agent; and

12           (2) each party in the case or the party's attorney or  
13 other designated representative of record.

14           (c) The resignation of a resident agent takes effect on the  
15 date the court enters an order accepting the resignation. A court  
16 may not enter an order accepting the resignation unless the  
17 resident agent complies with this section. (Tex. Prob. Code, Sec.  
18 221B.)

19                           [Chapters 57-100 reserved for expansion]

20           SUBTITLE C. PASSAGE OF TITLE AND DISTRIBUTION OF DECEDENTS'

21   PROPERTY IN GENERAL

22   CHAPTER 101. ESTATE ASSETS IN GENERAL

23           SUBCHAPTER A. PASSAGE AND POSSESSION OF DECEDENT'S ESTATE ON DEATH

24           Sec. 101.001. PASSAGE OF ESTATE ON DECEDENT'S DEATH

25           Sec. 101.002. EFFECT OF JOINT OWNERSHIP OF PROPERTY

26           Sec. 101.003. POSSESSION OF ESTATE BY PERSONAL

27   REPRESENTATIVE

[Sections 101.004-101.050 reserved for expansion]

SUBCHAPTER B. LIABILITY OF ESTATE FOR DEBTS

Sec. 101.051. LIABILITY OF ESTATE FOR DEBTS IN GENERAL

Sec. 101.052. LIABILITY OF COMMUNITY PROPERTY FOR  
DEBTS OF DECEASED SPOUSE

CHAPTER 101. ESTATE ASSETS IN GENERAL

SUBCHAPTER A. PASSAGE AND POSSESSION OF DECEDENT'S ESTATE ON DEATH

Sec. 101.001. PASSAGE OF ESTATE ON DECEDENT'S DEATH. (a)

Subject to Section 101.051, if a person dies leaving a lawful will:

(1) all of the person's estate that is devised by the will vests immediately in the devisees;

(2) all powers of appointment granted in the will vest immediately in the donees of those powers; and

(3) all of the person's estate that is not devised by the will vests immediately in the person's heirs at law.

(b) Subject to Section 101.051, the estate of a person who dies intestate vests immediately in the person's heirs at law. (Tex. Prob. Code, Sec. 37 (part).)

Sec. 101.002. EFFECT OF JOINT OWNERSHIP OF PROPERTY. If two or more persons hold an interest in property jointly and one joint owner dies before severance, the interest of the decedent in the joint estate:

(1) does not survive to the remaining joint owner or owners; and

(2) passes by will or intestacy from the decedent as if the decedent's interest had been severed. (Tex. Prob. Code, Sec. 46(a) (part).)

1           Sec. 101.003. POSSESSION OF ESTATE BY PERSONAL  
2 REPRESENTATIVE. On the issuance of letters testamentary or of  
3 administration on an estate described by Section 101.001, the  
4 executor or administrator has the right to possession of the estate  
5 as the estate existed at the death of the testator or intestate,  
6 subject to the exceptions provided by Section 101.051. The  
7 executor or administrator shall recover possession of the estate  
8 and hold the estate in trust to be disposed of in accordance with  
9 the law. (Tex. Prob. Code, Sec. 37 (part).)

10           [Sections 101.004-101.050 reserved for expansion]

11           SUBCHAPTER B. LIABILITY OF ESTATE FOR DEBTS

12           Sec. 101.051. LIABILITY OF ESTATE FOR DEBTS IN GENERAL. (a)  
13 A decedent's estate vests in accordance with Section 101.001(a)  
14 subject to the payment of:

15           (1) the debts of the decedent, except as exempted by  
16 law; and

17           (2) any court-ordered child support payments that are  
18 delinquent on the date of the decedent's death.

19           (b) A decedent's estate vests in accordance with Section  
20 101.001(b) subject to the payment of, and is still liable for:

21           (1) the debts of the decedent, except as exempted by  
22 law; and

23           (2) any court-ordered child support payments that are  
24 delinquent on the date of the decedent's death. (Tex. Prob. Code,  
25 Sec. 37 (part).)

26           Sec. 101.052. LIABILITY OF COMMUNITY PROPERTY FOR DEBTS OF  
27 DECEASED SPOUSE. (a) The community property subject to the sole or

1 joint management, control, and disposition of a spouse during  
2 marriage continues to be subject to the liabilities of that spouse  
3 on death.

4 (b) The interest that the deceased spouse owned in any other  
5 nonexempt community property passes to the deceased spouse's heirs  
6 or devisees charged with the debts that were enforceable against  
7 the deceased spouse before death.

8 (c) This section does not prohibit the administration of  
9 community property under other provisions of this title relating to  
10 the administration of an estate. (Tex. Prob. Code, Secs. 155  
11 (part), 156 (part).)

12 CHAPTER 102. PROBATE ASSETS: DECEDENT'S HOMESTEAD

13 Sec. 102.001. TREATMENT OF CERTAIN CHILDREN

14 Sec. 102.002. HOMESTEAD RIGHTS NOT AFFECTED BY

15 CHARACTER OF THE HOMESTEAD

16 Sec. 102.003. PASSAGE OF HOMESTEAD

17 Sec. 102.004. LIABILITY OF HOMESTEAD FOR DEBTS

18 Sec. 102.005. PROHIBITIONS ON PARTITION OF HOMESTEAD

19 Sec. 102.006. CIRCUMSTANCES UNDER WHICH PARTITION OF

20 HOMESTEAD IS AUTHORIZED

21 CHAPTER 102. PROBATE ASSETS: DECEDENT'S HOMESTEAD

22 Sec. 102.001. TREATMENT OF CERTAIN CHILDREN. For purposes  
23 of determining homestead rights, a child is a child of his or her  
24 mother and a child of his or her father, as provided by Sections  
25 201.051, 201.052, and 201.053. (Tex. Prob. Code, Sec. 42(c)  
26 (part).)

27 Sec. 102.002. HOMESTEAD RIGHTS NOT AFFECTED BY CHARACTER OF

1 THE HOMESTEAD. The homestead rights and the respective interests  
2 of the surviving spouse and children of a decedent are the same  
3 whether the homestead was the decedent's separate property or was  
4 community property between the surviving spouse and the decedent.  
5 (Tex. Prob. Code, Sec. 282.)

6 Sec. 102.003. PASSAGE OF HOMESTEAD. The homestead of a  
7 decedent who dies leaving a surviving spouse descends and vests on  
8 the decedent's death in the same manner as other real property of  
9 the decedent and is governed by the same laws of descent and  
10 distribution. (Tex. Prob. Code, Sec. 283.)

11 Sec. 102.004. LIABILITY OF HOMESTEAD FOR DEBTS. The  
12 homestead is not liable for the payment of any of the debts of the  
13 estate, other than:

14 (1) purchase money for the homestead;  
15 (2) taxes due on the homestead;  
16 (3) work and material used in constructing  
17 improvements on the homestead if the requirements of Section  
18 50(a)(5), Article XVI, Texas Constitution, are met;

19 (4) an owelty of partition imposed against the  
20 entirety of the property by a court order or written agreement of  
21 the parties to the partition, including a debt of one spouse in  
22 favor of the other spouse resulting from a division or an award of a  
23 family homestead in a divorce proceeding;

24 (5) the refinance of a lien against the homestead,  
25 including a federal tax lien resulting from the tax debt of both  
26 spouses, if the homestead is a family homestead, or from the tax  
27 debt of the decedent;

1           (6) an extension of credit on the homestead if the  
2 requirements of Section 50(a)(6), Article XVI, Texas Constitution,  
3 are met; or

4           (7) a reverse mortgage. (Tex. Prob. Code, Sec. 270.)

5           Sec. 102.005. PROHIBITIONS ON PARTITION OF HOMESTEAD. The  
6 homestead may not be partitioned among the decedent's heirs:

7           (1) during the lifetime of the surviving spouse for as  
8 long as the surviving spouse elects to use or occupy the property as  
9 a homestead; or

10          (2) during the period the guardian of the decedent's  
11 minor children is permitted to use and occupy the homestead under a  
12 court order. (Tex. Prob. Code, Sec. 284.)

13          Sec. 102.006. CIRCUMSTANCES UNDER WHICH PARTITION OF  
14 HOMESTEAD IS AUTHORIZED. The homestead may be partitioned among  
15 the respective owners of the property in the same manner as other  
16 property held in common if:

17          (1) the surviving spouse dies, sells his or her  
18 interest in the homestead, or elects to no longer use or occupy the  
19 property as a homestead; or

20          (2) the court no longer permits the guardian of the  
21 minor children to use and occupy the property as a homestead. (Tex.  
22 Prob. Code, Sec. 285.)

23                   [Chapters 103-110 reserved for expansion]



1 CHAPTER 111. NONPROBATE ASSETS IN GENERAL

2 SUBCHAPTER A. RIGHT OF SURVIVORSHIP AGREEMENTS

3 BETWEEN JOINT TENANTS

4 Sec. 111.001. RIGHT OF SURVIVORSHIP AGREEMENTS

5 AUTHORIZED

6 Sec. 111.002. AGREEMENTS CONCERNING COMMUNITY PROPERTY

7 [Sections 111.003-111.050 reserved for expansion]

8 SUBCHAPTER B. OTHER PROVISIONS FOR PAYMENT OR TRANSFER

9 OF CERTAIN ASSETS ON DEATH

10 Sec. 111.051. DEFINITIONS

11 Sec. 111.052. VALIDITY OF CERTAIN NONTESTAMENTARY

12 INSTRUMENTS AND PROVISIONS

13 Sec. 111.053. CREDITOR'S RIGHTS NOT LIMITED

14 CHAPTER 111. NONPROBATE ASSETS IN GENERAL

15 SUBCHAPTER A. RIGHT OF SURVIVORSHIP AGREEMENTS

16 BETWEEN JOINT TENANTS

17 Sec. 111.001. RIGHT OF SURVIVORSHIP AGREEMENTS AUTHORIZED.

18 (a) Notwithstanding Section 101.002, two or more persons who hold  
19 an interest in property jointly may agree in writing that the  
20 interest of a joint owner who dies survives to the surviving joint  
21 owner or owners.

22 (b) An agreement described by Subsection (a) may not be  
23 inferred from the mere fact that property is held in joint  
24 ownership. (Tex. Prob. Code, Sec. 46(a) (part).)

25 Sec. 111.002. AGREEMENTS CONCERNING COMMUNITY PROPERTY.

26 (a) Section 111.001 does not apply to an agreement between spouses  
27 regarding the spouses' community property.

1 (b) An agreement between spouses regarding a right of  
2 survivorship in community property is governed by Chapter 112.  
3 (Tex. Prob. Code, Sec. 46(b).)

4 [Sections 111.003-111.050 reserved for expansion]

5 SUBCHAPTER B. OTHER PROVISIONS FOR PAYMENT OR TRANSFER  
6 OF CERTAIN ASSETS ON DEATH

7 Sec. 111.051. DEFINITIONS. In this subchapter:

8 (1) "Employees' trust" means:

9 (A) a trust that forms a part of a stock-bonus,  
10 pension, or profit-sharing plan under Section 401, Internal Revenue  
11 Code of 1954 (26 U.S.C. Section 401 (1986));

12 (B) a pension trust under Chapter 111, Property  
13 Code; and

14 (C) an employer-sponsored benefit plan or  
15 program, or any other retirement savings arrangement, including a  
16 pension plan created under Section 3, Employee Retirement Income  
17 Security Act of 1974 (29 U.S.C. Section 1002 (1986)), regardless of  
18 whether the plan, program, or arrangement is funded through a  
19 trust.

20 (2) "Financial institution" has the meaning assigned  
21 by Section 113.001.

22 (3) "Individual retirement account" means a trust,  
23 custodial arrangement, or annuity under Section 408(a) or (b),  
24 Internal Revenue Code of 1954 (26 U.S.C. Section 408 (1986)).

25 (4) "Retirement account" means a retirement-annuity  
26 contract, an individual retirement account, a simplified employee  
27 pension, or any other retirement savings arrangement.

1           (5) "Retirement-annuity contract" means an annuity  
2 contract under Section 403, Internal Revenue Code of 1954 (26  
3 U.S.C. Section 403 (1986)).

4           (6) "Simplified employee pension" means a trust,  
5 custodial arrangement, or annuity under Section 408, Internal  
6 Revenue Code of 1954 (26 U.S.C. Section 408 (1986)). (Tex. Prob.  
7 Code, Secs. 450(a) (part), (c).)

8           Sec. 111.052. VALIDITY OF CERTAIN NONTESTAMENTARY  
9 INSTRUMENTS AND PROVISIONS. (a) This code does not invalidate:

10           (1) any provision in an insurance policy, employment  
11 contract, bond, mortgage, promissory note, deposit agreement,  
12 employees' trust, retirement account, deferred compensation  
13 arrangement, custodial agreement, pension plan, trust agreement,  
14 conveyance of property, security, account with a financial  
15 institution, mutual fund account, or any other written instrument  
16 effective as a contract, gift, conveyance, or trust, stating that:

17                   (A) money or other benefits under the instrument  
18 due to or controlled or owned by a decedent shall be paid after the  
19 decedent's death, or property that is the subject of the instrument  
20 shall pass, to a person designated by the decedent in the instrument  
21 or in a separate writing, including a will, executed at the same  
22 time as the instrument or subsequently; or

23                   (B) money due or to become due under the  
24 instrument shall cease to be payable if the promisee or promissor  
25 dies before payment or demand; or

26           (2) an instrument described by Subdivision (1).

27           (b) A provision described by Subsection (a)(1) is

1 considered nontestamentary. (Tex. Prob. Code, Sec. 450(a) (part).)

2       Sec. 111.053. CREDITOR'S RIGHTS NOT LIMITED. Nothing in  
3 this subchapter limits the rights of a creditor under another law of  
4 this state. (Tex. Prob. Code, Sec. 450(b).)

5       CHAPTER 112. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

6               SUBCHAPTER A. GENERAL PROVISIONS

7       Sec. 112.001. DEFINITION OF COMMUNITY PROPERTY

8               SURVIVORSHIP AGREEMENT

9       Sec. 112.002. APPLICABILITY OF OTHER LAW TO COMMUNITY

10              PROPERTY HELD IN MULTIPLE-PARTY

11              ACCOUNTS

12              [Sections 112.003-112.050 reserved for expansion]

13       SUBCHAPTER B. COMMUNITY PROPERTY SURVIVORSHIP AGREEMENTS

14       Sec. 112.051. AGREEMENT FOR RIGHT OF SURVIVORSHIP IN

15              COMMUNITY PROPERTY

16       Sec. 112.052. FORM OF AGREEMENT

17       Sec. 112.053. ADJUDICATION NOT REQUIRED

18       Sec. 112.054. REVOCATION OF AGREEMENT

19              [Sections 112.055-112.100 reserved for expansion]

20       SUBCHAPTER C. ADJUDICATION TO PROVE COMMUNITY PROPERTY

21              SURVIVORSHIP AGREEMENT

22       Sec. 112.101. APPLICATION AUTHORIZED

23       Sec. 112.102. PROOF REQUIRED BY COURT

24       Sec. 112.103. METHOD OF PROOF OF SIGNATURES

25       Sec. 112.104. COURT ACTION; ISSUANCE OF ORDER

26       Sec. 112.105. EFFECT OF ORDER

27       Sec. 112.106. CUSTODY OF ADJUDICATED AGREEMENT

[Sections 112.107-112.150 reserved for expansion]

SUBCHAPTER D. OWNERSHIP AND TRANSFER OF COMMUNITY PROPERTY SUBJECT  
TO AGREEMENT

Sec. 112.151. OWNERSHIP OF PROPERTY DURING MARRIAGE;  
MANAGEMENT RIGHTS

Sec. 112.152. NONTESTAMENTARY NATURE OF TRANSFERS  
UNDER AGREEMENT

[Sections 112.153-112.200 reserved for expansion]

SUBCHAPTER E. THIRD PARTIES DEALING WITH COMMUNITY PROPERTY  
SUBJECT TO RIGHT OF SURVIVORSHIP

Sec. 112.201. DEFINITION OF CERTIFIED COPY

Sec. 112.202. ACTUAL KNOWLEDGE OR NOTICE OF AGREEMENT

Sec. 112.203. PERSONAL REPRESENTATIVE WITHOUT ACTUAL  
KNOWLEDGE OF AGREEMENT

Sec. 112.204. THIRD-PARTY PURCHASER WITHOUT NOTICE OF  
AGREEMENT

Sec. 112.205. DEBTORS AND OTHER PERSONS WITHOUT NOTICE  
OF AGREEMENT

Sec. 112.206. THIRD-PARTY PURCHASER WITHOUT NOTICE OF  
REVOCATION OF AGREEMENT

Sec. 112.207. DEBTORS AND OTHER PERSONS WITHOUT NOTICE  
OF REVOCATION OF AGREEMENT

Sec. 112.208. RIGHTS OF SURVIVING SPOUSE AGAINST  
CREDITORS

[Sections 112.209-112.250 reserved for expansion]

SUBCHAPTER F. RIGHTS OF CREDITORS

Sec. 112.251. MULTIPLE-PARTY ACCOUNTS

1 Sec. 112.252. LIABILITIES OF DECEASED SPOUSE NOT

2 AFFECTED BY RIGHT OF SURVIVORSHIP

3 Sec. 112.253. RIGHTS OF DECEASED SPOUSE'S CREDITORS IN

4 RELATION TO THIRD PARTIES

5 CHAPTER 112. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 112.001. DEFINITION OF COMMUNITY PROPERTY  
8 SURVIVORSHIP AGREEMENT. In this chapter, "community property  
9 survivorship agreement" means an agreement between spouses  
10 creating a right of survivorship in community property. (New.)

11 Sec. 112.002. APPLICABILITY OF OTHER LAW TO COMMUNITY  
12 PROPERTY HELD IN MULTIPLE-PARTY ACCOUNTS. Chapter 113 applies to  
13 multiple-party accounts held by spouses with a right of  
14 survivorship to the extent that chapter is not inconsistent with  
15 this chapter. (Tex. Prob. Code, Sec. 462.)

16 [Sections 112.003-112.050 reserved for expansion]

17 SUBCHAPTER B. COMMUNITY PROPERTY SURVIVORSHIP AGREEMENTS

18 Sec. 112.051. AGREEMENT FOR RIGHT OF SURVIVORSHIP IN  
19 COMMUNITY PROPERTY. At any time, spouses may agree between  
20 themselves that all or part of their community property, then  
21 existing or to be acquired, becomes the property of the surviving  
22 spouse on the death of a spouse. (Tex. Prob. Code, Sec. 451.)

23 Sec. 112.052. FORM OF AGREEMENT. (a) A community property  
24 survivorship agreement must be in writing and signed by both  
25 spouses.

26 (b) A written agreement signed by both spouses is sufficient  
27 to create a right of survivorship in the community property

1 described in the agreement if the agreement includes any of the  
2 following phrases:

- 3 (1) "with right of survivorship";
- 4 (2) "will become the property of the survivor";
- 5 (3) "will vest in and belong to the surviving spouse";
- 6 or
- 7 (4) "shall pass to the surviving spouse."

8 (c) Notwithstanding Subsection (b), a community property  
9 survivorship agreement that otherwise meets the requirements of  
10 this chapter is effective without including any of the phrases  
11 listed in that subsection. (Tex. Prob. Code, Sec. 452.)

12 Sec. 112.053. ADJUDICATION NOT REQUIRED. A community  
13 property survivorship agreement that satisfies the requirements of  
14 this chapter is effective and enforceable without an adjudication.  
15 (Tex. Prob. Code, Secs. 456(a) (part), 458 (part).)

16 Sec. 112.054. REVOCATION OF AGREEMENT. (a) A community  
17 property survivorship agreement made in accordance with this  
18 chapter may be revoked as provided by the terms of the agreement.

19 (b) If a community property survivorship agreement does not  
20 provide a method of revocation, the agreement may be revoked by a  
21 written instrument:

- 22 (1) signed by both spouses; or
- 23 (2) signed by one spouse and delivered to the other  
24 spouse.

25 (c) A community property survivorship agreement may be  
26 revoked with respect to specific property subject to the agreement  
27 by the disposition of the property by one or both spouses if the

1 disposition is not inconsistent with specific terms of the  
2 agreement and applicable law. (Tex. Prob. Code, Sec. 455.)

3 [Sections 112.055-112.100 reserved for expansion]

4 SUBCHAPTER C. ADJUDICATION TO PROVE COMMUNITY PROPERTY

5 SURVIVORSHIP AGREEMENT

6 Sec. 112.101. APPLICATION AUTHORIZED. (a) Notwithstanding  
7 Section 112.053, after the death of a spouse, the surviving spouse  
8 or the surviving spouse's personal representative may apply to the  
9 court for an order stating that a community property survivorship  
10 agreement satisfies the requirements of this chapter and is  
11 effective to create a right of survivorship in community property.

12 (b) An application under this section must include:

- 13 (1) the surviving spouse's name and domicile;  
14 (2) the deceased spouse's name and former domicile;  
15 (3) the fact, time, and place of the deceased spouse's  
16 death;  
17 (4) facts establishing venue in the court; and  
18 (5) the deceased spouse's social security number, if  
19 known.

20 (c) An application under this section must be filed in the  
21 county of proper venue for administration of the deceased spouse's  
22 estate.

23 (d) The original community property survivorship agreement  
24 shall be filed with an application under this section. (Tex. Prob.  
25 Code, Secs. 456(a) (part), (d).)

26 Sec. 112.102. PROOF REQUIRED BY COURT. An applicant for an  
27 order under Section 112.101 must prove to the court's satisfaction



1 that:

2 (1) the spouse whose community property interest is at  
3 issue is deceased;

4 (2) the court has jurisdiction and venue;

5 (3) the agreement was executed with the formalities  
6 required by law;

7 (4) the agreement was not revoked; and

8 (5) citation has been served and returned in the  
9 manner and for the length of time required by this title. (Tex.  
10 Prob. Code, Sec. 456(b).)

11 Sec. 112.103. METHOD OF PROOF OF SIGNATURES. (a) The  
12 deceased spouse's signature to an agreement that is the subject of  
13 an application under Section 112.101 may be proved by:

14 (1) the sworn testimony of one witness taken in open  
15 court;

16 (2) the affidavit of one witness; or

17 (3) the written or oral deposition of one witness  
18 taken in the same manner and under the same rules as depositions in  
19 other civil actions.

20 (b) If the surviving spouse is competent to make an oath,  
21 the surviving spouse's signature to the agreement may be proved by:

22 (1) the sworn testimony of the surviving spouse taken  
23 in open court;

24 (2) the surviving spouse's affidavit; or

25 (3) the written or oral deposition of the surviving  
26 spouse taken in the same manner and under the same rules as  
27 depositions in other civil actions.

1 (c) If the surviving spouse is not competent to make an  
2 oath, the surviving spouse's signature to the agreement may be  
3 proved in the manner provided by Subsection (a) for proof of the  
4 deceased spouse's signature. (Tex. Prob. Code, Sec. 456(c).)

5 Sec. 112.104. COURT ACTION; ISSUANCE OF ORDER. (a) On  
6 completion of a hearing on an application under Section 112.101, if  
7 the court is satisfied that the requisite proof has been made, the  
8 court shall enter an order adjudging the agreement valid.

9 (b) Certified copies of the agreement and order may be:

- 10 (1) recorded in other counties; and  
11 (2) used in evidence, as the original agreement might  
12 be, on the trial of the same matter in any other court, on appeal or  
13 otherwise. (Tex. Prob. Code, Sec. 457.)

14 Sec. 112.105. EFFECT OF ORDER. (a) An order under this  
15 subchapter adjudging a community property survivorship agreement  
16 valid constitutes sufficient authority to a person who:

17 (1) owes money, has custody of any property, or acts as  
18 registrar or transfer agent of any evidence of interest,  
19 indebtedness, property, or right that is subject to the terms of the  
20 agreement; or

21 (2) purchases from or otherwise deals with the  
22 surviving spouse for payment or transfer to the surviving spouse.

23 (b) The surviving spouse may enforce that spouse's right to  
24 a payment or transfer from a person described by Subsection (a)(2).  
25 (Tex. Prob. Code, Sec. 458 (part).)

26 Sec. 112.106. CUSTODY OF ADJUDICATED AGREEMENT. (a) An  
27 original community property survivorship agreement adjudicated

1 under this subchapter, together with the order adjudging the  
2 agreement valid, shall be deposited in the office of the county  
3 clerk of the county in which the agreement was adjudicated and must  
4 remain at that office, except during a period when the agreement is  
5 moved to another location for inspection on order of the court in  
6 which the agreement was adjudicated.

7 (b) If the court orders an original community property  
8 survivorship agreement adjudicated under this subchapter to be  
9 moved to another location for inspection, the person moving the  
10 original agreement shall give a receipt for the agreement and the  
11 court clerk shall make and retain a copy of the original agreement.  
12 (Tex. Prob. Code, Sec. 459.)

13 [Sections 112.107-112.150 reserved for expansion]

14 SUBCHAPTER D. OWNERSHIP AND TRANSFER OF COMMUNITY PROPERTY SUBJECT  
15 TO AGREEMENT

16 Sec. 112.151. OWNERSHIP OF PROPERTY DURING MARRIAGE;  
17 MANAGEMENT RIGHTS. (a) Property subject to a community property  
18 survivorship agreement remains community property during the  
19 marriage of the spouses.

20 (b) Unless the agreement provides otherwise, a community  
21 property survivorship agreement does not affect the rights of the  
22 spouses concerning the management, control, and disposition of  
23 property subject to the agreement. (Tex. Prob. Code, Sec. 453.)

24 Sec. 112.152. NONTESTAMENTARY NATURE OF TRANSFERS UNDER  
25 AGREEMENT. (a) Transfers at death resulting from community  
26 property survivorship agreements made in accordance with this  
27 chapter are effective by reason of the agreements involved and are

1 not testamentary transfers.

2 (b) Except as expressly provided otherwise by this title,  
3 transfers described by Subsection (a) are not subject to the  
4 provisions of this title applicable to testamentary transfers.  
5 (Tex. Prob. Code, Sec. 454.)

6 [Sections 112.153-112.200 reserved for expansion]

7 SUBCHAPTER E. THIRD PARTIES DEALING WITH COMMUNITY PROPERTY

8 SUBJECT TO RIGHT OF SURVIVORSHIP

9 Sec. 112.201. DEFINITION OF CERTIFIED COPY. In this  
10 subchapter, a "certified copy" means a copy of an official record or  
11 document that is:

12 (1) authorized by law to be recorded or filed and  
13 actually recorded or filed in a public office; and

14 (2) certified as correct in accordance with Rule 902,  
15 Texas Rules of Evidence. (Tex. Prob. Code, Sec. 460(f) (part).)

16 Sec. 112.202. ACTUAL KNOWLEDGE OR NOTICE OF AGREEMENT. (a)  
17 In this subchapter, a person or entity has "actual knowledge" of a  
18 community property survivorship agreement or the revocation of a  
19 community property survivorship agreement only if the person or  
20 entity has received:

21 (1) written notice of the agreement or revocation; or

22 (2) the original or a certified copy of the agreement  
23 or revoking instrument.

24 (b) In this subchapter, a person or entity has "notice" of a  
25 community property survivorship agreement or the revocation of a  
26 community property survivorship agreement if:

27 (1) the person or entity has actual knowledge of the

1 agreement or revocation; or

2 (2) with respect to real property, the agreement or  
3 revoking instrument is properly recorded in the county in which the  
4 real property is located. (Tex. Prob. Code, Sec. 460(f) (part).)

5 Sec. 112.203. PERSONAL REPRESENTATIVE WITHOUT ACTUAL  
6 KNOWLEDGE OF AGREEMENT. If the personal representative of a  
7 deceased spouse's estate has no actual knowledge of the existence  
8 of an agreement creating a right of survivorship in community  
9 property in the surviving spouse, the personal representative is  
10 not liable to the surviving spouse or any person claiming from the  
11 surviving spouse for selling, exchanging, distributing, or  
12 otherwise disposing of the property. (Tex. Prob. Code, Sec.  
13 460(a).)

14 Sec. 112.204. THIRD-PARTY PURCHASER WITHOUT NOTICE OF  
15 AGREEMENT. (a) This section applies only to a person or entity who  
16 for value purchases property:

17 (1) from a person claiming from a deceased spouse more  
18 than six months after the date of the deceased spouse's death or  
19 from the personal representative of the deceased spouse's estate;  
20 and

21 (2) without notice of the existence of an agreement  
22 creating a right of survivorship in the property in the surviving  
23 spouse.

24 (b) A purchaser of property from a person claiming from the  
25 deceased spouse has good title to the interest in the property that  
26 the person would have had in the absence of the agreement described  
27 by Subsection (a)(2), as against the claims of the surviving spouse

1 or any person claiming from the surviving spouse.

2 (c) A purchaser of property from the personal  
3 representative of the deceased spouse's estate has good title to  
4 the interest in the property that the personal representative would  
5 have had authority to convey in the absence of the agreement  
6 described by Subsection (a)(2), as against the claims of the  
7 surviving spouse or any person claiming from the surviving spouse.  
8 (Tex. Prob. Code, Sec. 460(b).)

9 Sec. 112.205. DEBTORS AND OTHER PERSONS WITHOUT NOTICE OF  
10 AGREEMENT. (a) This section applies only to a person or entity  
11 who:

- 12 (1) owes money to a deceased spouse; or  
13 (2) has custody of property or acts as registrar or  
14 transfer agent of any evidence of interest, indebtedness, property,  
15 or right owned by a deceased spouse before that spouse's death.

16 (b) A person or entity with no actual knowledge of the  
17 existence of an agreement creating a right of survivorship in  
18 property described by Subsection (a) in the surviving spouse may  
19 pay or transfer that property to the personal representative of the  
20 deceased spouse's estate or, if no administration of the deceased  
21 spouse's estate is pending, to the heirs or devisees of the estate  
22 and shall be discharged from all claims for those amounts or  
23 property paid or transferred. (Tex. Prob. Code, Sec. 460(d).)

24 Sec. 112.206. THIRD-PARTY PURCHASER WITHOUT NOTICE OF  
25 REVOCATION OF AGREEMENT. (a) This section applies only to a person  
26 or entity who for value purchases property from a surviving spouse  
27 more than six months after the date of the deceased spouse's death

1 and:

2 (1) with respect to personal property:

3 (A) the purchaser has received an original or  
4 certified copy of an agreement purporting to create a right of  
5 survivorship in the personal property in the surviving spouse,  
6 purportedly signed by both spouses; and

7 (B) the purchaser has no notice of the revocation  
8 of the agreement; or

9 (2) with respect to real property:

10 (A) the purchaser has received an original or  
11 certified copy of an agreement purporting to create a right of  
12 survivorship in the real property in the surviving spouse,  
13 purportedly signed by both spouses or such an agreement is properly  
14 recorded in a county in which any part of the real property is  
15 located; and

16 (B) the purchaser has no notice of the revocation  
17 of the agreement.

18 (b) A purchaser has good title to the interest in the  
19 property that the surviving spouse would have had in the absence of  
20 the revocation of the agreement, as against the claims of the  
21 personal representative of the deceased spouse's estate or any  
22 person claiming from the representative or the deceased spouse.

23 (Tex. Prob. Code, Sec. 460(c).)

24 Sec. 112.207. DEBTORS AND OTHER PERSONS WITHOUT NOTICE OF  
25 REVOCATION OF AGREEMENT. (a) This section applies only to a person  
26 or entity who:

27 (1) owes money to a deceased spouse; or

1           (2) has custody of property or acts as registrar or  
2 transfer agent of any evidence of interest, indebtedness, property,  
3 or right owned by a deceased spouse before that spouse's death.

4           (b) If a person or entity is presented with the original or a  
5 certified copy of an agreement creating a right of survivorship in  
6 property described by Subsection (a) in the surviving spouse,  
7 purportedly signed by both spouses, and if the person or entity has  
8 no actual knowledge that the agreement was revoked, the person or  
9 entity may pay or transfer that property to the surviving spouse and  
10 shall be discharged from all claims for those amounts or property  
11 paid or transferred. (Tex. Prob. Code, Sec. 460(e).)

12           Sec. 112.208. RIGHTS OF SURVIVING SPOUSE AGAINST CREDITORS.  
13 Except as expressly provided by this subchapter, this subchapter  
14 does not affect the rights of a surviving spouse or person claiming  
15 from the surviving spouse in disputes with persons claiming from a  
16 deceased spouse or the successors of any of them concerning a  
17 beneficial interest in property or the proceeds from a beneficial  
18 interest in property, subject to a right of survivorship under an  
19 agreement that satisfies the requirements of this chapter. (Tex.  
20 Prob. Code, Sec. 460(g).)

21           [Sections 112.209-112.250 reserved for expansion]

22                           SUBCHAPTER F. RIGHTS OF CREDITORS

23           Sec. 112.251. MULTIPLE-PARTY ACCOUNTS. Chapter 113 governs  
24 the rights of creditors with respect to multiple-party accounts, as  
25 defined by Section 113.004. (Tex. Prob. Code, Sec. 461 (part).)

26           Sec. 112.252. LIABILITIES OF DECEASED SPOUSE NOT AFFECTED  
27 BY RIGHT OF SURVIVORSHIP. (a) Except as expressly provided by



1 Section 112.251, the community property subject to the sole or  
2 joint management, control, and disposition of a spouse during  
3 marriage continues to be subject to the liabilities of that spouse  
4 on that spouse's death without regard to a right of survivorship in  
5 the surviving spouse under an agreement made in accordance with  
6 this chapter.

7 (b) The surviving spouse is liable to account to the  
8 deceased spouse's personal representative for property received by  
9 the surviving spouse under a right of survivorship to the extent  
10 necessary to discharge the deceased spouse's liabilities.

11 (c) A proceeding to assert a liability under Subsection (b):

12 (1) may be commenced only if the deceased spouse's  
13 personal representative has received a written demand by a  
14 creditor; and

15 (2) must be commenced on or before the second  
16 anniversary of the deceased spouse's death.

17 (d) Property recovered by the deceased spouse's personal  
18 representative under this section shall be administered as part of  
19 the deceased spouse's estate. (Tex. Prob. Code, Sec. 461 (part).)

20 Sec. 112.253. RIGHTS OF DECEASED SPOUSE'S CREDITORS IN  
21 RELATION TO THIRD PARTIES. This subchapter does not affect the  
22 protection afforded to a person or entity under Subchapter E  
23 unless, before payment or transfer to the surviving spouse, the  
24 person or entity received a written notice from the deceased  
25 spouse's personal representative stating the amount needed to  
26 discharge the deceased spouse's liabilities. (Tex. Prob. Code, Sec.  
27 461 (part).)

1                   CHAPTER 113. MULTIPLE-PARTY ACCOUNTS  
2                    SUBCHAPTER A. GENERAL PROVISIONS  
3   Sec. 113.001.   GENERAL DEFINITIONS  
4   Sec. 113.002.   DEFINITION OF PARTY  
5   Sec. 113.003.   DEFINITION OF NET CONTRIBUTION  
6   Sec. 113.004.   TYPES OF ACCOUNTS  
7   Sec. 113.005.   AUTHORITY OF FINANCIAL INSTITUTIONS TO  
8                    ENTER INTO CERTAIN ACCOUNTS  
9                    [Sections 113.006-113.050 reserved for expansion]  
10                  SUBCHAPTER B. UNIFORM ACCOUNT FORM  
11   Sec. 113.051.   ESTABLISHMENT OF TYPE OF ACCOUNT;  
12                    APPLICABILITY OF CERTAIN LAW  
13   Sec. 113.052.   FORM  
14   Sec. 113.053.   USE OF FORM; DISCLOSURE  
15                    [Sections 113.054-113.100 reserved for expansion]  
16                  SUBCHAPTER C. OWNERSHIP AND OPERATION OF ACCOUNTS  
17   Sec. 113.101.   EFFECT OF CERTAIN PROVISIONS REGARDING  
18                    OWNERSHIP BETWEEN PARTIES AND OTHERS  
19   Sec. 113.102.   OWNERSHIP OF JOINT ACCOUNT DURING  
20                    PARTIES' LIFETIMES  
21   Sec. 113.103.   OWNERSHIP OF P.O.D. ACCOUNT DURING  
22                    ORIGINAL PAYEE'S LIFETIME  
23   Sec. 113.104.   OWNERSHIP OF TRUST ACCOUNT DURING  
24                    TRUSTEE'S LIFETIME  
25   Sec. 113.105.   OWNERSHIP OF CONVENIENCE ACCOUNT;  
26                    ADDITIONS AND ACCRUALS  
27                    [Sections 113.106-113.150 reserved for expansion]

1 SUBCHAPTER D. RIGHTS OF SURVIVORSHIP IN ACCOUNTS

2 Sec. 113.151. ESTABLISHMENT OF RIGHT OF SURVIVORSHIP  
3 IN JOINT ACCOUNT; OWNERSHIP ON DEATH  
4 OF PARTY

5 Sec. 113.152. OWNERSHIP OF P.O.D. ACCOUNT ON DEATH OF  
6 PARTY

7 Sec. 113.153. OWNERSHIP OF TRUST ACCOUNT ON DEATH OF  
8 TRUSTEE

9 Sec. 113.154. OWNERSHIP OF CONVENIENCE ACCOUNT ON  
10 DEATH OF PARTY

11 Sec. 113.155. EFFECT OF DEATH OF PARTY ON CERTAIN  
12 ACCOUNTS WITHOUT RIGHTS OF  
13 SURVIVORSHIP

14 Sec. 113.156. APPLICABILITY OF CERTAIN PROVISIONS ON  
15 DEATH OF PARTY

16 Sec. 113.157. WRITTEN NOTICE TO FINANCIAL INSTITUTIONS  
17 REGARDING FORM OF ACCOUNT

18 Sec. 113.158. NONTESTAMENTARY NATURE OF CERTAIN  
19 TRANSFERS

20 [Sections 113.159-113.200 reserved for expansion]

21 SUBCHAPTER E. PROTECTION OF FINANCIAL INSTITUTIONS

22 Sec. 113.201. APPLICABILITY OF SUBCHAPTER

23 Sec. 113.202. PAYMENT OF MULTIPLE-PARTY ACCOUNT

24 Sec. 113.203. PAYMENT OF JOINT ACCOUNT

25 Sec. 113.204. PAYMENT OF P.O.D. ACCOUNT

26 Sec. 113.205. PAYMENT OF TRUST ACCOUNT

27 Sec. 113.206. PAYMENT OF CONVENIENCE ACCOUNT

1 Sec. 113.207. LIABILITY FOR PAYMENT FROM JOINT ACCOUNT

2 AFTER DEATH

3 Sec. 113.208. LIABILITY FOR PAYMENT FROM CONVENIENCE

4 ACCOUNT

5 Sec. 113.209. DISCHARGE FROM CLAIMS

6 Sec. 113.210. SET-OFF TO FINANCIAL INSTITUTION

7 [Sections 113.211-113.250 reserved for expansion]

8 SUBCHAPTER F. RIGHTS OF CREDITORS; PLEDGE OF ACCOUNT

9 Sec. 113.251. PLEDGE OF ACCOUNT

10 Sec. 113.252. RIGHTS OF CREDITORS

11 Sec. 113.253. NO EFFECT ON CERTAIN RIGHTS AND

12 LIABILITIES OF FINANCIAL INSTITUTIONS

13 CHAPTER 113. MULTIPLE-PARTY ACCOUNTS

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 113.001. GENERAL DEFINITIONS. In this chapter:

16 (1) "Account" means a contract of deposit of funds  
17 between a depositor and a financial institution. The term includes  
18 a checking account, savings account, certificate of deposit, share  
19 account, or other similar arrangement.

20 (2) "Beneficiary" means a person named in a trust  
21 account for whom a party to the account is named as trustee.

22 (3) "Financial institution" means an organization  
23 authorized to do business under state or federal laws relating to  
24 financial institutions. The term includes a bank or trust company,  
25 savings bank, building and loan association, savings and loan  
26 company or association, credit union, and brokerage firm that deals  
27 in the sale and purchase of stocks, bonds, and other types of

1 securities.

2 (4) "Payment" of sums on deposit includes a  
3 withdrawal, a payment on a check or other directive of a party, and  
4 a pledge of sums on deposit by a party and any set-off, or reduction  
5 or other disposition of all or part of an account under a pledge.

6 (5) "P.O.D. payee" means a person designated on a  
7 P.O.D. account as a person to whom the account is payable on request  
8 after the death of one or more persons.

9 (6) "Proof of death" includes:

10 (A) a certified copy of a death certificate; or

11 (B) a judgment or order of a court in a proceeding  
12 in which the death of a person is proved to the satisfaction of the  
13 court by circumstantial evidence in accordance with Chapter 454.

14 (7) "Request" means a proper request for withdrawal,  
15 or a check or order for payment, that complies with all conditions  
16 of the account, including special requirements concerning  
17 necessary signatures and regulations of the financial institution.  
18 If a financial institution conditions withdrawal or payment on  
19 advance notice, for purposes of this chapter a request for  
20 withdrawal or payment is treated as immediately effective and a  
21 notice of intent to withdraw is treated as a request for withdrawal.

22 (8) "Sums on deposit" means the balance payable on a  
23 multiple-party account including interest, dividends, and any  
24 deposit life insurance proceeds added to the account by reason of  
25 the death of a party.

26 (9) "Withdrawal" includes payment to a third person in  
27 accordance with a check or other directive of a party. (Tex. Prob.

1 Code, Secs. 436(1), (2), (3), (8), (9), (11), (12), (13), (15).)

2       Sec. 113.002. DEFINITION OF PARTY. (a) In this chapter,  
3 "party" means a person who, by the terms of a multiple-party  
4 account, has a present right, subject to request, to payment from  
5 the account. Except as otherwise required by the context, the term  
6 includes a guardian, personal representative, or assignee,  
7 including an attaching creditor, of a party. The term also includes  
8 a person identified as a trustee of an account for another  
9 regardless of whether a beneficiary is named. The term does not  
10 include a named beneficiary unless the beneficiary has a present  
11 right of withdrawal.

12       (b) A P.O.D. payee or beneficiary of a trust account is a  
13 party only after the account becomes payable to the P.O.D. payee or  
14 beneficiary by reason of the P.O.D. payee or beneficiary surviving  
15 the original payee or trustee. (Tex. Prob. Code, Sec. 436(7).)

16       Sec. 113.003. DEFINITION OF NET CONTRIBUTION. (a) In this  
17 chapter, "net contribution" of a party to a joint account at any  
18 given time is the sum of all deposits made to that account by or for  
19 the party, less all withdrawals made by or for the party that have  
20 not been paid to or applied to the use of any other party, plus a pro  
21 rata share of any interest or dividends included in the current  
22 balance of the account. The term also includes any deposit life  
23 insurance proceeds added to the account by reason of the death of  
24 the party whose net contribution is in question.

25       (b) A financial institution may not be required to inquire,  
26 for purposes of establishing net contributions, about:

27           (1) the source of funds received for deposit to a

1 multiple-party account; or

2 (2) the proposed application of an amount withdrawn  
3 from a multiple-party account. (Tex. Prob. Code, Secs. 436(6), 444  
4 (part).)

5 Sec. 113.004. TYPES OF ACCOUNTS. In this chapter:

6 (1) "Convenience account" means an account that:

7 (A) is established at a financial institution by  
8 one or more parties in the names of the parties and one or more  
9 convenience signers; and

10 (B) has terms that provide that the sums on  
11 deposit are paid or delivered to the parties or to the convenience  
12 signers "for the convenience" of the parties.

13 (2) "Joint account" means an account payable on  
14 request to one or more of two or more parties, regardless of whether  
15 there is a right of survivorship.

16 (3) "Multiple-party account" means a joint account, a  
17 convenience account, a P.O.D. account, or a trust account. The term  
18 does not include an account established for the deposit of funds of  
19 a partnership, joint venture, or other association for business  
20 purposes, or an account controlled by one or more persons as the  
21 authorized agent or trustee for a corporation, unincorporated  
22 association, charitable or civic organization, or a regular  
23 fiduciary or trust account in which the relationship is established  
24 other than by deposit agreement.

25 (4) "P.O.D. account" means an account payable on  
26 request to:

27 (A) one person during the person's lifetime and,

1 on the person's death, to one or more P.O.D. payees; or

2 (B) one or more persons during their lifetimes  
3 and, on the death of all of those persons, to one or more P.O.D.  
4 payees.

5 (5) "Trust account" means an account in the name of one  
6 or more parties as trustee for one or more beneficiaries in which  
7 the relationship is established by the form of the account and the  
8 deposit agreement with the financial institution and in which there  
9 is no subject of the trust other than the sums on deposit in the  
10 account. The deposit agreement is not required to address payment  
11 to the beneficiary. The term does not include:

12 (A) a regular trust account under a testamentary  
13 trust or a trust agreement that has significance apart from the  
14 account; or

15 (B) a fiduciary account arising from a fiduciary  
16 relationship, such as the attorney-client relationship. (Tex.  
17 Prob. Code, Secs. 436(4), (5), (10), (14), 438A(a).)

18 Sec. 113.005. AUTHORITY OF FINANCIAL INSTITUTIONS TO ENTER  
19 INTO CERTAIN ACCOUNTS. A financial institution may enter into a  
20 multiple-party account to the same extent that the institution may  
21 enter into a single-party account. (Tex. Prob. Code, Sec. 444  
22 (part).)

23 [Sections 113.006-113.050 reserved for expansion]

24 SUBCHAPTER B. UNIFORM ACCOUNT FORM

25 Sec. 113.051. ESTABLISHMENT OF TYPE OF ACCOUNT;  
26 APPLICABILITY OF CERTAIN LAW. (a) A contract of deposit that  
27 contains provisions substantially the same as in the form provided



1 by Section 113.052 establishes the type of account selected by a  
2 party. This chapter governs an account selected under the form,  
3 other than a single-party account without a P.O.D. designation.

4 (b) A contract of deposit that does not contain provisions  
5 substantially the same as in the form provided by Section 113.052 is  
6 governed by the provisions of this chapter applicable to the type of  
7 account that most nearly conforms to the depositor's intent. (Tex.  
8 Prob. Code, Sec. 439A(a).)

9 Sec. 113.052. FORM. A financial institution may use the  
10 following form to establish the type of account selected by a party:

11 UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT SELECTION  
12 FORM NOTICE: The type of account you select may determine how  
13 property passes on your death. Your will may not control the  
14 disposition of funds held in some of the following accounts.

15 Select one of the following accounts by placing your initials  
16 next to the account selected:

17 \_\_\_ (1) SINGLE-PARTY ACCOUNT WITHOUT "P.O.D." (PAYABLE ON  
18 DEATH) DESIGNATION. The party to the account owns the account. On  
19 the death of the party, ownership of the account passes as a part of  
20 the party's estate under the party's will or by intestacy.

21 Enter the name of the party:

22 \_\_\_\_\_

23 \_\_\_ (2) SINGLE-PARTY ACCOUNT WITH "P.O.D." (PAYABLE ON  
24 DEATH) DESIGNATION. The party to the account owns the account. On  
25 the death of the party, ownership of the account passes to the  
26 P.O.D. beneficiaries of the account. The account is not a part of  
27 the party's estate.

1           Enter the name of the party:

2 \_\_\_\_\_

3           Enter the name or names of the P.O.D. beneficiaries:

4 \_\_\_\_\_

5 \_\_\_\_\_

6           \_\_\_ (3) MULTIPLE-PARTY       ACCOUNT       WITHOUT       RIGHT       OF  
7 SURVIVORSHIP.   The parties to the account own the account in  
8 proportion to the parties' net contributions to the account.   The  
9 financial institution may pay any sum in the account to a party at  
10 any time.   On the death of a party, the party's ownership of the  
11 account passes as a part of the party's estate under the party's  
12 will or by intestacy.

13           Enter the names of the parties:

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17           \_\_\_ (4) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP.  
18 The parties to the account own the account in proportion to the  
19 parties' net contributions to the account.   The financial  
20 institution may pay any sum in the account to a party at any time.  
21 On the death of a party, the party's ownership of the account passes  
22 to the surviving parties.

23           Enter the names of the parties:

24 \_\_\_\_\_

25 \_\_\_\_\_

26           \_\_\_ (5) MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND  
27 P.O.D. (PAYABLE ON DEATH) DESIGNATION.   The parties to the account

1 own the account in proportion to the parties' net contributions to  
2 the account. The financial institution may pay any sum in the  
3 account to a party at any time. On the death of the last surviving  
4 party, the ownership of the account passes to the P.O.D.  
5 beneficiaries.

6 Enter the names of the parties:

7 \_\_\_\_\_  
8 \_\_\_\_\_

9 Enter the name or names of the P.O.D. beneficiaries:

10 \_\_\_\_\_  
11 \_\_\_\_\_

12 \_\_\_\_ (6) CONVENIENCE ACCOUNT. The parties to the account own  
13 the account. One or more convenience signers to the account may  
14 make account transactions for a party. A convenience signer does  
15 not own the account. On the death of the last surviving party,  
16 ownership of the account passes as a part of the last surviving  
17 party's estate under the last surviving party's will or by  
18 intestacy. The financial institution may pay funds in the account  
19 to a convenience signer before the financial institution receives  
20 notice of the death of the last surviving party. The payment to a  
21 convenience signer does not affect the parties' ownership of the  
22 account.

23 Enter the names of the parties:

24 \_\_\_\_\_  
25 \_\_\_\_\_

26 Enter the names of the convenience signers:

27 \_\_\_\_\_

1 \_\_\_\_\_  
 2       \_\_\_ (7) TRUST ACCOUNT. The parties named as trustees to the  
 3 account own the account in proportion to the parties' net  
 4 contributions to the account. A trustee may withdraw funds from the  
 5 account. A beneficiary may not withdraw funds from the account  
 6 before all trustees are deceased. On the death of the last  
 7 surviving trustee, the ownership of the account passes to the  
 8 beneficiary. The trust account is not a part of a trustee's estate  
 9 and does not pass under the trustee's will or by intestacy, unless  
 10 the trustee survives all of the beneficiaries and all other  
 11 trustees.

12           Enter the name or names of the trustees:  
 13 \_\_\_\_\_  
 14 \_\_\_\_\_

15           Enter the name or names of the beneficiaries:  
 16 \_\_\_\_\_  
 17 \_\_\_\_\_

18 (Tex. Prob. Code, Sec. 439A(b).)

19       Sec. 113.053. USE OF FORM; DISCLOSURE. (a) A financial  
 20 institution is considered to have adequately disclosed the  
 21 information provided in this subchapter if the financial  
 22 institution uses the form provided by Section 113.052.

23       (b) If a financial institution varies the format of the form  
 24 provided by Section 113.052, the financial institution may make  
 25 disclosures in the account agreement or in any other form that  
 26 adequately discloses the information provided by this subchapter.

27       (c) If the customer receives adequate disclosure of the

1 ownership rights to an account and the names of the parties are  
2 appropriately indicated, a financial institution may combine any of  
3 the provisions in, and vary the format of, the form and notices  
4 described in Section 113.052 in:

5 (1) a universal account form with options listed for  
6 selection and additional disclosures provided in the account  
7 agreement; or

8 (2) any other manner that adequately discloses the  
9 information provided by this subchapter. (Tex. Prob. Code, Secs.  
10 439A(c), (d).)

11 [Sections 113.054-113.100 reserved for expansion]

12 SUBCHAPTER C. OWNERSHIP AND OPERATION OF ACCOUNTS

13 Sec. 113.101. EFFECT OF CERTAIN PROVISIONS REGARDING  
14 OWNERSHIP BETWEEN PARTIES AND OTHERS. The provisions of this  
15 subchapter and Subchapters B and D that relate to beneficial  
16 ownership between parties, or between parties and P.O.D. payees or  
17 beneficiaries of multiple-party accounts:

18 (1) are relevant only to controversies between those  
19 persons and those persons' creditors and other successors; and

20 (2) do not affect the withdrawal power of those  
21 persons under the terms of an account contract. (Tex. Prob. Code,  
22 Sec. 437.)

23 Sec. 113.102. OWNERSHIP OF JOINT ACCOUNT DURING PARTIES'  
24 LIFETIMES. During the lifetime of all parties to a joint account,  
25 the account belongs to the parties in proportion to the net  
26 contributions by each party to the sums on deposit unless there is  
27 clear and convincing evidence of a different intent. (Tex. Prob.

1 Code, Sec. 438(a).)

2           Sec. 113.103. OWNERSHIP OF P.O.D. ACCOUNT DURING ORIGINAL  
3 PAYEE'S LIFETIME. (a) During the lifetime of an original payee of  
4 a P.O.D. account, the account belongs to the original payee and does  
5 not belong to the P.O.D. payee or payees.

6           (b) If two or more parties are named as original payees of a  
7 P.O.D. account, during the parties' lifetimes rights between the  
8 parties are governed by Section 113.102. (Tex. Prob. Code, Sec.  
9 438(b).)

10           Sec. 113.104. OWNERSHIP OF TRUST ACCOUNT DURING TRUSTEE'S  
11 LIFETIME. (a) A trust account belongs beneficially to the trustee  
12 during the trustee's lifetime unless:

13                   (1) the terms of the account or the deposit agreement  
14 manifest a contrary intent; or

15                   (2) other clear and convincing evidence of an  
16 irrevocable trust exists.

17           (b) If two or more parties are named as trustees on a trust  
18 account, during the parties' lifetimes beneficial rights between  
19 the parties are governed by Section 113.102.

20           (c) An account that is an irrevocable trust belongs  
21 beneficially to the beneficiary. (Tex. Prob. Code, Sec. 438(c).)

22           Sec. 113.105. OWNERSHIP OF CONVENIENCE ACCOUNT; ADDITIONS  
23 AND ACCRUALS. (a) The making of a deposit in a convenience account  
24 does not affect the title to the deposit.

25           (b) A party to a convenience account is not considered to  
26 have made a gift of the deposit, or of any additions or accruals to  
27 the deposit, to a convenience signer.

1 (c) An addition made to a convenience account by anyone  
2 other than a party, and accruals to the addition, are considered to  
3 have been made by a party. (Tex. Prob. Code, Secs. 438A(b), (c),  
4 (e).)

5 [Sections 113.106-113.150 reserved for expansion]

6 SUBCHAPTER D. RIGHTS OF SURVIVORSHIP IN ACCOUNTS

7 Sec. 113.151. ESTABLISHMENT OF RIGHT OF SURVIVORSHIP IN  
8 JOINT ACCOUNT; OWNERSHIP ON DEATH OF PARTY. (a) Sums remaining on  
9 deposit on the death of a party to a joint account belong to the  
10 surviving party or parties against the estate of the deceased party  
11 if the interest of the deceased party is made to survive to the  
12 surviving party or parties by a written agreement signed by the  
13 party who dies.

14 (b) Notwithstanding any other law, an agreement is  
15 sufficient under this section to confer an absolute right of  
16 survivorship on parties to a joint account if the agreement  
17 contains a statement substantially similar to the following: "On  
18 the death of one party to a joint account, all sums in the account on  
19 the date of the death vest in and belong to the surviving party as  
20 his or her separate property and estate."

21 (c) A survivorship agreement may not be inferred from the  
22 mere fact that the account is a joint account.

23 (d) If there are two or more surviving parties to a joint  
24 account that is subject to a right of survivorship agreement:

25 (1) during the parties' lifetimes respective  
26 ownerships are in proportion to the parties' previous ownership  
27 interests under Sections 113.102, 113.103, and 113.104, as

1 applicable, augmented by an equal share for each survivor of any  
2 interest a deceased party owned in the account immediately before  
3 that party's death; and

4 (2) the right of survivorship continues between the  
5 surviving parties if a written agreement signed by a party who dies  
6 provides for that continuation. (Tex. Prob. Code, Sec. 439(a).)

7 Sec. 113.152. OWNERSHIP OF P.O.D. ACCOUNT ON DEATH OF  
8 PARTY. (a) If the account is a P.O.D. account and there is a  
9 written agreement signed by the original payee or payees, on the  
10 death of the original payee or on the death of the survivor of two or  
11 more original payees, any sums remaining on deposit belong to:

12 (1) the P.O.D. payee or payees if surviving; or

13 (2) the survivor of the P.O.D. payees if one or more  
14 P.O.D. payees die before the original payee.

15 (b) If two or more P.O.D. payees survive, no right of  
16 survivorship exists between the surviving P.O.D. payees unless the  
17 terms of the account or deposit agreement expressly provide for  
18 survivorship between those payees. (Tex. Prob. Code, Sec. 439(b).)

19 Sec. 113.153. OWNERSHIP OF TRUST ACCOUNT ON DEATH OF  
20 TRUSTEE. (a) If the account is a trust account and there is a  
21 written agreement signed by the trustee or trustees, on death of the  
22 trustee or the survivor of two or more trustees, any sums remaining  
23 on deposit belong to:

24 (1) the person or persons named as beneficiaries, if  
25 surviving; or

26 (2) the survivor of the persons named as beneficiaries  
27 if one or more beneficiaries die before the trustee.



1           (b) If two or more beneficiaries survive, no right of  
2 survivorship exists between the surviving beneficiaries unless the  
3 terms of the account or deposit agreement expressly provide for  
4 survivorship between those beneficiaries. (Tex. Prob. Code, Sec.  
5 439(c).)

6           Sec. 113.154. OWNERSHIP OF CONVENIENCE ACCOUNT ON DEATH OF  
7 PARTY. On the death of the last surviving party to a convenience  
8 account:

9                   (1) a convenience signer has no right of survivorship  
10 in the account; and

11                   (2) ownership of the account remains in the estate of  
12 the last surviving party. (Tex. Prob. Code, Sec. 438A(d).)

13           Sec. 113.155. EFFECT OF DEATH OF PARTY ON CERTAIN ACCOUNTS  
14 WITHOUT RIGHTS OF SURVIVORSHIP. The death of a party to a  
15 multiple-party account to which Sections 113.151, 113.152, and  
16 113.153 do not apply has no effect on the beneficial ownership of  
17 the account, other than to transfer the rights of the deceased party  
18 as part of the deceased party's estate. (Tex. Prob. Code, Sec.  
19 439(d).)

20           Sec. 113.156. APPLICABILITY OF CERTAIN PROVISIONS ON DEATH  
21 OF PARTY. Sections 113.151, 113.152, 113.153, and 113.155 as to  
22 rights of survivorship are determined by the form of the account at  
23 the death of a party. (Tex. Prob. Code, Sec. 440 (part).)

24           Sec. 113.157. WRITTEN NOTICE TO FINANCIAL INSTITUTIONS  
25 REGARDING FORM OF ACCOUNT. Notwithstanding any other law, the form  
26 of an account may be altered by written order given by a party to the  
27 financial institution to change the form of the account or to stop

1 or vary payment under the terms of the account. The order or  
2 request must be signed by a party, received by the financial  
3 institution during the party's lifetime, and not countermanded by  
4 another written order of the same party during the party's  
5 lifetime. (Tex. Prob. Code, Sec. 440 (part).)

6 Sec. 113.158. NONTESTAMENTARY NATURE OF CERTAIN TRANSFERS.  
7 Transfers resulting from the application of Sections 113.151,  
8 113.152, 113.153, and 113.155 are effective by reason of the  
9 account contracts involved and this chapter and are not to be  
10 considered testamentary transfers or subject to the testamentary  
11 provisions of this title. (Tex. Prob. Code, Sec. 441.)

12 [Sections 113.159-113.200 reserved for expansion]

13 SUBCHAPTER E. PROTECTION OF FINANCIAL INSTITUTIONS

14 Sec. 113.201. APPLICABILITY OF SUBCHAPTER. This subchapter  
15 and Section 113.003(b) govern:

16 (1) the liability of financial institutions that make  
17 payments as provided by this subchapter; and

18 (2) the set-off rights of those institutions. (Tex.  
19 Prob. Code, Sec. 443.)

20 Sec. 113.202. PAYMENT OF MULTIPLE-PARTY ACCOUNT. A  
21 multiple-party account may be paid, on request, to any one or more  
22 of the parties. (Tex. Prob. Code, Sec. 444 (part).)

23 Sec. 113.203. PAYMENT OF JOINT ACCOUNT. (a) Subject to  
24 Subsection (b), amounts in a joint account may be paid, on request,  
25 to any party without regard to whether any other party is  
26 incapacitated or deceased at the time the payment is demanded.

27 (b) Payment may not be made to the personal representative

1 or heir of a deceased party unless:

2 (1) proofs of death are presented to the financial  
3 institution showing that the deceased party was the last surviving  
4 party; or

5 (2) there is no right of survivorship under Sections  
6 113.151, 113.152, 113.153, and 113.155. (Tex. Prob. Code, Sec. 445  
7 (part).)

8 Sec. 113.204. PAYMENT OF P.O.D. ACCOUNT. (a) A P.O.D.  
9 account may be paid, on request, to any original payee of the  
10 account.

11 (b) Payment may be made, on request, to the P.O.D. payee or  
12 to the personal representative or heirs of a deceased P.O.D. payee  
13 on the presentation to the financial institution of proof of death  
14 showing that the P.O.D. payee survived each person named as an  
15 original payee.

16 (c) Payment may be made to the personal representative or  
17 heirs of a deceased original payee if proof of death is presented to  
18 the financial institution showing that the deceased original payee  
19 was the survivor of each other person named on the account as an  
20 original payee or a P.O.D. payee. (Tex. Prob. Code, Sec. 446.)

21 Sec. 113.205. PAYMENT OF TRUST ACCOUNT. (a) A trust  
22 account may be paid, on request, to any trustee.

23 (b) Unless a financial institution has received written  
24 notice that a beneficiary has a vested interest not dependent on the  
25 beneficiary's surviving the trustee, payment may be made to the  
26 personal representative or heirs of a deceased trustee if proof of  
27 death is presented to the financial institution showing that the

1 deceased trustee was the survivor of each other person named on the  
2 account as a trustee or beneficiary.

3 (c) Payment may be made, on request, to a beneficiary if  
4 proof of death is presented to the financial institution showing  
5 that the beneficiary or beneficiaries survived all persons named as  
6 trustees. (Tex. Prob. Code, Sec. 447.)

7 Sec. 113.206. PAYMENT OF CONVENIENCE ACCOUNT. Deposits to  
8 a convenience account and additions and accruals to the deposits  
9 may be paid to a party or a convenience signer. (Tex. Prob. Code,  
10 Sec. 438A(f) (part).)

11 Sec. 113.207. LIABILITY FOR PAYMENT FROM JOINT ACCOUNT  
12 AFTER DEATH. A financial institution that pays an amount from a  
13 joint account to a surviving party to that account in accordance  
14 with a written agreement under Section 113.151 is not liable to an  
15 heir, devisee, or beneficiary of the deceased party's estate.  
16 (Tex. Prob. Code, Sec. 445 (part).)

17 Sec. 113.208. LIABILITY FOR PAYMENT FROM CONVENIENCE  
18 ACCOUNT. (a) A financial institution is completely released from  
19 liability for a payment made from a convenience account before the  
20 financial institution receives notice in writing signed by a party  
21 not to make the payment in accordance with the terms of the account.  
22 After receipt of the notice from a party, the financial institution  
23 may require a party to approve any further payments from the  
24 account.

25 (b) A financial institution that makes a payment of the sums  
26 on deposit in a convenience account to a convenience signer after  
27 the death of the last surviving party, but before the financial

1 institution receives written notice of the last surviving party's  
2 death, is completely released from liability for the payment.

3 (c) A financial institution that makes a payment of the sums  
4 on deposit in a convenience account to the personal representative  
5 of the deceased last surviving party's estate after the death of the  
6 last surviving party, but before a court order prohibiting payment  
7 is served on the financial institution, is, to the extent of the  
8 payment, released from liability to any person claiming a right to  
9 the funds. The personal representative's receipt of the funds is a  
10 complete release and discharge of the financial institution. (Tex.  
11 Prob. Code, Secs. 438A(f) (part), (g).)

12 Sec. 113.209. DISCHARGE FROM CLAIMS. (a) Payment made in  
13 accordance with Section 113.202, 113.203, 113.204, 113.205, or  
14 113.207 discharges the financial institution from all claims for  
15 those amounts paid regardless of whether the payment is consistent  
16 with the beneficial ownership of the account between parties,  
17 P.O.D. payees, or beneficiaries, or their successors.

18 (b) The protection provided by Subsection (a) does not  
19 extend to payments made after a financial institution receives,  
20 from any party able to request present payment, written notice to  
21 the effect that withdrawals in accordance with the terms of the  
22 account should not be permitted. Unless the notice is withdrawn by  
23 the person giving the notice, the successor of a deceased party must  
24 concur in a demand for withdrawal for the financial institution to  
25 be protected under Subsection (a).

26 (c) No notice, other than the notice described by Subsection  
27 (b), or any other information shown to have been available to a

1 financial institution affects the institution's right to the  
2 protection provided by Subsection (a).

3 (d) The protection provided by Subsection (a) does not  
4 affect the rights of parties in disputes between the parties or the  
5 parties' successors concerning the beneficial ownership of funds  
6 in, or withdrawn from, multiple-party accounts. (Tex. Prob. Code,  
7 Sec. 448.)

8 Sec. 113.210. SET-OFF TO FINANCIAL INSTITUTION. (a)  
9 Without qualifying any other statutory right to set-off or lien and  
10 subject to any contractual provision, if a party to a  
11 multiple-party account is indebted to a financial institution, the  
12 financial institution has a right to set-off against the account in  
13 which the party has, or had immediately before the party's death, a  
14 present right of withdrawal.

15 (b) The amount of the account subject to set-off under this  
16 section is that proportion to which the debtor is, or was  
17 immediately before the debtor's death, beneficially entitled, and  
18 in the absence of proof of net contributions, to an equal share with  
19 all parties having present rights of withdrawal. (Tex. Prob. Code,  
20 Sec. 449.)

21 [Sections 113.211-113.250 reserved for expansion]

22 SUBCHAPTER F. RIGHTS OF CREDITORS; PLEDGE OF ACCOUNT

23 Sec. 113.251. PLEDGE OF ACCOUNT. (a) A party to a  
24 multiple-party account may pledge the account or otherwise create a  
25 security interest in the account without the joinder of, as  
26 applicable, a P.O.D. payee, a beneficiary, a convenience signer, or  
27 any other party to a joint account, regardless of whether a right

1 of survivorship exists.

2 (b) A convenience signer may not pledge or otherwise create  
3 a security interest in an account.

4 (c) Not later than the 30th day after the date a security  
5 interest on a multiple-party account is perfected, a secured  
6 creditor that is a financial institution with accounts insured by  
7 the Federal Deposit Insurance Corporation shall provide written  
8 notice of the pledge of the account to any other party to the  
9 account who did not create the security interest. The notice must  
10 be sent by certified mail to each other party at the last address  
11 the party provided to the depository bank.

12 (d) The financial institution is not required to provide the  
13 notice described by Subsection (c) to a P.O.D. payee, beneficiary,  
14 or convenience signer. (Tex. Prob. Code, Sec. 442 (part).)

15 Sec. 113.252. RIGHTS OF CREDITORS. (a) A multiple-party  
16 account is not effective against:

17 (1) an estate of a deceased party to transfer to a  
18 survivor amounts needed to pay debts, taxes, and expenses of  
19 administration, including statutory allowances to the surviving  
20 spouse and minor children, if other assets of the estate are  
21 insufficient; or

22 (2) the claim of a secured creditor who has a lien on  
23 the account.

24 (b) A party, P.O.D. payee, or beneficiary who receives  
25 payment from a multiple-party account after the death of a deceased  
26 party is liable to account to the deceased party's personal  
27 representative for amounts the deceased party owned beneficially

1 immediately before the party's death to the extent necessary to  
2 discharge the claims and charges described by Subsection (a) that  
3 remain unpaid after application of the deceased party's estate.  
4 The party, P.O.D. payee, or beneficiary is not liable in an amount  
5 greater than the amount the party, P.O.D. payee, or beneficiary  
6 received from the multiple-party account.

7 (c) A proceeding to assert liability under Subsection (b):

8 (1) may only be commenced if the personal  
9 representative receives a written demand by a surviving spouse, a  
10 creditor, or one acting for a minor child of the deceased party; and

11 (2) must be commenced on or before the second  
12 anniversary of the death of the deceased party.

13 (d) Amounts recovered by the personal representative under  
14 this section must be administered as part of the decedent's estate.  
15 (Tex. Prob. Code, Sec. 442 (part).)

16 Sec. 113.253. NO EFFECT ON CERTAIN RIGHTS AND LIABILITIES  
17 OF FINANCIAL INSTITUTIONS. This subchapter does not:

18 (1) affect the right of a financial institution to  
19 make payment on multiple-party accounts according to the terms of  
20 the account; or

21 (2) make the financial institution liable to the  
22 estate of a deceased party unless, before payment, the institution  
23 received written notice from the personal representative stating  
24 the amounts needed to pay debts, taxes, claims, and expenses of  
25 administration. (Tex. Prob. Code, Sec. 442 (part).)

26 [Chapters 114-120 reserved for expansion]



1                   CHAPTER 121. SURVIVAL REQUIREMENTS  
2                   SUBCHAPTER A. GENERAL PROVISIONS  
3   Sec. 121.001.   APPLICABILITY OF CHAPTER  
4                   [Sections 121.002-121.050 reserved for expansion]  
5   SUBCHAPTER B. SURVIVAL REQUIREMENT FOR INTESTATE SUCCESSION AND  
6                   CERTAIN OTHER PURPOSES  
7   Sec. 121.051.   APPLICABILITY OF SUBCHAPTER  
8   Sec. 121.052.   REQUIRED PERIOD OF SURVIVAL FOR  
9                   INTESTATE SUCCESSION AND CERTAIN OTHER  
10                   PURPOSES  
11   Sec. 121.053.   INTESTATE SUCCESSION: FAILURE TO  
12                   SURVIVE PRESUMED UNDER CERTAIN  
13                   CIRCUMSTANCES  
14                   [Sections 121.054-121.100 reserved for expansion]  
15   SUBCHAPTER C. SURVIVAL REQUIREMENTS FOR CERTAIN BENEFICIARIES  
16   Sec. 121.101.   REQUIRED PERIOD OF SURVIVAL FOR DEVISEE  
17   Sec. 121.102.   REQUIRED PERIOD OF SURVIVAL FOR  
18                   CONTINGENT BENEFICIARY  
19                   [Sections 121.103-121.150 reserved for expansion]  
20   SUBCHAPTER D. DISTRIBUTION OF CERTAIN PROPERTY ON PERSON'S FAILURE  
21                   TO SURVIVE FOR REQUIRED PERIOD  
22   Sec. 121.151.   DISTRIBUTION OF COMMUNITY PROPERTY  
23   Sec. 121.152.   DISTRIBUTION OF PROPERTY OWNED BY JOINT  
24                   OWNERS  
25   Sec. 121.153.   DISTRIBUTION OF CERTAIN INSURANCE  
26                   PROCEEDS

1                   CHAPTER 121. SURVIVAL REQUIREMENTS

2                   SUBCHAPTER A. GENERAL PROVISIONS

3           Sec. 121.001. APPLICABILITY OF CHAPTER. This chapter does  
4 not apply if provision has been made by will, living trust, deed, or  
5 insurance contract, or in any other manner, for a disposition of  
6 property that is different from the disposition of the property  
7 that would be made if the provisions of this chapter applied. (Tex.  
8 Prob. Code, Sec. 47(f).)

9           [Sections 121.002-121.050 reserved for expansion]

10           SUBCHAPTER B. SURVIVAL REQUIREMENT FOR INTESTATE SUCCESSION AND  
11                   CERTAIN OTHER PURPOSES

12           Sec. 121.051. APPLICABILITY OF SUBCHAPTER. This subchapter  
13 does not apply if the application of this subchapter would result in  
14 the escheat of an intestate estate. (Tex. Prob. Code, Sec. 47(a)  
15 (part).)

16           Sec. 121.052. REQUIRED PERIOD OF SURVIVAL FOR INTESTATE  
17 SUCCESSION AND CERTAIN OTHER PURPOSES. A person who does not  
18 survive a decedent by 120 hours is considered to have predeceased  
19 the decedent for purposes of the homestead allowance, exempt  
20 property, and intestate succession, and the decedent's heirs are  
21 determined accordingly, except as otherwise provided by this  
22 chapter. (Tex. Prob. Code, Sec. 47(a) (part).)

23           Sec. 121.053. INTESTATE SUCCESSION: FAILURE TO SURVIVE  
24 PRESUMED UNDER CERTAIN CIRCUMSTANCES. A person who, if the person  
25 survived a decedent by 120 hours, would be the decedent's heir is  
26 considered not to have survived the decedent for the required  
27 period if:

1           (1) the time of death of the decedent or of the person,  
2 or the times of death of both, cannot be determined; and

3           (2) the person's survival for the required period  
4 after the decedent's death cannot be established. (Tex. Prob.  
5 Code, Sec. 47(a) (part).)

6           [Sections 121.054-121.100 reserved for expansion]

7       SUBCHAPTER C. SURVIVAL REQUIREMENTS FOR CERTAIN BENEFICIARIES

8           Sec. 121.101. REQUIRED PERIOD OF SURVIVAL FOR DEVISEE. A  
9 devisee who does not survive the testator by 120 hours is treated as  
10 if the devisee predeceased the testator unless the testator's will  
11 contains some language that:

12           (1) deals explicitly with simultaneous death or deaths  
13 in a common disaster; or

14           (2) requires the devisee to survive the testator, or  
15 to survive the testator for a stated period, to take under the will.  
16 (Tex. Prob. Code, Sec. 47(c) (part).)

17           Sec. 121.102. REQUIRED PERIOD OF SURVIVAL FOR CONTINGENT  
18 BENEFICIARY. (a) If property is disposed of in a manner that  
19 conditions the right of a beneficiary to succeed to an interest in  
20 the property on the beneficiary surviving another person, the  
21 beneficiary is considered not to have survived the other person  
22 unless the beneficiary survives the person by 120 hours, except as  
23 provided by Subsection (b).

24           (b) If an interest in property is given alternatively to one  
25 of two or more beneficiaries, with the right of each beneficiary to  
26 take being dependent on that beneficiary surviving the other  
27 beneficiary or beneficiaries, and all of the beneficiaries die

1 within a period of less than 120 hours, the property shall be  
2 divided into as many equal portions as there are beneficiaries. The  
3 portions shall be distributed respectively to those who would have  
4 taken if each beneficiary had survived. (Tex. Prob. Code, Sec.  
5 47(c) (part).)

6 [Sections 121.103-121.150 reserved for expansion]

7 SUBCHAPTER D. DISTRIBUTION OF CERTAIN PROPERTY ON PERSON'S FAILURE  
8 TO SURVIVE FOR REQUIRED PERIOD

9 Sec. 121.151. DISTRIBUTION OF COMMUNITY PROPERTY. (a)

10 This section applies to community property, including the proceeds  
11 of life or accident insurance that are community property and  
12 become payable to the estate of either the husband or wife.

13 (b) If a husband and wife die leaving community property but  
14 neither survives the other by 120 hours, one-half of all community  
15 property shall be distributed as if the husband had survived, and  
16 the other one-half shall be distributed as if the wife had survived.  
17 (Tex. Prob. Code, Sec. 47(b).)

18 Sec. 121.152. DISTRIBUTION OF PROPERTY OWNED BY JOINT  
19 OWNERS. If property, including community property with a right of  
20 survivorship, is owned so that one of two joint owners is entitled  
21 to the whole of the property on the death of the other, but neither  
22 survives the other by 120 hours, one-half of the property shall be  
23 distributed as if one joint owner had survived, and the other  
24 one-half shall be distributed as if the other joint owner had  
25 survived. If there are more than two joint owners and all of the  
26 joint owners die within a period of less than 120 hours, the  
27 property shall be divided into as many equal portions as there are

1 joint owners and the portions shall be distributed respectively to  
2 those who would have taken if each joint owner survived. (Tex.  
3 Prob. Code, Sec. 47(d).)

4 Sec. 121.153. DISTRIBUTION OF CERTAIN INSURANCE PROCEEDS.

5 (a) If the insured under a life or accident insurance policy and a  
6 beneficiary of the proceeds of that policy die within a period of  
7 less than 120 hours, the insured is considered to have survived the  
8 beneficiary for the purpose of determining the rights under the  
9 policy of the beneficiary or beneficiaries as such.

10 (b) This section does not prevent the applicability of  
11 Section 121.151 to proceeds of life or accident insurance that are  
12 community property. (Tex. Prob. Code, Sec. 47(e).)

13 CHAPTER 122. DISCLAIMERS AND ASSIGNMENTS

14 SUBCHAPTER A. GENERAL PROVISIONS RELATING TO DISCLAIMER

15 Sec. 122.001. DEFINITIONS

16 Sec. 122.002. WHO MAY DISCLAIM

17 Sec. 122.003. EFFECTIVE DATE; CREDITORS' CLAIMS

18 Sec. 122.004. DISCLAIMER IRREVOCABLE

19 Sec. 122.005. POWER TO PROVIDE METHOD OF DISCLAIMER

20 [Sections 122.006-122.050 reserved for expansion]

21 SUBCHAPTER B. FORM, FILING, AND NOTICE OF DISCLAIMER

22 Sec. 122.051. FORM

23 Sec. 122.052. FILING IN PROBATE COURT

24 Sec. 122.053. FILING IN COUNTY OF DECEDENT'S RESIDENCE

25 Sec. 122.054. NONRESIDENT DECEDENT

26 Sec. 122.055. FILING DEADLINE

27 Sec. 122.056. NOTICE

[Sections 122.057-122.100 reserved for expansion]

SUBCHAPTER C. EFFECT OF DISCLAIMER

Sec. 122.101. EFFECT

Sec. 122.102. INEFFECTIVE DISCLAIMER

Sec. 122.103. SUBSEQUENT DISCLAIMER

Sec. 122.104. DISCLAIMER AFTER ACCEPTANCE

Sec. 122.105. INTEREST IN TRUST PROPERTY

Sec. 122.106. INTEREST IN SECURITIES

[Sections 122.107-122.150 reserved for expansion]

SUBCHAPTER D. PARTIAL DISCLAIMER

Sec. 122.151. PARTIAL DISCLAIMER

Sec. 122.152. EFFECT OF PARTIAL DISCLAIMER

Sec. 122.153. PARTIAL DISCLAIMER BY SPOUSE

[Sections 122.154-122.200 reserved for expansion]

SUBCHAPTER E. ASSIGNMENT OF INTEREST

Sec. 122.201. ASSIGNMENT

Sec. 122.202. FILING OF ASSIGNMENT

Sec. 122.203. NOTICE

Sec. 122.204. FAILURE TO COMPLY

Sec. 122.205. GIFT

Sec. 122.206. SPENDTHRIFT PROVISION

CHAPTER 122. DISCLAIMERS AND ASSIGNMENTS

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO DISCLAIMER

Sec. 122.001. DEFINITIONS. In this chapter, other than Subchapter E:

(1) "Beneficiary" includes a person who would have been entitled, if the person had not made a disclaimer, to receive

1 property as a result of the death of another person:

2 (A) by inheritance;

3 (B) under a will;

4 (C) by an agreement between spouses for community  
5 property with a right of survivorship;

6 (D) by a joint tenancy with a right of  
7 survivorship;

8 (E) by a survivorship agreement, account, or  
9 interest in which the interest of the decedent passes to a surviving  
10 beneficiary;

11 (F) by an insurance, annuity, endowment,  
12 employment, deferred compensation, or other contract or  
13 arrangement; or

14 (G) under a pension, profit sharing, thrift,  
15 stock bonus, life insurance, survivor income, incentive, or other  
16 plan or program providing retirement, welfare, or fringe benefits  
17 with respect to an employee or a self-employed individual.

18 (2) "Disclaimer" includes renunciation.

19 (3) "Property" includes all legal and equitable  
20 interests, powers, and property, present or future, vested or  
21 contingent, and beneficial or burdensome, in whole or in part.

22 (Tex. Prob. Code, Sec. 37A(e).)

23 Sec. 122.002. WHO MAY DISCLAIM. (a) A person who may be  
24 entitled to receive property as a beneficiary who on or after  
25 September 1, 1977, intends to irrevocably disclaim all or any part  
26 of the property shall evidence the disclaimer as provided by this  
27 chapter.

1           (b) Subject to Subsection (c), the legally authorized  
2 representative of a person who may be entitled to receive property  
3 as a beneficiary who on or after September 1, 1977, intends to  
4 irrevocably disclaim all or any part of the property on the  
5 beneficiary's behalf shall evidence the disclaimer as provided by  
6 this chapter.

7           (c) A disclaimer made by a legally authorized  
8 representative described by Subsection (d)(1), (2), or (3), other  
9 than an independent executor, must be made with prior court  
10 approval of the court that has or would have jurisdiction over the  
11 legally authorized representative. A disclaimer made by an  
12 independent executor on behalf of a decedent may be made without  
13 prior court approval.

14           (d) In this section, "legally authorized representative"  
15 means:

16                 (1) a guardian if the person entitled to receive the  
17 property as a beneficiary is an incapacitated person;

18                 (2) a guardian ad litem if the person entitled to  
19 receive the property as a beneficiary is an unborn or unascertained  
20 person;

21                 (3) a personal representative, including an  
22 independent executor, if the person entitled to receive the  
23 property as a beneficiary is a decedent; or

24                 (4) an attorney in fact or agent appointed under a  
25 durable power of attorney authorizing disclaimers if the person  
26 entitled to receive the property as a beneficiary executed the  
27 power of attorney as a principal. (Tex. Prob. Code, Sec. 37A(a).)



1           Sec. 122.003. EFFECTIVE DATE; CREDITORS' CLAIMS. (a) A  
2 disclaimer evidenced as provided by this chapter is effective for  
3 all purposes as of the date of the decedent's death.

4           (b) Property disclaimed in accordance with this chapter is  
5 not subject to the claims of a creditor of the disclaimant. (Tex.  
6 Prob. Code, Sec. 37A(b).)

7           Sec. 122.004. DISCLAIMER IRREVOCABLE. A disclaimer that is  
8 filed and served as provided by this chapter is irrevocable. (Tex.  
9 Prob. Code, Sec. 37A(k).)

10          Sec. 122.005. POWER TO PROVIDE METHOD OF DISCLAIMER. A  
11 will, insurance policy, employee benefit agreement, or other  
12 instrument may provide for the making of a disclaimer by a  
13 beneficiary of an interest receivable under that instrument and for  
14 the disposition of disclaimed property in a manner different than  
15 provided by this chapter. (Tex. Prob. Code, Sec. 37A(j).)

16           [Sections 122.006-122.050 reserved for expansion]

17           SUBCHAPTER B. FORM, FILING, AND NOTICE OF DISCLAIMER

18          Sec. 122.051. FORM. A disclaimer of property receivable by  
19 a beneficiary must be evidenced by written memorandum acknowledged  
20 before:

- 21           (1) a notary public; or  
22           (2) another person authorized to take acknowledgments  
23 of conveyances of real estate. (Tex. Prob. Code, Sec. 37A(g).)

24          Sec. 122.052. FILING IN PROBATE COURT. Except as provided  
25 by Sections 122.053 and 122.054, the written memorandum of  
26 disclaimer must be filed in the probate court in which:

- 27           (1) the decedent's will has been probated;

1           (2) proceedings have commenced for the administration  
2 of the decedent's estate; or

3           (3) an application has been filed for probate of the  
4 decedent's will or administration of the decedent's estate. (Tex.  
5 Prob. Code, Sec. 37A(h) (part).)

6           Sec. 122.053. FILING IN COUNTY OF DECEDENT'S RESIDENCE.  
7 The written memorandum of disclaimer must be filed with the county  
8 clerk of the county of the decedent's residence on the date of the  
9 decedent's death if:

10           (1) the administration of the decedent's estate is  
11 closed;

12           (2) one year has expired since the date letters  
13 testamentary were issued in an independent administration;

14           (3) a will of the decedent has not been probated or  
15 filed for probate;

16           (4) administration of the decedent's estate has not  
17 commenced; or

18           (5) an application for administration of the  
19 decedent's estate has not been filed. (Tex. Prob. Code, Sec. 37A(h)  
20 (part).)

21           Sec. 122.054. NONRESIDENT DECEDENT. If the decedent is not  
22 a resident of this state on the date of the decedent's death and the  
23 disclaimer is of real property that is located in this state, the  
24 written memorandum of disclaimer must be:

25           (1) filed with the county clerk of the county in which  
26 the real property is located; and

27           (2) recorded by the county clerk in the deed records of

1 that county. (Tex. Prob. Code, Sec. 37A(h) (part).)

2           Sec. 122.055. FILING DEADLINE. (a) Except as provided by  
3 Subsection (c), a written memorandum of disclaimer of a present  
4 interest must be filed not later than nine months after the date of  
5 the decedent's death.

6           (b) Except as provided by Subsection (c), a written  
7 memorandum of disclaimer of a future interest may be filed not later  
8 than nine months after the date of the event determining that the  
9 taker of the property or interest is finally ascertained and the  
10 taker's interest is indefeasibly vested.

11           (c) If the beneficiary is a charitable organization or a  
12 governmental agency of the state, a written memorandum of  
13 disclaimer of a present or future interest must be filed not later  
14 than the later of:

15                 (1) the first anniversary of the date the beneficiary  
16 receives the notice required by Subchapter A, Chapter 308; or

17                 (2) the expiration of the six-month period following  
18 the date the personal representative files the inventory,  
19 appraisal, and list of claims due or owing to the estate. (Tex.  
20 Prob. Code, Sec. 37A(h) (part).)

21           Sec. 122.056. NOTICE. (a) Except as provided by Subsection  
22 (b), a copy of the written memorandum of disclaimer shall be  
23 delivered in person to, or mailed by registered or certified mail to  
24 and received by, the legal representative of the transferor of the  
25 interest or the holder of legal title to the property to which the  
26 disclaimer relates not later than nine months after:

27                 (1) the date of the decedent's death; or

1           (2) if the interest is a future interest, the date the  
2 person who will receive the property or interest is finally  
3 ascertained and the person's interest is indefeasibly vested.

4           (b) If the beneficiary is a charitable organization or a  
5 governmental agency of this state, notice of a disclaimer required  
6 by Subsection (a) must be filed not later than the later of:

7           (1) the first anniversary of the date the beneficiary  
8 receives the notice required by Subchapter A, Chapter 308; or

9           (2) the expiration of the six-month period following  
10 the date the personal representative files the inventory,  
11 appraisal, and list of claims due or owing to the estate. (Tex.  
12 Prob. Code, Sec. 37A(i).)

13           [Sections 122.057-122.100 reserved for expansion]

14           SUBCHAPTER C. EFFECT OF DISCLAIMER

15           Sec. 122.101. EFFECT. Unless the decedent's will provides  
16 otherwise:

17           (1) property subject to a disclaimer passes as if the  
18 person disclaiming or on whose behalf a disclaimer is made had  
19 predeceased the decedent; and

20           (2) a future interest that would otherwise take effect  
21 in possession or enjoyment after the termination of the estate or  
22 interest that is disclaimed takes effect as if the disclaiming  
23 beneficiary had predeceased the decedent. (Tex. Prob. Code, Sec.  
24 37A(c).)

25           Sec. 122.102. INEFFECTIVE DISCLAIMER. (a) Except as  
26 provided by Subsection (b), a disclaimer that does not comply with  
27 this chapter is ineffective.

1           (b) A disclaimer otherwise ineffective under Subsection (a)  
2 is effective as an assignment of the disclaimed property to those  
3 who would have received the property had the person attempting the  
4 disclaimer died before the decedent. (Tex. Prob. Code, Sec.  
5 37A(d).)

6           Sec. 122.103. SUBSEQUENT DISCLAIMER. This chapter does not  
7 prevent a person who is entitled to property as the result of a  
8 disclaimer from subsequently disclaiming the property. (Tex. Prob.  
9 Code, Sec. 37A(f).)

10          Sec. 122.104. DISCLAIMER AFTER ACCEPTANCE. A disclaimer is  
11 not effective if the person making the disclaimer has previously  
12 accepted the property by taking possession or exercising dominion  
13 and control of the property as a beneficiary. (Tex. Prob. Code,  
14 Sec. 37A(n).)

15          Sec. 122.105. INTEREST IN TRUST PROPERTY. A beneficiary  
16 who accepts an interest in a trust is not considered to have a  
17 direct or indirect interest in trust property that relates to a  
18 licensed or permitted business and over which the beneficiary  
19 exercises no control. (Tex. Prob. Code, Sec. 37A(o) (part).)

20          Sec. 122.106. INTEREST IN SECURITIES. Direct or indirect  
21 beneficial ownership of not more than five percent of any class of  
22 equity securities that is registered under the Securities Exchange  
23 Act of 1934 (15 U.S.C. Section 78a et seq.) is not considered an  
24 ownership interest in the business of the issuer of the securities  
25 within the meaning of any statute, pursuant thereto. (Tex. Prob.  
26 Code, Sec. 37A(o) (part).)

27           [Sections 122.107-122.150 reserved for expansion]

1                   SUBCHAPTER D. PARTIAL DISCLAIMER

2           Sec. 122.151. PARTIAL DISCLAIMER. A person who may be  
3 entitled to receive property as a beneficiary may wholly or partly  
4 disclaim the property, including:

- 5                   (1) specific powers of invasion;  
6                   (2) powers of appointment; and  
7                   (3) fee estate in favor of life estates. (Tex. Prob.  
8 Code, Sec. 37A(1) (part).)

9           Sec. 122.152. EFFECT OF PARTIAL DISCLAIMER. A partial  
10 disclaimer in accordance with this chapter is effective whether the  
11 property disclaimed constitutes a portion of a single, aggregate  
12 gift or constitutes part or all of a separate, independent gift,  
13 except that:

14                   (1) a partial disclaimer is effective only with  
15 respect to property expressly described or referred to by category  
16 in the disclaimer; and

17                   (2) a partial disclaimer of property subject to a  
18 burdensome interest created by the decedent's will is not effective  
19 unless the property constitutes a gift separate and distinct from  
20 undisclaimed gifts. (Tex. Prob. Code, Sec. 37A(1) (part).)

21           Sec. 122.153. PARTIAL DISCLAIMER BY SPOUSE. A disclaimer  
22 by the decedent's surviving spouse of a transfer by the decedent is  
23 not a disclaimer by the surviving spouse of all or any part of any  
24 other transfer from the decedent to or for the benefit of the  
25 surviving spouse, regardless of whether the property or interest  
26 that would have passed under the disclaimed transfer passes because  
27 of the disclaimer to or for the benefit of the surviving spouse by

1 the other transfer. (Tex. Prob. Code, Sec. 37A(m).)

2 [Sections 122.154-122.200 reserved for expansion]

3 SUBCHAPTER E. ASSIGNMENT OF INTEREST

4 Sec. 122.201. ASSIGNMENT. A person who is entitled to  
5 receive property or an interest in property from a decedent under a  
6 will, by inheritance, or as a beneficiary under a life insurance  
7 contract, and does not disclaim the property under this chapter may  
8 assign the property or interest in property to any person. (Tex.  
9 Prob. Code, Sec. 37B(a).)

10 Sec. 122.202. FILING OF ASSIGNMENT. An assignment may, at  
11 the request of the assignor, be filed as provided for the filing of  
12 a disclaimer under Subchapter B. (Tex. Prob. Code, Sec. 37B(b)  
13 (part).)

14 Sec. 122.203. NOTICE. Notice of the filing of an assignment  
15 as provided by Section 122.202 must be served as required by Section  
16 122.056 for notice of a disclaimer. (Tex. Prob. Code, Sec. 37B(b)  
17 (part).)

18 Sec. 122.204. FAILURE TO COMPLY. Failure to comply with  
19 Subchapters A, B, C, and D does not affect an assignment. (Tex.  
20 Prob. Code, Sec. 37B(c).)

21 Sec. 122.205. GIFT. An assignment under this subchapter is  
22 a gift to the assignee and is not a disclaimer under Subchapters A,  
23 B, C, and D. (Tex. Prob. Code, Sec. 37B(d).)

24 Sec. 122.206. SPENDTHRIFT PROVISION. An assignment of  
25 property or interest that would defeat a spendthrift provision  
26 imposed in a trust may not be made under this subchapter. (Tex.  
27 Prob. Code, Sec. 37B(e).)

1 CHAPTER 123. DISSOLUTION OF MARRIAGE

2 SUBCHAPTER A. EFFECT OF DISSOLUTION OF MARRIAGE ON WILL

3 Sec. 123.001. WILL PROVISIONS MADE BEFORE DISSOLUTION  
4 OF MARRIAGE

5 Sec. 123.002. TREATMENT OF DECEDENT'S FORMER SPOUSE

6 [Sections 123.003-123.050 reserved for expansion]

7 SUBCHAPTER B. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN  
8 NONTESTAMENTARY TRANSFERS

9 Sec. 123.051. DEFINITIONS

10 Sec. 123.052. REVOCATION OF CERTAIN NONTESTAMENTARY  
11 TRANSFERS; TREATMENT OF FORMER SPOUSE  
12 AS BENEFICIARY UNDER CERTAIN POLICIES  
13 OR PLANS

14 Sec. 123.053. EFFECT OF REVOCATION

15 Sec. 123.054. LIABILITY OF CERTAIN PURCHASERS OR  
16 RECIPIENTS OF CERTAIN PAYMENTS,  
17 BENEFITS, OR PROPERTY

18 Sec. 123.055. LIABILITY OF FORMER SPOUSE FOR CERTAIN  
19 PAYMENTS, BENEFITS, OR PROPERTY

20 [Sections 123.056-123.100 reserved for expansion]

21 SUBCHAPTER C. CERTAIN MARRIAGES VOIDABLE AFTER DEATH

22 Sec. 123.101. PROCEEDING TO VOID MARRIAGE BASED ON  
23 MENTAL CAPACITY PENDING AT TIME OF  
24 DEATH

25 Sec. 123.102. APPLICATION TO VOID MARRIAGE AFTER DEATH

26 Sec. 123.103. ACTION ON APPLICATION TO VOID MARRIAGE  
27 AFTER DEATH



1 Sec. 123.104. EFFECT OF VOIDED MARRIAGE

2 CHAPTER 123. DISSOLUTION OF MARRIAGE

3 SUBCHAPTER A. EFFECT OF DISSOLUTION OF MARRIAGE ON WILL

4 Sec. 123.001. WILL PROVISIONS MADE BEFORE DISSOLUTION OF  
5 MARRIAGE. (a) In this section, "relative" means an individual  
6 related to another individual by:

7 (1) consanguinity, as determined under Section  
8 573.022, Government Code; or

9 (2) affinity, as determined under Section 573.024,  
10 Government Code.

11 (b) If, after the testator makes a will, the testator's  
12 marriage is dissolved by divorce, annulment, or a declaration that  
13 the marriage is void, all provisions in the will, including all  
14 fiduciary appointments, shall be read as if the former spouse and  
15 each relative of the former spouse who is not a relative of the  
16 testator failed to survive the testator, unless the will expressly  
17 provides otherwise. (Tex. Prob. Code, Secs. 69(a), (b).)

18 Sec. 123.002. TREATMENT OF DECEDENT'S FORMER SPOUSE. A  
19 person is not a surviving spouse of a decedent if the person's  
20 marriage to the decedent has been dissolved by divorce, annulment,  
21 or a declaration that the marriage is void, unless:

22 (1) as the result of a subsequent marriage, the person  
23 is married to the decedent at the time of death; and

24 (2) the subsequent marriage is not declared void under  
25 Subchapter C. (Tex. Prob. Code, Sec. 69(c).)

26 [Sections 123.003-123.050 reserved for expansion]

1 SUBCHAPTER B. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN

2 NONTESTAMENTARY TRANSFERS

3 Sec. 123.051. DEFINITIONS. In this subchapter:

4 (1) "Disposition or appointment of property" includes  
5 a transfer of property to or a provision of another benefit to a  
6 beneficiary under a trust instrument.

7 (2) "Divorced individual" means an individual whose  
8 marriage has been dissolved by divorce or annulment.

9 (3) "Revocable," with respect to a disposition,  
10 appointment, provision, or nomination, means a disposition to,  
11 appointment of, provision in favor of, or nomination of an  
12 individual's spouse that is contained in a trust instrument  
13 executed by the individual before the dissolution of the  
14 individual's marriage to the spouse and that the individual was  
15 solely empowered by law or by the trust instrument to revoke  
16 regardless of whether the individual had the capacity to exercise  
17 the power at that time. (Tex. Prob. Code, Sec. 471.)

18 Sec. 123.052. REVOCATION OF CERTAIN NONTESTAMENTARY  
19 TRANSFERS; TREATMENT OF FORMER SPOUSE AS BENEFICIARY UNDER CERTAIN  
20 POLICIES OR PLANS. (a) The dissolution of the marriage revokes a  
21 provision in a trust instrument that was executed by a divorced  
22 individual before the individual's marriage was dissolved and that:

23 (1) is a revocable disposition or appointment of  
24 property made to the individual's former spouse;

25 (2) confers a general or special power of appointment  
26 on the individual's former spouse; or

27 (3) nominates the individual's former spouse to serve:

1 (A) as a personal representative, trustee,  
2 conservator, agent, or guardian; or

3 (B) in another fiduciary or representative  
4 capacity.

5 (b) Subsection (a) does not apply if one of the following  
6 provides otherwise:

7 (1) a court order;

8 (2) the express terms of a trust instrument executed  
9 by the divorced individual before the individual's marriage was  
10 dissolved; or

11 (3) an express provision of a contract relating to the  
12 division of the marital estate entered into between the divorced  
13 individual and the individual's former spouse before, during, or  
14 after the marriage.

15 (c) Sections 9.301 and 9.302, Family Code, govern the  
16 designation of a former spouse as a beneficiary of certain life  
17 insurance policies or as a beneficiary under certain retirement  
18 benefit plans or other financial plans. (Tex. Prob. Code, Sec.  
19 472(a); New.)

20 Sec. 123.053. EFFECT OF REVOCATION. (a) An interest granted  
21 in a provision of a trust instrument that is revoked under Section  
22 123.052(a)(1) or (2) passes as if the former spouse of the divorced  
23 individual who executed the trust instrument disclaimed the  
24 interest granted in the provision.

25 (b) An interest granted in a provision of a trust instrument  
26 that is revoked under Section 123.052(a)(3) passes as if the former  
27 spouse died immediately before the dissolution of the marriage.

1 (Tex. Prob. Code, Sec. 472(b).)

2           Sec. 123.054. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS  
3 OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A bona fide purchaser  
4 of property from a divorced individual's former spouse or a person  
5 who receives from the former spouse a payment, benefit, or property  
6 in partial or full satisfaction of an enforceable obligation:

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

9           (2) is not liable under this subchapter for the amount  
10 of the payment or the value of the property or benefit. (Tex. Prob.  
11 Code, Sec. 473(a).)

12           Sec. 123.055. LIABILITY OF FORMER SPOUSE FOR CERTAIN  
13 PAYMENTS, BENEFITS, OR PROPERTY. A divorced individual's former  
14 spouse who, not for value, receives a payment, benefit, or property  
15 to which the former spouse is not entitled as a result of Sections  
16 123.052(a) and (b):

17           (1) shall return the payment, benefit, or property to  
18 the person who is entitled to the payment, benefit, or property  
19 under this subchapter; or

20           (2) is personally liable to the person described by  
21 Subdivision (1) for the amount of the payment or the value of the  
22 benefit or property received, as applicable. (Tex. Prob. Code,  
23 Sec. 473(b).)

24           [Sections 123.056-123.100 reserved for expansion]

25           SUBCHAPTER C. CERTAIN MARRIAGES VOIDABLE AFTER DEATH

26           Sec. 123.101. PROCEEDING TO VOID MARRIAGE BASED ON MENTAL  
27 CAPACITY PENDING AT TIME OF DEATH. (a) If a proceeding under Chapter

1 6, Family Code, to declare a marriage void based on the lack of  
2 mental capacity of one of the parties to the marriage is pending on  
3 the date of death of one of those parties, or if a guardianship  
4 proceeding in which a court is requested under Chapter 6, Family  
5 Code, to declare a ward's or proposed ward's marriage void based on  
6 the lack of mental capacity of the ward or proposed ward is pending  
7 on the date of the ward's or proposed ward's death, the court may  
8 make the determination and declare the marriage void after the  
9 decedent's death.

10 (b) In making a determination described by Subsection (a),  
11 the court shall apply the standards for an annulment prescribed by  
12 Section 6.108(a), Family Code. (Tex. Prob. Code, Sec. 47A(a).)

13 Sec. 123.102. APPLICATION TO VOID MARRIAGE AFTER DEATH. (a)  
14 Subject to Subsection (c), if a proceeding described by Section  
15 123.101(a) is not pending on the date of a decedent's death, an  
16 interested person may file an application with the court requesting  
17 that the court void the marriage of the decedent if:

18 (1) on the date of the decedent's death, the decedent  
19 was married; and

20 (2) that marriage commenced not earlier than three  
21 years before the date of the decedent's death.

22 (b) The notice applicable to a proceeding for a declaratory  
23 judgment under Chapter 37, Civil Practice and Remedies Code,  
24 applies to a proceeding under Subsection (a).

25 (c) An application authorized by Subsection (a) may not be  
26 filed after the first anniversary of the date of the decedent's  
27 death. (Tex. Prob. Code, Secs. 47A(b), (c).)

1           Sec. 123.103. ACTION ON APPLICATION TO VOID MARRIAGE AFTER  
2 DEATH. (a) Except as provided by Subsection (b), in a proceeding  
3 brought under Section 123.102, the court shall declare the  
4 decedent's marriage void if the court finds that, on the date the  
5 marriage occurred, the decedent did not have the mental capacity  
6 to:

- 7                   (1) consent to the marriage; and  
8                   (2) understand the nature of the marriage ceremony, if  
9 a ceremony occurred.

10           (b) A court that makes a finding described by Subsection (a)  
11 may not declare the decedent's marriage void if the court finds  
12 that, after the date the marriage occurred, the decedent:

- 13                   (1) gained the mental capacity to recognize the  
14 marriage relationship; and  
15                   (2) did recognize the marriage relationship. (Tex.  
16 Prob. Code, Secs. 47A(d), (e).)

17           Sec. 123.104. EFFECT OF VOIDED MARRIAGE. If the court  
18 declares a decedent's marriage void in a proceeding described by  
19 Section 123.101(a) or brought under Section 123.102, the other  
20 party to the marriage is not considered the decedent's surviving  
21 spouse for purposes of any law of this state. (Tex. Prob. Code, Sec.  
22 47A(f).)

23           CHAPTER 124. VALUATION AND TAXATION OF ESTATE PROPERTY

24                   SUBCHAPTER A. APPORTIONMENT OF TAXES

25           Sec. 124.001. DEFINITIONS

26           Sec. 124.002. REFERENCES TO INTERNAL REVENUE CODE

27           Sec. 124.003. APPORTIONMENT DIRECTED BY FEDERAL LAW

- 1 Sec. 124.004. EFFECT OF DISCLAIMERS
- 2 Sec. 124.005. GENERAL APPORTIONMENT OF ESTATE TAX;
- 3                   EXCEPTIONS
- 4 Sec. 124.006. EFFECT OF TAX DEDUCTIONS, EXEMPTIONS, OR
- 5                   CREDITS
- 6 Sec. 124.007. EXCLUSION OF CERTAIN PROPERTY FROM
- 7                   APPORTIONMENT
- 8 Sec. 124.008. EXCLUSION OF CERTAIN TEMPORARY
- 9                   INTERESTS FROM APPORTIONMENT
- 10 Sec. 124.009. QUALIFIED REAL PROPERTY
- 11 Sec. 124.010. EFFECT OF EXTENSION OR DEFICIENCY IN
- 12                   PAYMENT OF ESTATE TAXES; LIABILITY OF
- 13                   REPRESENTATIVE
- 14 Sec. 124.011. APPORTIONMENT OF INTEREST AND PENALTIES
- 15 Sec. 124.012. APPORTIONMENT OF REPRESENTATIVE'S
- 16                   EXPENSES
- 17 Sec. 124.013. WITHHOLDING OF ESTATE TAX SHARE BY
- 18                   REPRESENTATIVE
- 19 Sec. 124.014. RECOVERY OF ESTATE TAX SHARE NOT
- 20                   WITHHELD
- 21 Sec. 124.015. RECOVERY OF UNPAID ESTATE TAX;
- 22                   REIMBURSEMENT
- 23 Sec. 124.016. TIME TO INITIATE ACTIONS TO RECOVER
- 24                   UNPAID ESTATE TAX
- 25 Sec. 124.017. TAX OR DEATH DUTY PAYABLE TO ANOTHER
- 26                   STATE
- 27 Sec. 124.018. PAYMENT OF EXPENSES AND ATTORNEY'S FEES

[Sections 124.019-124.050 reserved for expansion]

SUBCHAPTER B. SATISFACTION OF CERTAIN PECUNIARY GIFTS

Sec. 124.051. VALUATION OF PROPERTY DISTRIBUTED IN

KIND IN SATISFACTION OF PECUNIARY GIFT

Sec. 124.052. SATISFACTION OF MARITAL DEDUCTION

PECUNIARY GIFTS WITH ASSETS IN KIND

CHAPTER 124. VALUATION AND TAXATION OF ESTATE PROPERTY

SUBCHAPTER A. APPORTIONMENT OF TAXES

Sec. 124.001. DEFINITIONS. In this subchapter:

(1) "Court" means:

(A) a court in which proceedings for administration of an estate are pending or have been completed; or

(B) if no proceedings are pending or have been completed, a court in which venue lies for the administration of an estate.

(2) "Estate" means the gross estate of a decedent as determined for the purpose of estate taxes.

(3) "Estate tax" means any estate, inheritance, or death tax levied or assessed on the property of a decedent's estate because of the death of a person and imposed by federal, state, local, or foreign law, including the federal estate tax and the inheritance tax imposed by Chapter 211, Tax Code, and including interest and penalties imposed in addition to those taxes. The term does not include a tax imposed under Section 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 2701(d)).

(4) "Person" includes a trust, natural person, partnership, association, joint stock company, corporation,



1 government, political subdivision, or governmental agency.

2 (5) "Person interested in the estate" means a person,  
3 or a fiduciary on behalf of that person, who is entitled to receive  
4 or who has received, from a decedent or because of the death of the  
5 decedent, property included in the decedent's estate for purposes  
6 of the estate tax. The term does not include a creditor of the  
7 decedent or of the decedent's estate.

8 (6) "Representative" means the representative,  
9 executor, or administrator of an estate, or any other person who is  
10 required to pay estate taxes assessed against the estate. (Tex.  
11 Prob. Code, Secs. 322A(a), (s).)

12 Sec. 124.002. REFERENCES TO INTERNAL REVENUE CODE. A  
13 reference in this subchapter to a section of the Internal Revenue  
14 Code of 1986 refers to that section as it exists at the time in  
15 question. The reference also includes a corresponding section of a  
16 subsequent Internal Revenue Code and, if the referenced section is  
17 renumbered, the section as renumbered. (Tex. Prob. Code, Sec.  
18 322A(x).)

19 Sec. 124.003. APPORTIONMENT DIRECTED BY FEDERAL LAW. If  
20 federal law directs the apportionment of the federal estate tax, a  
21 similar state tax shall be apportioned in the same manner. (Tex.  
22 Prob. Code, Sec. 322A(l).)

23 Sec. 124.004. EFFECT OF DISCLAIMERS. This subchapter shall  
24 be applied after giving effect to any disclaimers made in  
25 accordance with Subchapters A, B, C, and D, Chapter 122. (Tex.  
26 Prob. Code, Sec. 322A(p).)

27 Sec. 124.005. GENERAL APPORTIONMENT OF ESTATE TAX;

1 EXCEPTIONS. (a) A representative shall charge each person  
2 interested in the estate a portion of the total estate tax assessed  
3 against the estate. The portion charged to each person must  
4 represent the same ratio as the taxable value of that person's  
5 interest in the estate included in determining the amount of the tax  
6 bears to the total taxable value of all the interests of all persons  
7 interested in the estate included in determining the amount of the  
8 tax. In apportioning an estate tax under this subsection, the  
9 representative shall disregard a portion of the tax that is:

- 10 (1) apportioned under the law imposing the tax;  
11 (2) otherwise apportioned by federal law; or  
12 (3) apportioned as otherwise provided by this  
13 subchapter.

14 (b) Subsection (a) does not apply to the extent the  
15 decedent, in a written inter vivos or testamentary instrument  
16 disposing of or creating an interest in property, specifically  
17 directs the manner of apportionment of estate tax or grants a  
18 discretionary power of apportionment to another person. A  
19 direction for the apportionment or nonapportionment of estate tax  
20 is limited to the estate tax on the property passing under the  
21 instrument unless the instrument is a will that provides otherwise.

22 (c) If directions under Subsection (b) for the  
23 apportionment of an estate tax are provided in two or more  
24 instruments executed by the same person and the directions in those  
25 instruments conflict, the instrument disposing of or creating an  
26 interest in the property to be taxed controls. If directions for  
27 the apportionment of estate tax are provided in two or more

1 instruments executed by different persons and the directions in  
2 those instruments conflict, the direction of the person in whose  
3 estate the property is included controls.

4 (d) Subsections (b) and (c) do not:

5 (1) grant or enlarge the power of a person to apportion  
6 estate tax to property passing under an instrument created by  
7 another person in excess of the estate tax attributable to the  
8 property; or

9 (2) apply to the extent federal law directs a  
10 different manner of apportionment. (Tex. Prob. Code, Sec. 322A(b).)

11 Sec. 124.006. EFFECT OF TAX DEDUCTIONS, EXEMPTIONS, OR  
12 CREDITS. (a) A deduction, exemption, or credit allowed by law in  
13 connection with the estate tax inures to a person interested in the  
14 estate as provided by this section.

15 (b) If the deduction, exemption, or credit is allowed  
16 because of the relationship of the person interested in the estate  
17 to the decedent, or because of the purpose of the gift, the  
18 deduction, exemption, or credit inures to the person having the  
19 relationship or receiving the gift, unless that person's interest  
20 in the estate is subject to a prior present interest that is not  
21 allowable as a deduction. The estate tax apportionable to the  
22 person having the present interest shall be paid from the corpus of  
23 the gift or the interest of the person having the relationship.

24 (c) A deduction for property of the estate that was  
25 previously taxed and a credit for gift taxes or death taxes of a  
26 foreign country that were paid by the decedent or the decedent's  
27 estate inure proportionally to all persons interested in the estate

1 who are liable for a share of the estate tax.

2 (d) A credit for inheritance, succession, or estate taxes,  
3 or for similar taxes applicable to property or interests includable  
4 in the estate, inures to the persons interested in the estate who  
5 are chargeable with payment of a portion of those taxes to the  
6 extent that the credit proportionately reduces those taxes. (Tex.  
7 Prob. Code, Secs. 322A(c), (d), (e), (f).)

8 Sec. 124.007. EXCLUSION OF CERTAIN PROPERTY FROM  
9 APPORTIONMENT. (a) To the extent that property passing to or in  
10 trust for a surviving spouse or a charitable, public, or similar  
11 gift or devise is not an allowable deduction for purposes of the  
12 estate tax solely because of an inheritance tax or other death tax  
13 imposed on and deductible from the property:

14 (1) the property is not included in the computation  
15 provided for by Section 124.005; and

16 (2) no apportionment is made against the property.

17 (b) The exclusion provided by this section does not apply if  
18 the result would be to deprive the estate of a deduction otherwise  
19 allowable under Section 2053(d), Internal Revenue Code of 1986, for  
20 a state death tax on a transfer for a public, charitable, or  
21 religious use. (Tex. Prob. Code, Sec. 322A(g).)

22 Sec. 124.008. EXCLUSION OF CERTAIN TEMPORARY INTERESTS  
23 FROM APPORTIONMENT. (a) Except as provided by Section 124.009(c),  
24 the following temporary interests are not subject to apportionment:

25 (1) an interest in income;

26 (2) an estate for years or for life; or

27 (3) another temporary interest in any property or

1 fund.

2 (b) The estate tax apportionable to a temporary interest  
3 described by Subsection (a) and the remainder, if any, is  
4 chargeable against the corpus of the property or the funds that are  
5 subject to the temporary interest and remainder. (Tex. Prob. Code,  
6 Sec. 322A(h).)

7 Sec. 124.009. QUALIFIED REAL PROPERTY. (a) In this  
8 section, "qualified real property" has the meaning assigned by  
9 Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section  
10 2032A).

11 (b) If an election is made under Section 2032A, Internal  
12 Revenue Code of 1986 (26 U.S.C. Section 2032A), the representative  
13 shall apportion estate taxes according to the amount of federal  
14 estate tax that would be payable if the election were not made. The  
15 representative shall apply the amount of the reduction of the  
16 estate tax resulting from the election to reduce the amount of the  
17 estate tax allocated based on the value of the qualified real  
18 property that is the subject of the election. If the amount of that  
19 reduction is greater than the amount of the taxes allocated based on  
20 the value of the qualified real property, the representative shall:

21 (1) apply the excess amount to the portion of the taxes  
22 allocated for all other property; and

23 (2) apportion the amount described by Subdivision (1)  
24 under Section 124.005(a).

25 (c) If additional federal estate tax is imposed under  
26 Section 2032A(c), Internal Revenue Code of 1986 (26 U.S.C. Section  
27 2032A), because of an early disposition or cessation of a qualified

1 use, the additional tax shall be equitably apportioned among the  
2 persons who have an interest in the portion of the qualified real  
3 property to which the additional tax is attributable in proportion  
4 to their interests. The additional tax is a charge against that  
5 qualified real property. If the qualified real property is split  
6 between one or more life or term interests and remainder interests,  
7 the additional tax shall be apportioned to each person whose action  
8 or cessation of use caused the imposition of additional tax, unless  
9 all persons with an interest in the qualified real property agree in  
10 writing to dispose of the property, in which case the additional tax  
11 shall be apportioned among the remainder interests. (Tex. Prob.  
12 Code, Sec. 322A(i).)

13           Sec. 124.010. EFFECT OF EXTENSION OR DEFICIENCY IN PAYMENT  
14 OF ESTATE TAXES; LIABILITY OF REPRESENTATIVE. (a) If the date for  
15 the payment of any portion of an estate tax is extended:

16                   (1) the amount of the extended tax shall be  
17 apportioned to the persons who receive the specific property that  
18 gives rise to the extension; and

19                   (2) those persons are entitled to the benefits and  
20 shall bear the burdens of the extension.

21           (b) Except as provided by Subsection (c), interest on an  
22 extension of estate tax and interest and penalties on a deficiency  
23 shall be apportioned equitably to reflect the benefits and burdens  
24 of the extension or deficiency and of any tax deduction associated  
25 with the interest and penalties.

26           (c) A representative shall be charged with the amount of any  
27 penalty or interest that is assessed due to delay caused by the

1 representative's negligence. (Tex. Prob. Code, Secs. 322A(k),  
2 (m).)

3           Sec. 124.011. APPORTIONMENT OF INTEREST AND PENALTIES. (a)  
4 Interest and penalties assessed against an estate by a taxing  
5 authority shall be apportioned among and charged to the persons  
6 interested in the estate in the manner provided by Section 124.005  
7 unless, on application by any person interested in the estate, the  
8 court determines that:

9           (1) the proposed apportionment is not equitable; or

10           (2) the assessment of interest or penalties was caused  
11 by a breach of fiduciary duty of a representative.

12           (b) If the apportionment is not equitable, the court may  
13 apportion interest and penalties in an equitable manner.

14           (c) If the assessment of interest or penalties was caused by  
15 a breach of fiduciary duty of a representative, the court may charge  
16 the representative with the amount of the interest and penalties  
17 assessed attributable to the representative's conduct. (Tex. Prob.  
18 Code, Sec. 322A(q).)

19           Sec. 124.012. APPORTIONMENT OF REPRESENTATIVE'S EXPENSES.

20 (a) Expenses reasonably incurred by a representative in  
21 determination of the amount, apportionment, or collection of the  
22 estate tax shall be apportioned among and charged to persons  
23 interested in the estate in the manner provided by Section 124.005  
24 unless, on application by any person interested in the estate, the  
25 court determines that the proposed apportionment is not equitable.

26           (b) If the court determines that the proposed apportionment  
27 is not equitable, the court may apportion the expenses in an

1 equitable manner. (Tex. Prob. Code, Sec. 322A(r).)

2           Sec. 124.013. WITHHOLDING OF ESTATE TAX SHARE BY  
3 REPRESENTATIVE. A representative who has possession of any estate  
4 property that is distributable to a person interested in the estate  
5 may withhold from that property an amount equal to the person's  
6 apportioned share of the estate tax. (Tex. Prob. Code, Sec.  
7 322A(t).)

8           Sec. 124.014. RECOVERY OF ESTATE TAX SHARE NOT WITHHELD.

9 (a) If property includable in an estate does not come into  
10 possession of a representative obligated to pay the estate tax, the  
11 representative shall:

12                   (1) recover from each person interested in the estate  
13 the amount of the estate tax apportioned to the person under this  
14 subchapter; or

15                   (2) assign to persons affected by the tax obligation  
16 the representative's right of recovery.

17 (b) The obligation to recover a tax under Subsection (a)  
18 does not apply if:

19                   (1) the duty is waived by the parties affected by the  
20 tax obligation or by the instrument under which the representative  
21 derives powers; or

22                   (2) in the reasonable judgment of the representative,  
23 proceeding to recover the tax is not cost-effective. (Tex. Prob.  
24 Code, Sec. 322A(n).)

25           Sec. 124.015. RECOVERY OF UNPAID ESTATE TAX; REIMBURSEMENT.

26 (a) A representative shall recover from any person interested in  
27 the estate the unpaid amount of the estate tax apportioned and



1 charged to the person under this subchapter unless the  
2 representative determines in good faith that an attempt to recover  
3 the amount would be economically impractical.

4 (b) A representative who cannot collect from a person  
5 interested in the estate an unpaid amount of estate tax apportioned  
6 to that person shall apportion the amount not collected in the  
7 manner provided by Section 124.005(a) among the other persons  
8 interested in the estate who are subject to apportionment.

9 (c) A person who is charged with or who pays an apportioned  
10 amount under Subsection (b) has a right of reimbursement for that  
11 amount from the person who failed to pay the tax. The  
12 representative may enforce the right of reimbursement, or the  
13 person who is charged with or who pays an apportioned amount under  
14 Subsection (b) may enforce the right of reimbursement directly by  
15 an assignment from the representative. A person assigned the right  
16 under this subsection is subrogated to the rights of the  
17 representative.

18 (d) A representative who has a right of reimbursement may  
19 petition a court to determine the right of reimbursement. (Tex.  
20 Prob. Code, Secs. 322A(o), (u).)

21 Sec. 124.016. TIME TO INITIATE ACTIONS TO RECOVER UNPAID  
22 ESTATE TAX. (a) A representative required to recover unpaid  
23 amounts of estate tax apportioned to persons interested in the  
24 estate under this subchapter may not be required to initiate the  
25 necessary actions until the expiration of the 90th day after the  
26 date of the final determination by the Internal Revenue Service of  
27 the amount of the estate tax.

1           (b) A representative who initiates an action under this  
2 subchapter within a reasonable time after the expiration of the  
3 90-day period is not subject to any liability or surcharge because a  
4 portion of the estate tax apportioned to a person interested in the  
5 estate was collectible during a period after the death of the  
6 decedent but thereafter became uncollectible. (Tex. Prob. Code,  
7 Sec. 322A(v).)

8           Sec. 124.017. TAX OR DEATH DUTY PAYABLE TO ANOTHER STATE.

9           (a) A representative acting in another state may initiate an action  
10 in a court of this state to recover from a person interested in the  
11 estate who is domiciled in this state or owns property in this state  
12 subject to attachment or execution, a proportionate amount of:

- 13                   (1) the federal estate tax;  
14                   (2) an estate tax payable to another state; or  
15                   (3) a death duty due by a decedent's estate to another  
16 state.

17           (b) In the action, a determination of apportionment by the  
18 court having jurisdiction of the administration of the decedent's  
19 estate in the other state is prima facie correct.

20           (c) This section applies only if the state in which the  
21 determination of apportionment was made provides a substantially  
22 similar remedy. (Tex. Prob. Code, Sec. 322A(w).)

23           Sec. 124.018. PAYMENT OF EXPENSES AND ATTORNEY'S FEES. The  
24 court shall award necessary expenses, including reasonable  
25 attorney's fees, to the prevailing party in an action initiated by a  
26 person for the collection of estate taxes from a person interested  
27 in the estate to whom estate taxes were apportioned and charged

1 under Section 124.005. (Tex. Prob. Code, Sec. 322A(y).)

2 [Sections 124.019-124.050 reserved for expansion]

3 SUBCHAPTER B. SATISFACTION OF CERTAIN PECUNIARY GIFTS

4 Sec. 124.051. VALUATION OF PROPERTY DISTRIBUTED IN KIND IN  
5 SATISFACTION OF PECUNIARY GIFT. Unless the governing instrument  
6 provides otherwise, if a will or trust contains a pecuniary devise  
7 or transfer that may be satisfied by distributing assets in kind and  
8 the executor, administrator, or trustee determines to fund the  
9 devise or transfer by distributing assets in kind, the property  
10 shall be valued, for the purpose of funding the devise or transfer,  
11 at the value of the property on the date or dates of distribution.  
12 (Tex. Prob. Code, Sec. 378A(b).)

13 Sec. 124.052. SATISFACTION OF MARITAL DEDUCTION PECUNIARY  
14 GIFTS WITH ASSETS IN KIND. (a) This section applies to an  
15 executor, administrator, or trustee authorized under the will or  
16 trust of a decedent to satisfy a pecuniary devise or transfer in  
17 trust in kind with assets at their value for federal estate tax  
18 purposes, in satisfaction of a gift intended to qualify, or that  
19 otherwise would qualify, for a United States estate tax marital  
20 deduction.

21 (b) Unless the governing instrument provides otherwise, an  
22 executor, administrator, or trustee, in order to implement a devise  
23 or transfer described by Subsection (a), shall distribute assets,  
24 including cash, fairly representative of appreciation or  
25 depreciation in the value of all property available for  
26 distribution in satisfaction of the devise or transfer. (Tex.  
27 Prob. Code, Sec. 378A(a).)

[Chapters 125-150 reserved for expansion]

SUBTITLE D. PROCEEDINGS BEFORE ADMINISTRATION OF ESTATE

CHAPTER 151. EXAMINATION OF DOCUMENTS AND SAFE DEPOSIT BOXES

Sec. 151.001. EXAMINATION OF DOCUMENTS OR SAFE DEPOSIT  
BOX WITH COURT ORDER

Sec. 151.002. DELIVERY OF DOCUMENT WITH COURT ORDER

Sec. 151.003. EXAMINATION OF DOCUMENT OR SAFE DEPOSIT  
BOX WITHOUT COURT ORDER

Sec. 151.004. DELIVERY OF DOCUMENT WITHOUT COURT ORDER

Sec. 151.005. RESTRICTION ON REMOVAL OF CONTENTS OF  
SAFE DEPOSIT BOX

CHAPTER 151. EXAMINATION OF DOCUMENTS AND SAFE DEPOSIT BOXES

Sec. 151.001. EXAMINATION OF DOCUMENTS OR SAFE DEPOSIT BOX  
WITH COURT ORDER. (a) A judge of a court that has probate  
jurisdiction of a decedent's estate may order a person to permit a  
court representative named in the order to examine a decedent's  
documents or safe deposit box if it is shown to the judge that:

(1) the person may possess or control the documents or  
that the person leased the safe deposit box to the decedent; and

(2) the documents or safe deposit box may contain:

(A) a will of the decedent;

(B) a deed to a burial plot in which the decedent  
is to be buried; or

(C) an insurance policy issued in the decedent's  
name and payable to a beneficiary named in the policy.

(b) The court representative shall examine the decedent's  
documents or safe deposit box in the presence of:

1           (1) the judge ordering the examination or an agent of  
2 the judge; and

3           (2) the person who has possession or control of the  
4 documents or who leased the safe deposit box or, if that person is a  
5 corporation, an officer of the corporation or an agent of an  
6 officer. (Tex. Prob. Code, Sec. 36B.)

7           Sec. 151.002. DELIVERY OF DOCUMENT WITH COURT ORDER. (a) A  
8 judge who orders an examination of a decedent's documents or safe  
9 deposit box under Section 151.001 may order the person who  
10 possesses or controls the documents or who leases the safe deposit  
11 box to permit the court representative to take possession of a  
12 document described by Section 151.001(a)(2).

13           (b) The court representative shall deliver:

14           (1) a will to the clerk of a court that:

15                   (A) has probate jurisdiction; and

16                   (B) is located in the same county as the court of  
17 the judge who ordered the examination under Section 151.001;

18           (2) a burial plot deed to the person designated by the  
19 judge in the order for the examination; or

20           (3) an insurance policy to a beneficiary named in the  
21 policy.

22           (c) A court clerk to whom a will is delivered under  
23 Subsection (b) shall issue a receipt for the will to the court  
24 representative. (Tex. Prob. Code, Sec. 36C.)

25           Sec. 151.003. EXAMINATION OF DOCUMENT OR SAFE DEPOSIT BOX  
26 WITHOUT COURT ORDER. (a) A person who possesses or controls a  
27 document delivered by a decedent for safekeeping or who leases a

1 safe deposit box to a decedent may permit examination of the  
2 document or the contents of the safe deposit box by:

- 3 (1) the decedent's spouse;
- 4 (2) a parent of the decedent;
- 5 (3) a descendant of the decedent who is at least 18  
6 years of age; or
- 7 (4) a person named as executor of the decedent's estate  
8 in a copy of a document that the person has and that appears to be a  
9 will of the decedent.

10 (b) An examination under Subsection (a) shall be conducted  
11 in the presence of the person who possesses or controls the document  
12 or who leases the safe deposit box or, if the person is a  
13 corporation, an officer of the corporation. (Tex. Prob. Code, Sec.  
14 36D.)

15 Sec. 151.004. DELIVERY OF DOCUMENT WITHOUT COURT ORDER.

16 (a) Subject to Subsection (c), a person who permits an examination  
17 of a decedent's document or safe deposit box under Section 151.003  
18 may deliver:

- 19 (1) a document appearing to be the decedent's will to:
  - 20 (A) the clerk of a court that:
    - 21 (i) has probate jurisdiction; and
    - 22 (ii) is located in the county in which the  
23 decedent resided; or
  - 24 (B) a person named in the document as an executor  
25 of the decedent's estate;

26 (2) a document appearing to be a deed to a burial plot  
27 in which the decedent is to be buried, or appearing to give burial

1 instructions, to the person conducting the examination; or

2 (3) a document appearing to be an insurance policy on  
3 the decedent's life to a beneficiary named in the policy.

4 (b) A person who has leased a safe deposit box to the  
5 decedent shall keep a copy of a document delivered by the person  
6 under Subsection (a)(1) until the fourth anniversary of the date of  
7 delivery.

8 (c) A person may not deliver a document under Subsection (a)  
9 unless the person examining the document:

10 (1) requests delivery of the document; and

11 (2) issues a receipt for the document to the person  
12 delivering the document. (Tex. Prob. Code, Sec. 36E.)

13 Sec. 151.005. RESTRICTION ON REMOVAL OF CONTENTS OF SAFE  
14 DEPOSIT BOX. A person may not remove the contents of a decedent's  
15 safe deposit box except as provided by Section 151.002, Section  
16 151.004, or another law. (Tex. Prob. Code, Sec. 36F.)

17 CHAPTER 152. EMERGENCY INTERVENTION

18 SUBCHAPTER A. EMERGENCY INTERVENTION APPLICATION

19 Sec. 152.001. APPLICATION AUTHORIZED

20 Sec. 152.002. CONTENTS OF APPLICATION

21 Sec. 152.003. ADDITIONAL CONTENTS OF APPLICATION:

22 INSTRUCTIONS REGARDING DECEDENT'S

23 FUNERAL AND REMAINS

24 Sec. 152.004. TIME AND PLACE OF FILING

25 [Sections 152.005-152.050 reserved for expansion]

1 SUBCHAPTER B. ORDER FOR EMERGENCY INTERVENTION

2 Sec. 152.051. ISSUANCE OF ORDER REGARDING FUNERAL AND  
3 BURIAL EXPENSES

4 Sec. 152.052. ISSUANCE OF ORDER REGARDING ACCESS TO  
5 CERTAIN PERSONAL PROPERTY

6 Sec. 152.053. DURATION OF ORDER

7 Sec. 152.054. CERTIFIED COPIES OF ORDER

8 Sec. 152.055. LIABILITY OF CERTAIN PERSONS IN  
9 CONNECTION WITH ORDER

10 [Sections 152.056-152.100 reserved for expansion]

11 SUBCHAPTER C. LIMITATION ON RIGHT OF DECEDENT'S SURVIVING SPOUSE  
12 TO CONTROL DECEDENT'S BURIAL OR CREMATION

13 Sec. 152.101. APPLICATION AUTHORIZED

14 Sec. 152.102. HEARING; ISSUANCE OF ORDER

15 CHAPTER 152. EMERGENCY INTERVENTION

16 SUBCHAPTER A. EMERGENCY INTERVENTION APPLICATION

17 Sec. 152.001. APPLICATION AUTHORIZED. (a) Subject to  
18 Subsection (b), a person qualified to serve as an administrator  
19 under Section 304.001 may file an application requesting emergency  
20 intervention by a court exercising probate jurisdiction to provide  
21 for:

22 (1) the payment of the decedent's funeral and burial  
23 expenses; or

24 (2) the protection and storage of personal property  
25 owned by the decedent that, on the date of the decedent's death, was  
26 located in accommodations rented by the decedent.

27 (b) An applicant may file an application under this section



1 only if:

2 (1) an application or affidavit has not been filed and  
3 is not pending under Section 145, 256.052, 256.054, or 301.052 or  
4 Chapter 205; and

5 (2) the applicant needs to:

6 (A) obtain funds for the payment of the  
7 decedent's funeral and burial expenses; or

8 (B) gain access to accommodations rented by the  
9 decedent that contain the decedent's personal property and the  
10 applicant has been denied access to those accommodations. (Tex.  
11 Prob. Code, Secs. 108 (part), 109, 110.)

12 Sec. 152.002. CONTENTS OF APPLICATION. (a) An emergency  
13 intervention application must be sworn and must contain:

14 (1) the applicant's name, address, and interest;

15 (2) facts showing an immediate necessity for the  
16 issuance of an emergency intervention order under Subchapter B;

17 (3) the decedent's date of death, place of death, and  
18 residential address on the date of death;

19 (4) the name and address of the funeral home holding  
20 the decedent's remains; and

21 (5) the names of any known or ascertainable heirs and  
22 devisees of the decedent.

23 (b) In addition to the information required under  
24 Subsection (a), if emergency intervention is requested to obtain  
25 funds needed for the payment of the decedent's funeral and burial  
26 expenses, the application must also contain:

27 (1) the reason any known or ascertainable heirs and

1 devisees of the decedent:

2 (A) cannot be contacted; or

3 (B) have refused to assist in the decedent's  
4 burial;

5 (2) a description of necessary funeral and burial  
6 procedures and a statement from the funeral home that contains a  
7 detailed and itemized description of the cost of those procedures;  
8 and

9 (3) the name and address of an individual, entity, or  
10 financial institution, including an employer, in possession of any  
11 funds of or due to the decedent, and related account numbers and  
12 balances, if known by the applicant.

13 (c) In addition to the information required under  
14 Subsection (a), if emergency intervention is requested to gain  
15 access to accommodations rented by a decedent that at the time of  
16 the decedent's death contain the decedent's personal property, the  
17 application must also contain:

18 (1) the reason any known or ascertainable heirs and  
19 devisees of the decedent:

20 (A) cannot be contacted; or

21 (B) have refused to assist in the protection of  
22 the decedent's personal property;

23 (2) the type and location of the decedent's personal  
24 property and the name of the person in possession of the property;  
25 and

26 (3) the name and address of the owner or manager of the  
27 accommodations and a statement regarding whether access to the

1 accommodations is necessary. (Tex. Prob. Code, Secs. 111(a), 112.)

2           Sec. 152.003. ADDITIONAL CONTENTS OF APPLICATION:  
3 INSTRUCTIONS REGARDING DECEDENT'S FUNERAL AND REMAINS. (a) In  
4 addition to the information required under Section 152.002, if  
5 emergency intervention is requested to obtain funds needed for the  
6 payment of a decedent's funeral and burial expenses, the  
7 application must also state whether there are any written  
8 instructions from the decedent relating to the type and manner of  
9 funeral or burial preferred by the decedent. The applicant shall:

10           (1) attach the instructions, if available, to the  
11 application; and

12           (2) fully comply with the instructions.

13           (b) If written instructions do not exist, the applicant may  
14 not permit the decedent's remains to be cremated unless the  
15 applicant obtains the court's permission to cremate the remains.  
16 (Tex. Prob. Code, Sec. 111(b).)

17           Sec. 152.004. TIME AND PLACE OF FILING. An emergency  
18 intervention application must be filed:

19           (1) with the court clerk in the county in which:

20                   (A) the decedent was domiciled; or

21                   (B) the accommodations rented by the decedent  
22 that contain the decedent's personal property are located; and

23           (2) not earlier than the third day after the date of  
24 the decedent's death and not later than the 90th day after the date  
25 of the decedent's death. (Tex. Prob. Code, Sec. 108 (part).)

26           [Sections 152.005-152.050 reserved for expansion]

1 SUBCHAPTER B. ORDER FOR EMERGENCY INTERVENTION

2 Sec. 152.051. ISSUANCE OF ORDER REGARDING FUNERAL AND  
3 BURIAL EXPENSES. If on review of an application filed under Section  
4 152.001 the court determines that emergency intervention is  
5 necessary to obtain funds needed for the payment of a decedent's  
6 funeral and burial expenses, the court may order funds of the  
7 decedent that are being held by an individual, an employer, or a  
8 financial institution to be paid directly to a funeral home only  
9 for:

10 (1) reasonable and necessary attorney's fees for the  
11 attorney who obtained the order;

12 (2) court costs for obtaining the order; and

13 (3) funeral and burial expenses not to exceed \$5,000  
14 as ordered by the court to provide the decedent with a reasonable,  
15 dignified, and appropriate funeral and burial. (Tex. Prob. Code,  
16 Sec. 113(a).)

17 Sec. 152.052. ISSUANCE OF ORDER REGARDING ACCESS TO CERTAIN  
18 PERSONAL PROPERTY. If on review of an application filed under  
19 Section 152.001 the court determines that emergency intervention is  
20 necessary to gain access to accommodations rented by the decedent  
21 that, at the time of the decedent's death, contain the decedent's  
22 personal property, the court may order one or more of the following:

23 (1) that the owner or agent of the accommodations  
24 shall grant the applicant access to the accommodations at a  
25 reasonable time and in the presence of the owner or agent;

26 (2) that the applicant and owner or agent of the  
27 accommodations shall jointly prepare and file with the court a list

1 that generally describes the decedent's property found at the  
2 premises;

3 (3) that the applicant or the owner or agent of the  
4 accommodations may remove and store the decedent's property at  
5 another location until claimed by the decedent's heirs;

6 (4) that the applicant has only the powers that are  
7 specifically stated in the order and that are necessary to protect  
8 the decedent's property that is the subject of the application; or

9 (5) that funds of the decedent held by an individual,  
10 an employer, or a financial institution be paid to the applicant for  
11 reasonable and necessary attorney's fees and court costs for  
12 obtaining the order. (Tex. Prob. Code, Sec. 113(b).)

13 Sec. 152.053. DURATION OF ORDER. The authority of an  
14 applicant under an emergency intervention order expires on the  
15 earlier of:

16 (1) the 90th day after the date the order is issued; or

17 (2) the date a personal representative of the  
18 decedent's estate qualifies. (Tex. Prob. Code, Sec. 114(a).)

19 Sec. 152.054. CERTIFIED COPIES OF ORDER. The court clerk  
20 may issue certified copies of an emergency intervention order on  
21 request of the applicant only until the earlier of:

22 (1) the 90th day after the date the order is signed; or

23 (2) the date a personal representative of the  
24 decedent's estate qualifies. (Tex. Prob. Code, Sec. 113(c).)

25 Sec. 152.055. LIABILITY OF CERTAIN PERSONS IN CONNECTION  
26 WITH ORDER. (a) A person who is provided a certified copy of an  
27 emergency intervention order within the period prescribed by

1 Section 152.054 is not personally liable for an action taken by the  
2 person in accordance with and in reliance on the order.

3 (b) If a personal representative has not been appointed when  
4 an emergency intervention order issued under Section 152.052  
5 expires, a person in possession of the decedent's personal property  
6 that is the subject of the order, without incurring civil  
7 liability, may:

8 (1) release the property to the decedent's heirs; or

9 (2) dispose of the property under Subchapter C,  
10 Chapter 54, Property Code, or Section 7.209 or 7.210, Business &  
11 Commerce Code. (Tex. Prob. Code, Secs. 113(d), 114(b).)

12 [Sections 152.056-152.100 reserved for expansion]

13 SUBCHAPTER C. LIMITATION ON RIGHT OF DECEDENT'S SURVIVING SPOUSE  
14 TO CONTROL DECEDENT'S BURIAL OR CREMATION

15 Sec. 152.101. APPLICATION AUTHORIZED. (a) The executor of  
16 a decedent's will or the decedent's next of kin may file an  
17 application for an order limiting the right of the decedent's  
18 surviving spouse to control the decedent's burial or cremation.

19 (b) For purposes of Subsection (a), the decedent's next of  
20 kin:

21 (1) is determined in accordance with order of descent,  
22 with the person nearest in order of descent first, and so on; and

23 (2) includes the decedent's descendants who legally  
24 adopted the decedent or who have been legally adopted by the  
25 decedent.

26 (c) An application under this section must be under oath and  
27 must establish:

1           (1) whether the decedent died intestate or testate;

2           (2) that the surviving spouse is alleged to be a  
3 principal or accomplice in a wilful act that resulted in the  
4 decedent's death; and

5           (3) that good cause exists to limit the surviving  
6 spouse's right to control the decedent's burial or cremation. (Tex.  
7 Prob. Code, Secs. 115(a), (b).)

8           Sec. 152.102. HEARING; ISSUANCE OF ORDER. (a) If the court  
9 finds that there is good cause to believe that the decedent's  
10 surviving spouse is the principal or an accomplice in a wilful act  
11 that resulted in the decedent's death, the court may, after notice  
12 and a hearing, limit the surviving spouse's right to control the  
13 decedent's burial or cremation.

14           (b) Subsection (a) applies:

15           (1) without regard to whether the decedent died  
16 intestate or testate; and

17           (2) regardless of whether the surviving spouse is  
18 designated by the decedent's will as the executor of the decedent's  
19 estate.

20           (c) If the court limits the surviving spouse's right of  
21 control as provided by Subsection (a), the court shall designate  
22 and authorize a person to make burial or cremation arrangements.  
23 (Tex. Prob. Code, Secs. 115(c), (d).)

24           [Chapters 153-200 reserved for expansion]

1                   SUBTITLE E. INTESTATE SUCCESSION  
2                   CHAPTER 201. DESCENT AND DISTRIBUTION  
3                   SUBCHAPTER A. INTESTATE SUCCESSION  
4 Sec. 201.001.   ESTATE OF AN INTESTATE NOT LEAVING  
5                   SPOUSE  
6 Sec. 201.002.   SEPARATE ESTATE OF AN INTESTATE  
7 Sec. 201.003.   COMMUNITY ESTATE OF AN INTESTATE  
8                   [Sections 201.004-201.050 reserved for expansion]  
9                   SUBCHAPTER B. MATTERS AFFECTING INHERITANCE  
10 Sec. 201.051.   MATERNAL INHERITANCE  
11 Sec. 201.052.   PATERNAL INHERITANCE  
12 Sec. 201.053.   EFFECT OF RELIANCE ON AFFIDAVIT OF  
13                   HEIRSHIP  
14 Sec. 201.054.   ADOPTED CHILD  
15 Sec. 201.055.   ISSUE OF VOID OR VOIDABLE MARRIAGE  
16 Sec. 201.056.   PERSONS NOT IN BEING  
17 Sec. 201.057.   COLLATERAL KINDRED OF WHOLE AND HALF  
18                   BLOOD  
19 Sec. 201.058.   CONVICTED PERSONS  
20 Sec. 201.059.   PERSON WHO DIES BY CASUALTY  
21 Sec. 201.060.   ALIENAGE  
22 Sec. 201.061.   ESTATE OF PERSON WHO DIES BY SUICIDE  
23 Sec. 201.062.   TREATMENT OF CERTAIN PARENT-CHILD  
24                   RELATIONSHIPS  
25                   [Sections 201.063-201.100 reserved for expansion]



1 SUBCHAPTER C. DISTRIBUTION TO HEIRS

2 Sec. 201.101. DETERMINATION OF PER CAPITA WITH  
3 REPRESENTATION DISTRIBUTION

4 Sec. 201.102. NO DISTINCTION BASED ON PROPERTY'S  
5 SOURCE

6 Sec. 201.103. TREATMENT OF INTESTATE'S ESTATE

7 [Sections 201.104-201.150 reserved for expansion]

8 SUBCHAPTER D. ADVANCEMENTS

9 Sec. 201.151. DETERMINATION OF ADVANCEMENT; DATE OF  
10 VALUATION

11 Sec. 201.152. SURVIVAL OF RECIPIENT REQUIRED

12 CHAPTER 201. DESCENT AND DISTRIBUTION

13 SUBCHAPTER A. INTESTATE SUCCESSION

14 Sec. 201.001. ESTATE OF AN INTESTATE NOT LEAVING SPOUSE.

15 (a) If a person who dies intestate does not leave a spouse, the  
16 estate to which the person had title descends and passes in  
17 parcenary to the person's kindred in the order provided by this  
18 section.

19 (b) The person's estate descends and passes to the person's  
20 children and the children's descendants.

21 (c) If no child or child's descendant survives the person,  
22 the person's estate descends and passes in equal portions to the  
23 person's father and mother.

24 (d) If only the person's father or mother survives the  
25 person, the person's estate shall:

26 (1) be divided into two equal portions, with:

27 (A) one portion passing to the surviving parent;

1 and

2 (B) one portion passing to the person's siblings  
3 and the siblings' descendants; or

4 (2) be inherited entirely by the surviving parent if  
5 there is no sibling of the person or siblings' descendants.

6 (e) If neither the person's father nor mother survives the  
7 person, the person's entire estate passes to the person's siblings  
8 and the siblings' descendants.

9 (f) If none of the kindred described by Subsections (b)-(e)  
10 survive the person, the person's estate shall be divided into two  
11 moieties, with:

12 (1) one moiety passing to the person's paternal  
13 kindred as provided by Subsection (g); and

14 (2) one moiety passing to the person's maternal  
15 kindred as provided by Subsection (h).

16 (g) The moiety passing to the person's paternal kindred  
17 passes in the following order:

18 (1) if both paternal grandparents survive the person,  
19 equal portions pass to the person's paternal grandfather and  
20 grandmother;

21 (2) if only the person's paternal grandfather or  
22 grandmother survives the person, the person's estate shall:

23 (A) be divided into two equal portions, with:

24 (i) one portion passing to the surviving  
25 grandparent; and

26 (ii) one portion passing to the descendants  
27 of the deceased grandparent; or

1                   (B) pass entirely to the surviving grandparent if  
2 no descendant of the deceased grandparent survives the person; and

3                   (3) if neither the person's paternal grandfather nor  
4 grandmother survives the person, the moiety passing to the  
5 decedent's paternal kindred passes to the descendants of the  
6 person's paternal grandfather and grandmother, and so on without  
7 end, passing in like manner to the nearest lineal ancestors and  
8 their descendants.

9                   (h) The moiety passing to the person's maternal kindred  
10 passes in the same order and manner as the other moiety passes to  
11 the decedent's paternal kindred under Subsection (g). (Tex. Prob.  
12 Code, Sec. 38(a).)

13                   Sec. 201.002. SEPARATE ESTATE OF AN INTESTATE. (a) If a  
14 person who dies intestate leaves a surviving spouse, the estate,  
15 other than a community estate, to which the person had title  
16 descends and passes as provided by this section.

17                   (b) If the person has one or more children or a descendant of  
18 a child:

19                   (1) the surviving spouse takes one-third of the  
20 personal estate;

21                   (2) two-thirds of the personal estate descends to the  
22 person's child or children, and the descendants of a child or  
23 children; and

24                   (3) the surviving spouse is entitled to a life estate  
25 in one-third of the person's land, with the remainder descending to  
26 the person's child or children and the descendants of a child or  
27 children.

1 (c) Except as provided by Subsection (d), if the person has  
2 no child and no descendant of a child:

3 (1) the surviving spouse is entitled to all of the  
4 personal estate;

5 (2) the surviving spouse is entitled to one-half of  
6 the person's land without a remainder to any person; and

7 (3) one-half of the person's land passes and is  
8 inherited according to the rules of descent and distribution.

9 (d) If the person described by Subsection (c) does not leave  
10 a surviving parent or one or more surviving siblings, or their  
11 descendants, the surviving spouse is entitled to the entire estate.  
12 (Tex. Prob. Code, Sec. 38(b).)

13 Sec. 201.003. COMMUNITY ESTATE OF AN INTESTATE. (a) If a  
14 person who dies intestate leaves a surviving spouse, the community  
15 estate of the deceased spouse passes as provided by this section.

16 (b) The community estate of the deceased spouse passes to  
17 the surviving spouse if:

18 (1) no child or other descendant of the deceased  
19 spouse survives the deceased spouse; or

20 (2) all of the surviving children and descendants of  
21 the deceased spouse are also children or descendants of the  
22 surviving spouse.

23 (c) If the deceased spouse is survived by a child or other  
24 descendant who is not also a child or descendant of the surviving  
25 spouse, one-half of the community estate is retained by the  
26 surviving spouse and the other one-half passes to the deceased  
27 spouse's children or descendants. The descendants inherit only the

1 portion of that estate to which they would be entitled under Section  
2 201.101. In every case, the community estate passes charged with  
3 the debts against the community estate. (Tex. Prob. Code, Sec. 45.)

4 [Sections 201.004-201.050 reserved for expansion]

5 SUBCHAPTER B. MATTERS AFFECTING INHERITANCE

6 Sec. 201.051. MATERNAL INHERITANCE. For purposes of  
7 inheritance, a child is the child of the child's biological or  
8 adopted mother, and the child and the child's issue shall inherit  
9 from the child's mother and the child's maternal kindred, both  
10 descendants, ascendants, and collateral kindred in all degrees, and  
11 they may inherit from the child and the child's issue. (Tex. Prob.  
12 Code, Sec. 42(a).)

13 Sec. 201.052. PATERNAL INHERITANCE. (a) For purposes of  
14 inheritance, a child is the child of the child's biological father  
15 if:

16 (1) the child is born under circumstances described by  
17 Section 160.201, Family Code;

18 (2) the child is adjudicated to be the child of the  
19 father by court decree under Chapter 160, Family Code;

20 (3) the child was adopted by the child's father; or

21 (4) the father executed an acknowledgment of paternity  
22 under Subchapter D, Chapter 160, Family Code, or a similar  
23 statement properly executed in another jurisdiction.

24 (b) A child described by Subsection (a) and the child's  
25 issue shall inherit from the child's father and the child's paternal  
26 kindred, both descendants, ascendants, and collateral kindred in  
27 all degrees, and they may inherit from the child and the child's

1 issue.

2 (c) A person may petition the probate court for a  
3 determination of right of inheritance from a decedent if the  
4 person:

5 (1) claims to be a biological child of the decedent and  
6 is not otherwise presumed to be a child of the decedent; or

7 (2) claims inheritance through a biological child of  
8 the decedent who is not otherwise presumed to be a child of the  
9 decedent.

10 (d) If under Subsection (c) the court finds by clear and  
11 convincing evidence that the purported father was the biological  
12 father of the child:

13 (1) the child is treated as any other child of the  
14 decedent for purposes of inheritance; and

15 (2) the child and the child's issue may inherit from  
16 the child's paternal kindred, both descendants, ascendants, and  
17 collateral kindred in all degrees, and they may inherit from the  
18 child and the child's issue.

19 (e) This section does not permit inheritance by a purported  
20 father of a child, recognized or not, if the purported father's  
21 parental rights have been terminated. (Tex. Prob. Code, Sec.  
22 42(b)(1).)

23 Sec. 201.053. EFFECT OF RELIANCE ON AFFIDAVIT OF HEIRSHIP.

24 (a) A person who purchases for valuable consideration any interest  
25 in property of the heirs of a decedent acquires good title to the  
26 interest that the person would have received, as purchaser, in the  
27 absence of a claim of the child described by Subdivision (1), if the

1 person:

2 (1) in good faith relies on the declarations in an  
3 affidavit of heirship that does not include a child who at the time  
4 of the sale or contract of sale of the property:

5 (A) is not a presumed child of the decedent; and

6 (B) has not under a final court decree or  
7 judgment been found to be entitled to treatment under Section  
8 201.052 as a child of the decedent; and

9 (2) is without knowledge of the claim of the child  
10 described by Subdivision (1).

11 (b) Subsection (a) does not affect any liability of the  
12 heirs for the proceeds of a sale described by Subsection (a) to the  
13 child who was not included in the affidavit of heirship. (Tex.  
14 Prob. Code, Sec. 42(b)(2).)

15 Sec. 201.054. ADOPTED CHILD. (a) For purposes of  
16 inheritance under the laws of descent and distribution, an adopted  
17 child is regarded as the child of the adoptive parent or parents,  
18 and the adopted child and the adopted child's descendants inherit  
19 from and through the adoptive parent or parents and their kindred as  
20 if the adopted child were the natural child of the adoptive parent  
21 or parents. The adoptive parent or parents and their kindred  
22 inherit from and through the adopted child as if the adopted child  
23 were the natural child of the adoptive parent or parents.

24 (b) The natural parent or parents of an adopted child and  
25 the kindred of the natural parent or parents may not inherit from or  
26 through the adopted child, but the adopted child inherits from and  
27 through the child's natural parent or parents, except as provided

1 by Section 162.507(c), Family Code.

2 (c) This section does not prevent an adoptive parent from  
3 disposing of the parent's property by will according to law.

4 (d) This section does not diminish the rights of an adopted  
5 child under the laws of descent and distribution or otherwise that  
6 the adopted child acquired by virtue of inclusion in the definition  
7 of "child" under Section 22.004. (Tex. Prob. Code, Sec. 40.)

8 Sec. 201.055. ISSUE OF VOID OR VOIDABLE MARRIAGE. The issue  
9 of a marriage declared void or voided by annulment shall be treated  
10 in the same manner as the issue of a valid marriage. (Tex. Prob.  
11 Code, Sec. 42(d).)

12 Sec. 201.056. PERSONS NOT IN BEING. No right of inheritance  
13 accrues to any person other than to a child or lineal descendant of  
14 an intestate, unless the person is in being and capable in law to  
15 take as an heir at the time of the intestate's death. (Tex. Prob.  
16 Code, Sec. 41(a).)

17 Sec. 201.057. COLLATERAL KINDRED OF WHOLE AND HALF BLOOD.  
18 If the inheritance from an intestate passes to the collateral  
19 kindred of the intestate and part of the collateral kindred are of  
20 whole blood and the other part are of half blood of the intestate,  
21 each of the collateral kindred who is of half blood inherits only  
22 half as much as that inherited by each of the collateral kindred who  
23 is of whole blood. If all of the collateral kindred are of half  
24 blood of the intestate, each of the collateral kindred inherits a  
25 whole portion. (Tex. Prob. Code, Sec. 41(b).)

26 Sec. 201.058. CONVICTED PERSONS. (a) No conviction shall  
27 work corruption of blood or forfeiture of estate except as provided



1 by Subsection (b).

2 (b) If a beneficiary of a life insurance policy or contract  
3 is convicted and sentenced as a principal or accomplice in wilfully  
4 bringing about the death of the insured, the proceeds of the  
5 insurance policy or contract shall be paid in the manner provided by  
6 the Insurance Code. (Tex. Prob. Code, Sec. 41(d) (part).)

7 Sec. 201.059. PERSON WHO DIES BY CASUALTY. Death by  
8 casualty does not result in forfeiture of estate. (Tex. Prob. Code,  
9 Sec. 41(d) (part).)

10 Sec. 201.060. ALIENAGE. A person is not disqualified to  
11 take as an heir because the person, or another person through whom  
12 the person claims, is or has been an alien. (Tex. Prob. Code, Sec.  
13 41(c).)

14 Sec. 201.061. ESTATE OF PERSON WHO DIES BY SUICIDE. The  
15 estate of a person who commits suicide descends or vests as if the  
16 person died a natural death. (Tex. Prob. Code, Sec. 41(d) (part).)

17 Sec. 201.062. TREATMENT OF CERTAIN PARENT-CHILD  
18 RELATIONSHIPS. (a) A probate court may enter an order declaring  
19 that the parent of a child under 18 years of age may not inherit from  
20 or through the child under the laws of descent and distribution if  
21 the court finds by clear and convincing evidence that the parent  
22 has:

23 (1) voluntarily abandoned and failed to support the  
24 child in accordance with the parent's obligation or ability for at  
25 least three years before the date of the child's death, and did not  
26 resume support for the child before that date;

27 (2) voluntarily and with knowledge of the pregnancy:

1 (A) abandoned the child's mother beginning at a  
2 time during her pregnancy with the child and continuing through the  
3 birth;

4 (B) failed to provide adequate support or medical  
5 care for the mother during the period of abandonment before the  
6 child's birth; and

7 (C) remained apart from and failed to support the  
8 child since birth; or

9 (3) been convicted or has been placed on community  
10 supervision, including deferred adjudication community  
11 supervision, for being criminally responsible for the death or  
12 serious injury of a child under the following sections of the Penal  
13 Code or adjudicated under Title 3, Family Code, for conduct that  
14 caused the death or serious injury of a child and that would  
15 constitute a violation of one of the following sections of the Penal  
16 Code:

17 (A) Section 19.02 (murder);

18 (B) Section 19.03 (capital murder);

19 (C) Section 19.04 (manslaughter);

20 (D) Section 21.11 (indecent with a child);

21 (E) Section 22.01 (assault);

22 (F) Section 22.011 (sexual assault);

23 (G) Section 22.02 (aggravated assault);

24 (H) Section 22.021 (aggravated sexual assault);

25 (I) Section 22.04 (injury to a child, elderly  
26 individual, or disabled individual);

27 (J) Section 22.041 (abandoning or endangering

1 child);

2 (K) Section 25.02 (prohibited sexual conduct);

3 (L) Section 43.25 (sexual performance by a  
4 child); or

5 (M) Section 43.26 (possession or promotion of  
6 child pornography).

7 (b) On a determination under Subsection (a) that the parent  
8 of a child may not inherit from or through the child, the parent  
9 shall be treated as if the parent predeceased the child for purposes  
10 of:

11 (1) inheritance under the laws of descent and  
12 distribution; and

13 (2) any other cause of action based on parentage.  
14 (Tex. Prob. Code, Secs. 41(e), (f).)

15 [Sections 201.063-201.100 reserved for expansion]

16 SUBCHAPTER C. DISTRIBUTION TO HEIRS

17 Sec. 201.101. DETERMINATION OF PER CAPITA WITH  
18 REPRESENTATION DISTRIBUTION. (a) The children, descendants,  
19 brothers, sisters, uncles, aunts, or other relatives of an  
20 intestate who stand in the first or same degree of relationship  
21 alone and come into the distribution of the intestate's estate take  
22 per capita, which means by persons.

23 (b) If some of the persons described by Subsection (a) are  
24 dead and some are living, each descendant of those persons who have  
25 died is entitled to a distribution of the intestate's estate. Each  
26 descendant inherits only that portion of the property to which the  
27 parent through whom the descendant inherits would be entitled if

1 that parent were alive. (Tex. Prob. Code, Sec. 43.)

2           Sec. 201.102. NO DISTINCTION BASED ON PROPERTY'S SOURCE. A  
3 distinction may not be made, in regulating the descent and  
4 distribution of an estate of a person dying intestate, between  
5 property derived by gift, devise, or descent from the intestate's  
6 father, and property derived by gift, devise, or descent from the  
7 intestate's mother. (Tex. Prob. Code, Sec. 39 (part).)

8           Sec. 201.103. TREATMENT OF INTESTATE'S ESTATE. All of the  
9 estate to which an intestate had title at the time of death descends  
10 and vests in the intestate's heirs in the same manner as if the  
11 intestate had been the original purchaser. (Tex. Prob. Code, Sec.  
12 39 (part).)

13           [Sections 201.104-201.150 reserved for expansion]

14                           SUBCHAPTER D. ADVANCEMENTS

15           Sec. 201.151. DETERMINATION OF ADVANCEMENT; DATE OF  
16 VALUATION. (a) If a decedent dies intestate as to all or part of the  
17 decedent's estate, property that the decedent gave during the  
18 decedent's lifetime to a person who, on the date of the decedent's  
19 death, is the decedent's heir, or property received by the  
20 decedent's heir under a nontestamentary transfer under Subchapter  
21 B, Chapter 111, or Chapter 112 or 113, is an advancement against the  
22 heir's intestate share of the estate only if:

23                   (1) the decedent declared in a contemporaneous  
24 writing, or the heir acknowledged in writing, that the gift or  
25 nontestamentary transfer is an advancement; or

26                   (2) the decedent's contemporaneous writing or the  
27 heir's written acknowledgment otherwise indicates that the gift or

1 nontestamentary transfer is to be considered in computing the  
2 division and distribution of the decedent's intestate estate.

3 (b) For purposes of Subsection (a), property that is  
4 advanced is valued as of the earlier of:

5 (1) the time that the heir came into possession or  
6 enjoyment of the property; or

7 (2) the time of the decedent's death. (Tex. Prob.  
8 Code, Secs. 44(a), (b).)

9 Sec. 201.152. SURVIVAL OF RECIPIENT REQUIRED. If the  
10 recipient of property described by Section 201.151 does not survive  
11 the decedent, the property is not considered in computing the  
12 division and distribution of the decedent's intestate estate unless  
13 the decedent's contemporaneous writing provides otherwise. (Tex.  
14 Prob. Code, Sec. 44(c).)

15 CHAPTER 202. DETERMINATION OF HEIRSHIP

16 SUBCHAPTER A. AUTHORIZATION AND PROCEDURES FOR COMMENCEMENT OF

17 PROCEEDING TO DECLARE HEIRSHIP

18 Sec. 202.001. GENERAL AUTHORIZATION FOR AND NATURE OF

19 PROCEEDING TO DECLARE HEIRSHIP

20 Sec. 202.002. CIRCUMSTANCES UNDER WHICH PROCEEDING TO

21 DECLARE HEIRSHIP IS AUTHORIZED

22 Sec. 202.003. VENUE FOR PROCEEDING TO DECLARE HEIRSHIP

23 Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO

24 DECLARE HEIRSHIP

25 Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE

26 HEIRSHIP

1 Sec. 202.006. REQUEST FOR DETERMINATION OF NECESSITY

2 FOR ADMINISTRATION

3 Sec. 202.007. AFFIDAVIT SUPPORTING APPLICATION

4 REQUIRED

5 Sec. 202.008. REQUIRED PARTIES TO PROCEEDING TO

6 DECLARE HEIRSHIP

7 Sec. 202.009. REPRESENTATION OF INTERESTS OF CERTAIN

8 PERSONS

9 [Sections 202.010-202.050 reserved for expansion]

10 SUBCHAPTER B. NOTICE OF PROCEEDING TO DECLARE HEIRSHIP

11 Sec. 202.051. SERVICE OF CITATION BY MAIL WHEN

12 RECIPIENT'S NAME AND ADDRESS ARE KNOWN

13 OR ASCERTAINABLE

14 Sec. 202.052. SERVICE OF CITATION BY PUBLICATION WHEN

15 RECIPIENT'S NAME OR ADDRESS IS NOT

16 ASCERTAINABLE

17 Sec. 202.053. REQUIRED POSTING OF CITATION

18 Sec. 202.054. PERSONAL SERVICE OF CITATION MAY BE

19 REQUIRED

20 Sec. 202.055. SERVICE OF CITATION ON CERTAIN PERSONS

21 NOT REQUIRED

22 Sec. 202.056. WAIVER OF SERVICE OF CITATION ON CERTAIN

23 PERSONS NOT PERMITTED

24 [Sections 202.057-202.100 reserved for expansion]

1 SUBCHAPTER C. TRANSFER OF PENDING PROCEEDING TO DECLARE HEIRSHIP

2 Sec. 202.101. REQUIRED TRANSFER OF PENDING PROCEEDING  
3 TO DECLARE HEIRSHIP UNDER CERTAIN  
4 CIRCUMSTANCES

5 Sec. 202.102. TRANSFER OF RECORDS

6 Sec. 202.103. PROCEDURES APPLICABLE TO TRANSFERRED  
7 PROCEEDING TO DECLARE HEIRSHIP;  
8 CONSOLIDATION WITH OTHER PROCEEDING

9 [Sections 202.104-202.150 reserved for expansion]

10 SUBCHAPTER D. EVIDENCE RELATING TO DETERMINATION OF HEIRSHIP

11 Sec. 202.151. WRITTEN EVIDENCE IN PROCEEDING TO  
12 DECLARE HEIRSHIP

13 [Sections 202.152-202.200 reserved for expansion]

14 SUBCHAPTER E. JUDGMENT IN PROCEEDING TO DECLARE HEIRSHIP

15 Sec. 202.201. REQUIRED STATEMENTS IN JUDGMENT

16 Sec. 202.202. FINALITY AND APPEAL OF JUDGMENT

17 Sec. 202.203. CORRECTION OF JUDGMENT AT REQUEST OF  
18 HEIR NOT PROPERLY SERVED

19 Sec. 202.204. LIMITATION OF LIABILITY OF CERTAIN  
20 PERSONS ACTING IN ACCORDANCE WITH  
21 JUDGMENT

22 Sec. 202.205. EFFECT OF CERTAIN JUDGMENTS ON LIABILITY  
23 TO CREDITORS

24 Sec. 202.206. FILING AND RECORDING OF JUDGMENT

CHAPTER 202. DETERMINATION OF HEIRSHIP

SUBCHAPTER A. AUTHORIZATION AND PROCEDURES FOR COMMENCEMENT OF  
PROCEEDING TO DECLARE HEIRSHIP

Sec. 202.001. GENERAL AUTHORIZATION FOR AND NATURE OF  
PROCEEDING TO DECLARE HEIRSHIP. In the manner provided by this  
chapter, a court may determine through a proceeding to declare  
heirship:

(1) the persons who are a decedent's heirs and only  
heirs; and

(2) the heirs' respective shares and interests under  
the laws of this state in the decedent's estate. (Tex. Prob. Code,  
Sec. 48(a) (part).)

Sec. 202.002. CIRCUMSTANCES UNDER WHICH PROCEEDING TO  
DECLARE HEIRSHIP IS AUTHORIZED. A court may conduct a proceeding to  
declare heirship when:

(1) a person dies intestate owning or entitled to  
property in this state and there has been no administration in this  
state of the person's estate; or

(2) there has been a will probated in this state or  
elsewhere or an administration in this state of the decedent's  
estate, but:

(A) property in this state was omitted from the  
will or administration; or

(B) no final disposition of property in this  
state has been made in the administration. (Tex. Prob. Code, Sec.  
48(a) (part).)

Sec. 202.003. VENUE FOR PROCEEDING TO DECLARE HEIRSHIP.



1 (a) A proceeding to declare heirship of a decedent may be conducted  
2 by:

3 (1) the court of the county in which a proceeding to  
4 probate the decedent's will or for the administration of the  
5 decedent's estate was most recently pending; or

6 (2) if no will of the decedent has been admitted to  
7 probate in this state and no administration of the decedent's  
8 estate has been granted in this state, the court of the county in  
9 which venue would be proper for commencement of an administration  
10 of the decedent's estate under Section 6.

11 (b) Notwithstanding Subsection (a), a probate court in  
12 which proceedings for the guardianship of the estate of a ward who  
13 dies intestate were pending at the time of the decedent's death may,  
14 if there is no administration pending in the estate, determine:

15 (1) the persons who are the decedent's heirs and only  
16 heirs; and

17 (2) the heirs' respective shares and interests under  
18 the laws of this state in the decedent's estate. (Tex. Prob. Code,  
19 Secs. 48(a) (part), (c).)

20 Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO  
21 DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent  
22 may be commenced and maintained under a circumstance specified by  
23 Section 202.002 by:

24 (1) the personal representative of the decedent's  
25 estate;

26 (2) a person claiming to be a secured creditor or the  
27 owner of all or part of the decedent's estate; or

1           (3) if the decedent was a ward with respect to whom a  
2 guardian of the estate had been appointed, the guardian of the  
3 estate, provided that the proceeding is commenced and maintained in  
4 the probate court in which the proceedings for the guardianship of  
5 the estate were pending at the time of the decedent's death. (Tex.  
6 Prob. Code, Sec. 49(a) (part).)

7           Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE  
8 HEIRSHIP. A person authorized by Section 202.004 to commence a  
9 proceeding to declare heirship must file an application in a court  
10 specified by Section 202.003 to commence the proceeding. The  
11 application must state:

12           (1) the decedent's name and time and place of death;  
13           (2) the names and residences of the decedent's heirs,  
14 the relationship of each heir to the decedent, and the true interest  
15 of the applicant and each of the heirs in the decedent's estate;

16           (3) if the time or place of the decedent's death or the  
17 name or residence of an heir is not definitely known to the  
18 applicant, all the material facts and circumstances with respect to  
19 which the applicant has knowledge and information that might  
20 reasonably tend to show the time or place of the decedent's death or  
21 the name or residence of the heir;

22           (4) that all children born to or adopted by the  
23 decedent have been listed;

24           (5) that each of the decedent's marriages has been  
25 listed with:

26                   (A) the date of the marriage;

27                   (B) the name of the spouse;

1 (C) the date and place of termination if the  
2 marriage was terminated; and

3 (D) other facts to show whether a spouse has had  
4 an interest in the decedent's property;

5 (6) whether the decedent died testate and, if so, what  
6 disposition has been made of the will;

7 (7) a general description of all property belonging to  
8 the decedent's estate; and

9 (8) an explanation for the omission from the  
10 application of any of the information required by this section.  
11 (Tex. Prob. Code, Sec. 49(a) (part).)

12 Sec. 202.006. REQUEST FOR DETERMINATION OF NECESSITY FOR  
13 ADMINISTRATION. A person who files an application under Section  
14 202.005 not later than the fourth anniversary of the date of the  
15 death of the decedent who is the subject of the application may  
16 request that the court determine whether there is a need for  
17 administration of the decedent's estate. The court shall hear  
18 evidence on the issue and, in the court's judgment, make a  
19 determination of the issue. (Tex. Prob. Code, Sec. 48(b).)

20 Sec. 202.007. AFFIDAVIT SUPPORTING APPLICATION REQUIRED.  
21 (a) An application filed under Section 202.005 must be supported by  
22 the affidavit of each applicant.

23 (b) An affidavit of an applicant under Subsection (a) must  
24 state that, to the applicant's knowledge:

25 (1) all the allegations in the application are true;  
26 and

27 (2) no material fact or circumstance has been omitted

1 from the application. (Tex. Prob. Code, Sec. 49(b) (part).)

2           Sec. 202.008. REQUIRED PARTIES TO PROCEEDING TO DECLARE  
3 HEIRSHIP. Each of the following persons must be made a party to a  
4 proceeding to declare heirship:

5           (1) each unknown heir of the decedent who is the  
6 subject of the proceeding;

7           (2) each person who is named as an heir of the decedent  
8 in the application filed under Section 202.005; and

9           (3) each person who is, on the filing date of the  
10 application, shown as owning a share or interest in any real  
11 property described in the application by the deed records of the  
12 county in which the property is located. (Tex. Prob. Code, Sec.  
13 49(b) (part).)

14           Sec. 202.009. REPRESENTATION OF INTERESTS OF CERTAIN  
15 PERSONS. (a) If it appears to the court in a proceeding to declare  
16 heirship that there is or may be a living heir whose name or  
17 whereabouts is unknown, or that a defendant is an incapacitated  
18 person, the court may appoint an attorney ad litem or guardian ad  
19 litem to represent the interests of that person. The court may not  
20 appoint an attorney ad litem or guardian ad litem unless the court  
21 finds that the appointment is necessary to protect the interests of  
22 the living heir or incapacitated person.

23           (b) The court shall appoint an attorney ad litem to  
24 represent the interests of unknown heirs. (Tex. Prob. Code, Secs.  
25 53(b), (c).)

26           [Sections 202.010-202.050 reserved for expansion]

1 SUBCHAPTER B. NOTICE OF PROCEEDING TO DECLARE HEIRSHIP

2 Sec. 202.051. SERVICE OF CITATION BY MAIL WHEN RECIPIENT'S  
3 NAME AND ADDRESS ARE KNOWN OR ASCERTAINABLE. Except as provided by  
4 Section 202.054, citation in a proceeding to declare heirship must  
5 be served by registered or certified mail on:

6 (1) each distributee who is 12 years of age or older  
7 and whose name and address are known or can be ascertained through  
8 the exercise of reasonable diligence; and

9 (2) the parent, managing conservator, or guardian of  
10 each distributee who is younger than 12 years of age if the name and  
11 address of the parent, managing conservator, or guardian are known  
12 or can be reasonably ascertained. (Tex. Prob. Code, Sec. 50(a)  
13 (part).)

14 Sec. 202.052. SERVICE OF CITATION BY PUBLICATION WHEN  
15 RECIPIENT'S NAME OR ADDRESS IS NOT ASCERTAINABLE. If the address of  
16 a person or entity on whom citation is required to be served cannot  
17 be ascertained, citation must be served on the person or entity by  
18 publication in the county in which the proceeding to declare  
19 heirship is commenced and in the county of the last residence of the  
20 decedent who is the subject of the proceeding, if that residence was  
21 in a county other than the county in which the proceeding is  
22 commenced. To determine whether a decedent has any other heirs,  
23 citation must be served on unknown heirs by publication in the  
24 manner provided by this section. (Tex. Prob. Code, Sec. 50(b).)

25 Sec. 202.053. REQUIRED POSTING OF CITATION. Except in a  
26 proceeding in which citation is served by publication as provided  
27 by Section 202.052, citation in a proceeding to declare heirship

1 must be posted in:

2 (1) the county in which the proceeding is commenced;  
3 and

4 (2) the county of the last residence of the decedent  
5 who is the subject of the proceeding. (Tex. Prob. Code, Sec. 50(c).)

6 Sec. 202.054. PERSONAL SERVICE OF CITATION MAY BE REQUIRED.  
7 The court may require that service of citation in a proceeding to  
8 declare heirship be made by personal service on some or all of those  
9 named as distributees in the application filed under Section  
10 202.005. (Tex. Prob. Code, Sec. 50(a) (part).)

11 Sec. 202.055. SERVICE OF CITATION ON CERTAIN PERSONS NOT  
12 REQUIRED. A party to a proceeding to declare heirship who executed  
13 the application filed under Section 202.005 is not required to be  
14 served by any method. (Tex. Prob. Code, Sec. 50(d).)

15 Sec. 202.056. WAIVER OF SERVICE OF CITATION ON CERTAIN  
16 PERSONS NOT PERMITTED. A parent, managing conservator, guardian,  
17 attorney ad litem, or guardian ad litem of a distributee who is 12  
18 years of age or older, but younger than 19 years of age, may not  
19 waive citation required by this subchapter to be served on the  
20 distributee. (Tex. Prob. Code, Sec. 50(e).)

21 [Sections 202.057-202.100 reserved for expansion]

22 SUBCHAPTER C. TRANSFER OF PENDING PROCEEDING TO DECLARE HEIRSHIP

23 Sec. 202.101. REQUIRED TRANSFER OF PENDING PROCEEDING TO  
24 DECLARE HEIRSHIP UNDER CERTAIN CIRCUMSTANCES. If, after a  
25 proceeding to declare heirship is commenced, an administration of  
26 the estate of the decedent who is the subject of the proceeding is  
27 granted in this state or the decedent's will is admitted to probate

1 in this state, the court in which the proceeding to declare  
2 heirship is pending shall, by an order entered of record in the  
3 proceeding, transfer the proceeding to the court in which the  
4 administration was granted or the will was probated. (Tex. Prob.  
5 Code, Sec. 51 (part).)

6 Sec. 202.102. TRANSFER OF RECORDS. The clerk of the court  
7 from which a proceeding to declare heirship is transferred under  
8 Section 202.101 shall, on entry of the order under that section,  
9 send to the clerk of the court named in the order a certified  
10 transcript of all pleadings, docket entries, and orders of the  
11 court in the proceeding. The clerk of the court to which the  
12 proceeding is transferred shall:

- 13 (1) file the transcript;  
14 (2) record the transcript in the minutes of the court;  
15 and  
16 (3) docket the proceeding. (Tex. Prob. Code, Sec. 51  
17 (part).)

18 Sec. 202.103. PROCEDURES APPLICABLE TO TRANSFERRED  
19 PROCEEDING TO DECLARE HEIRSHIP; CONSOLIDATION WITH OTHER  
20 PROCEEDING. A proceeding to declare heirship that is transferred  
21 under Section 202.101 shall proceed as though the proceeding was  
22 originally filed in the court to which the proceeding is  
23 transferred. The court may consolidate the proceeding with the  
24 other proceeding pending in that court. (Tex. Prob. Code, Sec. 51  
25 (part).)

26 [Sections 202.104-202.150 reserved for expansion]

1 SUBCHAPTER D. EVIDENCE RELATING TO DETERMINATION OF HEIRSHIP

2 Sec. 202.151. WRITTEN EVIDENCE IN PROCEEDING TO DECLARE  
3 HEIRSHIP. The court may require that all or any part of the  
4 evidence admitted in a proceeding to declare heirship be:

5 (1) reduced to writing and subscribed and sworn to by  
6 the witnesses, respectively; and

7 (2) filed in the proceeding and recorded in the  
8 minutes of the court. (Tex. Prob. Code, Sec. 53(a).)

9 [Sections 202.152-202.200 reserved for expansion]

10 SUBCHAPTER E. JUDGMENT IN PROCEEDING TO DECLARE HEIRSHIP

11 Sec. 202.201. REQUIRED STATEMENTS IN JUDGMENT. (a) The  
12 judgment in a proceeding to declare heirship must state:

13 (1) the names and places of residence of the heirs of  
14 the decedent who is the subject of the proceeding; and

15 (2) the heirs' respective shares and interests in the  
16 decedent's property.

17 (b) If the proof in a proceeding to declare heirship is in  
18 any respect deficient, the judgment in the proceeding must state  
19 that. (Tex. Prob. Code, Sec. 54.)

20 Sec. 202.202. FINALITY AND APPEAL OF JUDGMENT. (a) The  
21 judgment in a proceeding to declare heirship is a final judgment.

22 (b) At the request of an interested person, the judgment in  
23 a proceeding to declare heirship may be appealed or reviewed within  
24 the same time limits and in the same manner as other judgments in  
25 probate matters. (Tex. Prob. Code, Sec. 55(a) (part).)

26 Sec. 202.203. CORRECTION OF JUDGMENT AT REQUEST OF HEIR NOT  
27 PROPERLY SERVED. If an heir of a decedent who is the subject of a



1 proceeding to declare heirship is not served with citation by  
2 registered or certified mail or personal service in the proceeding,  
3 the heir may:

4 (1) have the judgment in the proceeding corrected by  
5 bill of review:

6 (A) at any time, but not later than the fourth  
7 anniversary of the date of the judgment; or

8 (B) after the passage of any length of time, on  
9 proof of actual fraud; and

10 (2) recover the heir's just share of the property or  
11 the value of that share from:

12 (A) the heirs named in the judgment; and

13 (B) those who claim under the heirs named in the  
14 judgment and who are not bona fide purchasers for value. (Tex.  
15 Prob. Code, Sec. 55(a) (part).)

16 Sec. 202.204. LIMITATION OF LIABILITY OF CERTAIN PERSONS  
17 ACTING IN ACCORDANCE WITH JUDGMENT. (a) The judgment in a  
18 proceeding to declare heirship is conclusive in a suit between an  
19 heir omitted from the judgment and a bona fide purchaser for value  
20 who purchased property after entry of the judgment without actual  
21 notice of the claim of the omitted heir, regardless of whether the  
22 judgment is subsequently modified, set aside, or nullified.

23 (b) A person is not liable to another person for the  
24 following actions performed in good faith after a judgment is  
25 entered in a proceeding to declare heirship:

26 (1) delivering the property of the decedent who was  
27 the subject of the proceeding to the persons named as heirs in the

1 judgment; or

2 (2) engaging in any other transaction with the persons  
3 named as heirs in the judgment. (Tex. Prob. Code, Sec. 55(b).)

4 Sec. 202.205. EFFECT OF CERTAIN JUDGMENTS ON LIABILITY TO  
5 CREDITORS. (a) A judgment in a proceeding to declare heirship  
6 stating that there is no necessity for administration of the estate  
7 of the decedent who is the subject of the proceeding constitutes  
8 authorization for a person who owes money to the estate, has custody  
9 of estate property, acts as registrar or transfer agent of an  
10 evidence of interest, indebtedness, property, or right belonging to  
11 the estate, or purchases from or otherwise deals with an heir named  
12 in the judgment to take the following actions without liability to a  
13 creditor of the estate or other person:

14 (1) to pay, deliver, or transfer the property or the  
15 evidence of property rights to an heir named in the judgment; or

16 (2) to purchase property from an heir named in the  
17 judgment.

18 (b) An heir named in a judgment in a proceeding to declare  
19 heirship is entitled to enforce the heir's right to payment,  
20 delivery, or transfer described by Subsection (a) by suit.

21 (c) Except as provided by this section, this chapter does  
22 not affect the rights or remedies of the creditors of a decedent who  
23 is the subject of a proceeding to declare heirship. (Tex. Prob.  
24 Code, Sec. 55(c).)

25 Sec. 202.206. FILING AND RECORDING OF JUDGMENT. (a) A  
26 certified copy of the judgment in a proceeding to declare heirship  
27 may be:

1           (1) filed for record in the office of the county clerk  
2 of the county in which any real property described in the judgment  
3 is located;

4           (2) recorded in the deed records of that county; and

5           (3) indexed in the name of the decedent who was the  
6 subject of the proceeding as grantor and in the names of the heirs  
7 named in the judgment as grantees.

8           (b) On the filing of a judgment in accordance with  
9 Subsection (a), the judgment constitutes constructive notice of the  
10 facts stated in the judgment. (Tex. Prob. Code, Sec. 56.)

11           CHAPTER 203. NONJUDICIAL EVIDENCE OF HEIRSHIP

12           Sec. 203.001. RECORDED STATEMENT OF FACTS AS PRIMA

13                           FACIE EVIDENCE OF HEIRSHIP

14           Sec. 203.002. FORM OF AFFIDAVIT CONCERNING IDENTITY OF

15                           HEIRS

16           CHAPTER 203. NONJUDICIAL EVIDENCE OF HEIRSHIP

17           Sec. 203.001. RECORDED STATEMENT OF FACTS AS PRIMA FACIE  
18 EVIDENCE OF HEIRSHIP. (a) A court shall receive in a proceeding to  
19 declare heirship or a suit involving title to property a statement  
20 of facts concerning the family history, genealogy, marital status,  
21 or the identity of the heirs of a decedent as prima facie evidence  
22 of the facts contained in the statement if:

23           (1) the statement is contained in:

24                           (A) an affidavit or other instrument legally  
25 executed and acknowledged or sworn to before, and certified by, an  
26 officer authorized to take acknowledgments or oaths, as applicable;  
27 or

1                   (B) a judgment of a court of record; and  
2                   (2) the affidavit or instrument containing the  
3 statement has been of record for five years or more in the deed  
4 records of a county in this state in which the property is located  
5 at the time the suit involving title to property is commenced, or in  
6 the deed records of a county in this state in which the decedent was  
7 domiciled or had a fixed place of residence at the time of the  
8 decedent's death.

9                   (b) If there is an error in a statement of facts in a  
10 recorded affidavit or instrument described by Subsection (a),  
11 anyone interested in a proceeding in which the affidavit or  
12 instrument is offered in evidence may prove the true facts.

13                   (c) An affidavit of facts concerning the identity of a  
14 decedent's heirs as to an interest in real property that is filed in  
15 a proceeding or suit described by Subsection (a) may be in the form  
16 prescribed by Section 203.002.

17                   (d) An affidavit of facts concerning the identity of a  
18 decedent's heirs does not affect the rights of an omitted heir or  
19 creditor of the decedent as otherwise provided by law. This section  
20 is cumulative of all other statutes on the same subject and may not  
21 be construed as abrogating any right to present evidence or rely on  
22 an affidavit of facts conferred by any other statute or rule. (Tex.  
23 Prob. Code, Sec. 52.)

24                   Sec. 203.002. FORM OF AFFIDAVIT CONCERNING IDENTITY OF  
25 HEIRS. An affidavit of facts concerning the identity of a  
26 decedent's heirs may be in substantially the following form:

AFFIDAVIT OF FACTS CONCERNING THE IDENTITY OF HEIRS

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ ("Affiant") (insert name of affiant) who, being first duly sworn, upon his/her oath states:

1. My name is \_\_\_\_\_ (insert name of affiant), and I live at \_\_\_\_\_ (insert address of affiant's residence). I am personally familiar with the family and marital history of \_\_\_\_\_ ("Decedent") (insert name of decedent), and I have personal knowledge of the facts stated in this affidavit.

2. I knew decedent from \_\_\_\_\_ (insert date) until \_\_\_\_\_ (insert date). Decedent died on \_\_\_\_\_ (insert date of death). Decedent's place of death was \_\_\_\_\_ (insert place of death). At the time of decedent's death, decedent's residence was \_\_\_\_\_ (insert address of decedent's residence).

3. Decedent's marital history was as follows: \_\_\_\_\_ (insert marital history and, if decedent's spouse is deceased, insert date and place of spouse's death).

4. Decedent had the following children: \_\_\_\_\_ (insert name, birth date, name of other parent, and current address of child or date of death of child and descendants of deceased child, as applicable, for each child).

5. Decedent did not have or adopt any other children and did not take any other children into decedent's home or raise any other children, except: \_\_\_\_\_ (insert name of child or names of children, or state "none").

6. (Include if decedent was not survived by descendants.) Decedent's mother was: \_\_\_\_\_ (insert name, birth date, and

1 current address or date of death of mother, as applicable).

2 7. (Include if decedent was not survived by descendants.)

3 Decedent's father was: \_\_\_\_\_ (insert name, birth date, and  
4 current address or date of death of father, as applicable).

5 8. (Include if decedent was not survived by descendants or by  
6 both mother and father.) Decedent had the following siblings:  
7 \_\_\_\_\_ (insert name, birth date, and current address or date of  
8 death of each sibling and parents of each sibling and descendants of  
9 each deceased sibling, as applicable, or state "none").

10 9. (Optional.) The following persons have knowledge  
11 regarding the decedent, the identity of decedent's children, if  
12 any, parents, or siblings, if any: \_\_\_\_\_ (insert names of  
13 persons with knowledge, or state "none").

14 10. Decedent died without leaving a written will. (Modify  
15 statement if decedent left a written will.)

16 11. There has been no administration of decedent's estate.  
17 (Modify statement if there has been administration of decedent's  
18 estate.)

19 12. Decedent left no debts that are unpaid, except:  
20 \_\_\_\_\_ (insert list of debts, or state "none").

21 13. There are no unpaid estate or inheritance taxes, except:  
22 \_\_\_\_\_ (insert list of unpaid taxes, or state "none").

23 14. To the best of my knowledge, decedent owned an interest  
24 in the following real property: \_\_\_\_\_ (insert list of real  
25 property in which decedent owned an interest, or state "none").

26 15. (Optional.) The following were the heirs of decedent:  
27 \_\_\_\_\_ (insert names of heirs).

1           16. (Insert additional information as appropriate, such as  
2 size of the decedent's estate.)

3 Signed this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

4 \_\_\_\_\_

5 (signature of affiant)

6 State of \_\_\_\_\_

7 County of \_\_\_\_\_

8 Sworn to and subscribed to before me on \_\_\_\_\_ (date) by

9 \_\_\_\_\_ (insert name of affiant).

10 \_\_\_\_\_

11 (signature of notarial officer)

12 (Seal, if any, of notary) \_\_\_\_\_

13 (printed name)

14 My commission expires: \_\_\_\_\_

15 (Tex. Prob. Code, Sec. 52A.)

16 CHAPTER 204. GENETIC TESTING IN PROCEEDINGS TO DECLARE HEIRSHIP

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 204.001. PROCEEDINGS AND RECORDS PUBLIC

19 [Sections 204.002-204.050 reserved for expansion]

20 SUBCHAPTER B. COURT ORDERS FOR GENETIC TESTING IN PROCEEDINGS TO

21 DECLARE HEIRSHIP

22 Sec. 204.051. ORDER FOR GENETIC TESTING

23 Sec. 204.052. ADVANCEMENT OF COSTS

24 Sec. 204.053. ORDER AND ADVANCEMENT OF COSTS FOR

25 SUBSEQUENT GENETIC TESTING

26 Sec. 204.054. SUBMISSION OF GENETIC MATERIAL BY OTHER

27 RELATIVE UNDER CERTAIN CIRCUMSTANCES

1 Sec. 204.055. GENETIC TESTING OF DECEASED INDIVIDUAL

2 Sec. 204.056. CRIMINAL PENALTY

3 [Sections 204.057-204.100 reserved for expansion]

4 SUBCHAPTER C. RESULTS OF GENETIC TESTING

5 Sec. 204.101. RESULTS OF GENETIC TESTING;

6 ADMISSIBILITY

7 Sec. 204.102. PRESUMPTION REGARDING RESULTS OF GENETIC

8 TESTING; REBUTTAL

9 Sec. 204.103. CONTESTING RESULTS OF GENETIC TESTING

10 [Sections 204.104-204.150 reserved for expansion]

11 SUBCHAPTER D. USE OF RESULTS OF GENETIC TESTING IN CERTAIN

12 PROCEEDINGS TO DECLARE HEIRSHIP

13 Sec. 204.151. APPLICABILITY OF SUBCHAPTER

14 Sec. 204.152. REQUIRED FINDINGS IN ABSENCE OF REBUTTAL

15 EVIDENCE

16 Sec. 204.153. EFFECT OF INCONCLUSIVE RESULTS OF

17 GENETIC TESTING

18 [Sections 204.154-204.200 reserved for expansion]

19 SUBCHAPTER E. ADDITIONAL ORDERS FOLLOWING RESULTS OF GENETIC

20 TESTING

21 Sec. 204.201. ORDER FOR CHANGE OF NAME

22 CHAPTER 204. GENETIC TESTING IN PROCEEDINGS TO DECLARE HEIRSHIP

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 204.001. PROCEEDINGS AND RECORDS PUBLIC. A proceeding

25 under this chapter or Chapter 202 involving genetic testing is open

26 to the public as in other civil cases. Papers and records in the

27 proceeding are available for public inspection. (Tex. Prob. Code,



1 Sec. 53E.)

2 [Sections 204.002-204.050 reserved for expansion]

3 SUBCHAPTER B. COURT ORDERS FOR GENETIC TESTING IN PROCEEDINGS TO  
4 DECLARE HEIRSHIP

5 Sec. 204.051. ORDER FOR GENETIC TESTING. (a) In a  
6 proceeding to declare heirship under Chapter 202, the court may, on  
7 the court's own motion, and shall, on the request of a party to the  
8 proceeding, order one or more specified individuals to submit to  
9 genetic testing as provided by Subchapter F, Chapter 160, Family  
10 Code. If two or more individuals are ordered to be tested, the  
11 court may order that the testing of those individuals be done  
12 concurrently or sequentially.

13 (b) The court may enforce an order under this section by  
14 contempt. (Tex. Prob. Code, Sec. 53A(a).)

15 Sec. 204.052. ADVANCEMENT OF COSTS. Subject to any  
16 assessment of costs following a proceeding to declare heirship in  
17 accordance with Rule 131, Texas Rules of Civil Procedure, the cost  
18 of genetic testing ordered under Section 204.051 must be advanced:

19 (1) by a party to the proceeding who requests the  
20 testing;

21 (2) as agreed by the parties and approved by the court;

22 or

23 (3) as ordered by the court. (Tex. Prob. Code, Sec.  
24 53A(b).)

25 Sec. 204.053. ORDER AND ADVANCEMENT OF COSTS FOR SUBSEQUENT  
26 GENETIC TESTING. (a) Subject to Subsection (b), the court shall  
27 order genetic testing subsequent to the testing conducted under

1 Section 204.051 if:

2 (1) a party to the proceeding to declare heirship  
3 contests the results of the genetic testing ordered under Section  
4 204.051; and

5 (2) the party contesting the results requests that  
6 additional testing be conducted.

7 (b) If the results of the genetic testing ordered under  
8 Section 204.051 identify a tested individual as an heir of the  
9 decedent, the court may order additional genetic testing in  
10 accordance with Subsection (a) only if the party contesting those  
11 results pays for the additional testing in advance. (Tex. Prob.  
12 Code, Secs. 53A(c), (d).)

13 Sec. 204.054. SUBMISSION OF GENETIC MATERIAL BY OTHER  
14 RELATIVE UNDER CERTAIN CIRCUMSTANCES. If a sample of an  
15 individual's genetic material that could identify another  
16 individual as the decedent's heir is not available for purposes of  
17 conducting genetic testing under this subchapter, the court, on a  
18 finding of good cause and that the need for genetic testing  
19 outweighs the legitimate interests of the individual to be tested,  
20 may order any of the following individuals to submit a sample of  
21 genetic material for the testing under circumstances the court  
22 considers just:

23 (1) a parent, sibling, or child of the individual  
24 whose genetic material is not available; or

25 (2) any other relative of that individual, as  
26 necessary to conduct the testing. (Tex. Prob. Code, Sec. 53A(e).)

27 Sec. 204.055. GENETIC TESTING OF DECEASED INDIVIDUAL. On

1 good cause shown, the court may order:

2 (1) genetic testing of a deceased individual under  
3 this subchapter; and

4 (2) if necessary, removal of the remains of the  
5 deceased individual as provided by Section 711.004, Health and  
6 Safety Code, for that testing. (Tex. Prob. Code, Sec. 53A(f).)

7 Sec. 204.056. CRIMINAL PENALTY. (a) An individual commits  
8 an offense if:

9 (1) the individual intentionally releases an  
10 identifiable sample of the genetic material of another individual  
11 that was provided for purposes of genetic testing ordered under  
12 this subchapter; and

13 (2) the release:

14 (A) is for a purpose not related to the  
15 proceeding to declare heirship; and

16 (B) was not ordered by the court or done in  
17 accordance with written permission obtained from the individual who  
18 provided the sample.

19 (b) An offense under this section is a Class A misdemeanor.  
20 (Tex. Prob. Code, Sec. 53A(g).)

21 [Sections 204.057-204.100 reserved for expansion]

22 SUBCHAPTER C. RESULTS OF GENETIC TESTING

23 Sec. 204.101. RESULTS OF GENETIC TESTING; ADMISSIBILITY. A  
24 report of the results of genetic testing ordered under Subchapter  
25 B:

26 (1) must comply with the requirements for a report  
27 prescribed by Section 160.504, Family Code; and

1           (2) is admissible in a proceeding to declare heirship  
2 under Chapter 202 as evidence of the truth of the facts asserted in  
3 the report. (Tex. Prob. Code, Sec. 53B(a).)

4           Sec. 204.102. PRESUMPTION REGARDING RESULTS OF GENETIC  
5 TESTING; REBUTTAL. The presumption under Section 160.505, Family  
6 Code:

7           (1) applies to the results of genetic testing ordered  
8 under Subchapter B; and

9           (2) may be rebutted as provided by Section 160.505,  
10 Family Code. (Tex. Prob. Code, Sec. 53B(b).)

11           Sec. 204.103. CONTESTING RESULTS OF GENETIC TESTING. (a) A  
12 party to a proceeding to declare heirship who contests the results  
13 of genetic testing may call one or more genetic testing experts to  
14 testify in person or by telephone, videoconference, deposition, or  
15 another method approved by the court.

16           (b) Unless otherwise ordered by the court, the party  
17 offering the testimony under Subsection (a) bears the expense for  
18 the expert testifying. (Tex. Prob. Code, Sec. 53B(c).)

19           [Sections 204.104-204.150 reserved for expansion]

20           SUBCHAPTER D. USE OF RESULTS OF GENETIC TESTING IN CERTAIN  
21                           PROCEEDINGS TO DECLARE HEIRSHIP

22           Sec. 204.151. APPLICABILITY OF SUBCHAPTER. This subchapter  
23 applies in a proceeding to declare heirship of a decedent only with  
24 respect to an individual who:

25           (1) petitions the court for a determination of right  
26 of inheritance as authorized by Section 201.052(c); and

27           (2) claims:

1 (A) to be a biological child of the decedent, but  
2 with respect to whom a parent-child relationship with the decedent  
3 was not established as provided by Section 160.201, Family Code; or

4 (B) to inherit through a biological child of the  
5 decedent, if a parent-child relationship between the individual  
6 through whom the inheritance is claimed and the decedent was not  
7 established as provided by Section 160.201, Family Code. (Tex.  
8 Prob. Code, Sec. 53C(a).)

9 Sec. 204.152. REQUIRED FINDINGS IN ABSENCE OF REBUTTAL  
10 EVIDENCE. Unless the results of genetic testing of another  
11 individual who is an heir of the decedent who is the subject of a  
12 proceeding to declare heirship to which this subchapter applies are  
13 admitted as rebuttal evidence, the court shall find that the  
14 individual described by Section 204.151:

15 (1) is an heir of the decedent, if the results of  
16 genetic testing ordered under Subchapter B identify a tested  
17 individual who is an heir of the decedent as the ancestor of the  
18 individual described by Section 204.151; or

19 (2) is not an heir of the decedent, if the results of  
20 genetic testing ordered under Subchapter B exclude a tested  
21 individual who is an heir of the decedent as the ancestor of the  
22 individual described by Section 204.151. (Tex. Prob. Code, Secs.  
23 53C(b), (c).)

24 Sec. 204.153. EFFECT OF INCONCLUSIVE RESULTS OF GENETIC  
25 TESTING. If the results of genetic testing ordered under  
26 Subchapter B do not identify or exclude a tested individual as the  
27 ancestor of the individual described by Section 204.151:

1           (1) the court may not dismiss the proceeding to  
2 declare heirship; and

3           (2) the results of the genetic testing and other  
4 relevant evidence are admissible in the proceeding. (Tex. Prob.  
5 Code, Sec. 53C(d).)

6           [Sections 204.154–204.200 reserved for expansion]

7           SUBCHAPTER E. ADDITIONAL ORDERS FOLLOWING RESULTS OF GENETIC  
8    TESTING

9           Sec. 204.201. ORDER FOR CHANGE OF NAME. On the request of  
10 an individual determined by the results of genetic testing to be the  
11 heir of a decedent and for good cause shown, the court may:

12           (1) order the name of the individual to be changed; and

13           (2) if the court orders a name change under  
14 Subdivision (1), order the bureau of vital statistics to issue an  
15 amended birth record for the individual. (Tex. Prob. Code, Sec.  
16 53D.)

17                                 CHAPTER 205. SMALL ESTATE AFFIDAVIT

18           Sec. 205.001. ENTITLEMENT TO ESTATE WITHOUT

19   APPOINTMENT OF PERSONAL REPRESENTATIVE

20           Sec. 205.002. AFFIDAVIT REQUIREMENTS

21           Sec. 205.003. EXAMINATION AND APPROVAL OF AFFIDAVIT

22           Sec. 205.004. COPY OF AFFIDAVIT TO CERTAIN PERSONS

23           Sec. 205.005. AFFIDAVIT AS LOCAL GOVERNMENT RECORD

24           Sec. 205.006. TITLE TO HOMESTEAD TRANSFERRED UNDER  
25    AFFIDAVIT

26           Sec. 205.007. LIABILITY OF CERTAIN PERSONS

27           Sec. 205.008. EFFECT OF CHAPTER

1                   CHAPTER 205. SMALL ESTATE AFFIDAVIT

2           Sec. 205.001. ENTITLEMENT TO ESTATE WITHOUT APPOINTMENT OF  
3 PERSONAL REPRESENTATIVE. The distributees of the estate of a  
4 decedent who dies intestate are entitled to the decedent's estate  
5 without waiting for the appointment of a personal representative of  
6 the estate to the extent the estate assets, excluding homestead and  
7 exempt property, exceed the known liabilities of the estate,  
8 excluding any liabilities secured by homestead and exempt property,  
9 if:

10                   (1) 30 days have elapsed since the date of the  
11 decedent's death;

12                   (2) no petition for the appointment of a personal  
13 representative is pending or has been granted;

14                   (3) the value of the estate assets, excluding  
15 homestead and exempt property, does not exceed \$50,000;

16                   (4) an affidavit that meets the requirements of  
17 Section 205.002 is filed with the clerk of the court that has  
18 jurisdiction and venue of the estate;

19                   (5) the judge approves the affidavit as provided by  
20 Section 205.003; and

21                   (6) the distributees comply with Section 205.004.  
22 (Tex. Prob. Code, Sec. 137(a) (part).)

23           Sec. 205.002. AFFIDAVIT REQUIREMENTS. An affidavit filed  
24 under Section 205.001 must:

25                   (1) be sworn to by:

26                           (A) two disinterested witnesses;

27                           (B) each distributee of the estate who has legal

1 capacity; and

2 (C) if warranted by the facts, the natural  
3 guardian or next of kin of any minor distributee or the guardian of  
4 any other incapacitated distributee;

5 (2) show the existence of the conditions prescribed by  
6 Sections 205.001(1), (2), and (3); and

7 (3) include:

8 (A) a list of all known estate assets and  
9 liabilities;

10 (B) the name and address of each distributee; and

11 (C) the relevant family history facts concerning  
12 heirship that show each distributee's right to receive estate money  
13 or other property or to have any evidence of money, property, or  
14 other right of the estate as is determined to exist transferred to  
15 the distributee as an heir or assignee. (Tex. Prob. Code, Sec.  
16 137(a) (part).)

17 Sec. 205.003. EXAMINATION AND APPROVAL OF AFFIDAVIT. The  
18 judge shall examine an affidavit filed under Section 205.001. The  
19 judge may approve the affidavit if the judge determines that the  
20 affidavit conforms to the requirements of this chapter. (Tex.  
21 Prob. Code, Sec. 137(a) (part).)

22 Sec. 205.004. COPY OF AFFIDAVIT TO CERTAIN PERSONS. The  
23 distributees of the estate shall provide a copy of the affidavit  
24 under this chapter, certified by the court clerk, to each person  
25 who:

26 (1) owes money to the estate;

27 (2) has custody or possession of estate property; or



1           (3) acts as a registrar, fiduciary, or transfer agent  
2 of or for an evidence of interest, indebtedness, property, or other  
3 right belonging to the estate. (Tex. Prob. Code, Sec. 137(a)  
4 (part).)

5           Sec. 205.005. AFFIDAVIT AS LOCAL GOVERNMENT RECORD. (a) If  
6 the judge approves an affidavit under Section 205.003, the  
7 affidavit shall be maintained as a local government record under  
8 Subtitle C, Title 6, Local Government Code.

9           (b) If the county does not maintain local government records  
10 in a manner authorized under Subtitle C, Title 6, Local Government  
11 Code, the county clerk shall provide and keep in the clerk's office  
12 an appropriate book labeled "Small Estates" in which the clerk  
13 shall, on payment of the legal recording fee, record each affidavit  
14 filed under this chapter. The small estates book must contain an  
15 accurate index that shows the decedent's name and references to any  
16 land involved. (Tex. Prob. Code, Sec. 137(d).)

17           Sec. 205.006. TITLE TO HOMESTEAD TRANSFERRED UNDER  
18 AFFIDAVIT. (a) If a decedent's homestead is the only real property  
19 in the decedent's estate, title to the homestead may be transferred  
20 under an affidavit that meets the requirements of this chapter. The  
21 affidavit used to transfer title to the homestead must be recorded  
22 in the deed records of a county in which the homestead is located.

23           (b) A bona fide purchaser for value may rely on an affidavit  
24 recorded under this section. A bona fide purchaser for value  
25 without actual or constructive notice of an heir who is not  
26 disclosed in the recorded affidavit acquires title to a homestead  
27 free of the interests of the undisclosed heir, but remains subject

1 to any claim a creditor of the decedent has by law. A purchaser has  
2 constructive notice of an heir who is not disclosed in the recorded  
3 affidavit if an affidavit, judgment of heirship, or title  
4 transaction in the chain of title in the deed records identifies  
5 that heir as the decedent's heir.

6 (c) An heir who is not disclosed in an affidavit recorded  
7 under this section may recover from an heir who receives  
8 consideration from a purchaser in a transfer for value of title to a  
9 homestead passing under the affidavit. (Tex. Prob. Code, Sec.  
10 137(c).)

11 Sec. 205.007. LIABILITY OF CERTAIN PERSONS. (a) A person  
12 making a payment, delivery, transfer, or issuance under an  
13 affidavit described by this chapter is released to the same extent  
14 as if made to a personal representative of the decedent. The person  
15 may not be required to:

- 16 (1) see to the application of the affidavit; or  
17 (2) inquire into the truth of any statement in the  
18 affidavit.

19 (b) The distributees to whom payment, delivery, transfer,  
20 or issuance is made are:

- 21 (1) answerable for the payment, delivery, transfer, or  
22 issuance to any person having a prior right; and  
23 (2) accountable to any personal representative  
24 appointed after the payment, delivery, transfer, or issuance.

25 (c) Each person who executed the affidavit is liable for any  
26 damage or loss to any person that arises from a payment, delivery,  
27 transfer, or issuance made in reliance on the affidavit.

1 (d) If a person to whom the affidavit is delivered refuses  
2 to pay, deliver, transfer, or issue property as provided by this  
3 section, the property may be recovered in an action brought for that  
4 purpose by or on behalf of the distributees entitled to the property  
5 on proof of the facts required to be stated in the affidavit. (Tex.  
6 Prob. Code, Sec. 138.)

7 Sec. 205.008. EFFECT OF CHAPTER. (a) This chapter does not  
8 affect the disposition of property under a will or other  
9 testamentary document.

10 (b) Except as provided by Section 205.006, this chapter does  
11 not transfer title to real property. (Tex. Prob. Code, Sec.  
12 137(b).)

13 [Chapters 206-250 reserved for expansion]

14 SUBTITLE F. WILLS

15 CHAPTER 251. FUNDAMENTAL REQUIREMENTS AND PROVISIONS RELATING TO  
16 WILLS

17 SUBCHAPTER A. WILL FORMATION

18 Sec. 251.001. WHO MAY EXECUTE WILL

19 Sec. 251.002. INTERESTS THAT MAY PASS BY WILL;

20 DISINHERITANCE

21 [Sections 251.003-251.050 reserved for expansion]

22 SUBCHAPTER B. WILL REQUIREMENTS

23 Sec. 251.051. WRITTEN, SIGNED, AND ATTESTED

24 Sec. 251.052. EXCEPTION FOR HOLOGRAPHIC WILLS

25 [Sections 251.053-251.100 reserved for expansion]

26 SUBCHAPTER C. SELF-PROVED WILLS

27 Sec. 251.101. SELF-PROVED WILL

1 Sec. 251.102. PROBATE AND TREATMENT OF SELF-PROVED

2 WILL

3 Sec. 251.103. PERIOD FOR MAKING ATTESTED WILLS

4 SELF-PROVED

5 Sec. 251.104. REQUIREMENTS FOR SELF-PROVING AFFIDAVIT

6 Sec. 251.105. EFFECT OF SIGNATURE ON SELF-PROVING

7 AFFIDAVIT

8 Sec. 251.106. CONTEST, REVOCATION, OR AMENDMENT OF

9 SELF-PROVED WILL

10 Sec. 251.107. SELF-PROVED HOLOGRAPHIC WILL

11 CHAPTER 251. FUNDAMENTAL REQUIREMENTS AND PROVISIONS RELATING TO

12 WILLS

13 SUBCHAPTER A. WILL FORMATION

14 Sec. 251.001. WHO MAY EXECUTE WILL. Under the rules and  
15 limitations prescribed by law, a person of sound mind has the right  
16 and power to make a last will and testament if, at the time the will  
17 is made, the person:

18 (1) is 18 years of age or older;

19 (2) is or has been married; or

20 (3) is a member of the armed forces of the United  
21 States, an auxiliary of the armed forces of the United States, or  
22 the United States Maritime Service. (Tex. Prob. Code, Sec. 57.)

23 Sec. 251.002. INTERESTS THAT MAY PASS BY WILL;  
24 DISINHERITANCE. (a) Subject to limitations prescribed by law, a  
25 person competent to make a last will and testament may devise under  
26 the will and testament all the estate, right, title, and interest in  
27 property the person has at the time of the person's death.

1 (b) A person who makes a last will and testament may:

2 (1) disinherit an heir; and

3 (2) direct the disposition of property or an interest  
4 passing under the will or by intestacy. (Tex. Prob. Code, Secs.  
5 58(a), (b).)

6 [Sections 251.003-251.050 reserved for expansion]

7 SUBCHAPTER B. WILL REQUIREMENTS

8 Sec. 251.051. WRITTEN, SIGNED, AND ATTESTED. Except as  
9 otherwise provided by law, a last will and testament must be:

10 (1) in writing;

11 (2) signed by:

12 (A) the testator in person; or

13 (B) another person on behalf of the testator:

14 (i) in the testator's presence; and

15 (ii) under the testator's direction; and

16 (3) attested by two or more credible witnesses who are  
17 at least 14 years of age and who subscribe their names to the will in  
18 their own handwriting in the testator's presence. (Tex. Prob.  
19 Code, Sec. 59(a) (part).)

20 Sec. 251.052. EXCEPTION FOR HOLOGRAPHIC WILLS.

21 Notwithstanding Section 251.051, a will written wholly in the  
22 testator's handwriting is not required to be attested by  
23 subscribing witnesses. (Tex. Prob. Code, Secs. 59(a) (part), 60  
24 (part).)

25 [Sections 251.053-251.100 reserved for expansion]

26 SUBCHAPTER C. SELF-PROVED WILLS

27 Sec. 251.101. SELF-PROVED WILL. A will to which a

1 self-proving affidavit subscribed and sworn to by the testator and  
2 witnesses is attached or annexed is a self-proved will. (Tex. Prob.  
3 Code, Sec. 59(b) (part).)

4 Sec. 251.102. PROBATE AND TREATMENT OF SELF-PROVED WILL.

5 (a) A self-proved will may be admitted to probate without the  
6 testimony of any subscribing witnesses if the testator and  
7 witnesses execute a self-proving affidavit.

8 (b) A self-proved will may not otherwise be treated  
9 differently than a will that is not self-proved. (Tex. Prob. Code,  
10 Secs. 59(a) (part), (c) (part).)

11 Sec. 251.103. PERIOD FOR MAKING ATTESTED WILLS SELF-PROVED.

12 A will or testament that meets the requirements of Section 251.051  
13 may be made self-proved at:

14 (1) the time of the execution of the will or testament;

15 or

16 (2) a later date during the lifetime of the testator  
17 and the witnesses. (Tex. Prob. Code, Sec. 59(a) (part).)

18 Sec. 251.104. REQUIREMENTS FOR SELF-PROVING AFFIDAVIT. (a)

19 An affidavit that is in form and content substantially as provided  
20 by Subsection (e) is a self-proving affidavit.

21 (b) A self-proving affidavit must be made by the testator  
22 and by the attesting witnesses before an officer authorized to  
23 administer oaths under the laws of this state. The officer shall  
24 affix the officer's official seal to the self-proving affidavit.

25 (c) The self-proving affidavit shall be attached or annexed  
26 to the will or testament.

27 (d) An affidavit that is in substantial compliance with the

1 form of the affidavit provided by Subsection (e), that is  
2 subscribed and acknowledged by the testator, and that is  
3 subscribed and sworn to by the attesting witnesses is sufficient to  
4 self-prove the will. No other affidavit or certificate of a  
5 testator is required to self-prove a will or testament other than  
6 the affidavit provided by Subsection (e).

7 (e) The form and content of the self-proving affidavit must  
8 be substantially as follows:

9 THE STATE OF TEXAS  
10 COUNTY OF \_\_\_\_\_

11 Before me, the undersigned authority, on this day personally  
12 appeared \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_,  
13 known to me to be the testator and the witnesses, respectively,  
14 whose names are subscribed to the annexed or foregoing instrument  
15 in their respective capacities, and, all of said persons being by me  
16 duly sworn, the said \_\_\_\_\_, testator, declared to me and  
17 to the said witnesses in my presence that said instrument is  
18 [his/her] last will and testament, and that [he/she] had willingly  
19 made and executed it as [his/her] free act and deed; and the said  
20 witnesses, each on [his/her] oath stated to me, in the presence and  
21 hearing of the said testator, that the said testator had declared to  
22 them that said instrument is [his/her] last will and testament, and  
23 that [he/she] executed same as such and wanted each of them to sign  
24 it as a witness; and upon their oaths each witness stated further  
25 that they did sign the same as witnesses in the presence of the said  
26 testator and at [his/her] request; that [he/she] was at that time  
27 eighteen years of age or over (or being under such age, was or had

1 been lawfully married, or was then a member of the armed forces of  
2 the United States, or an auxiliary of the armed forces of the United  
3 States, or the United States Maritime Service) and was of sound  
4 mind; and that each of said witnesses was then at least fourteen  
5 years of age.

6 \_\_\_\_\_  
7 Testator

8 \_\_\_\_\_  
9 Witness

10 \_\_\_\_\_  
11 Witness

12 Subscribed and sworn to before me by the said \_\_\_\_\_,  
13 testator, and by the said \_\_\_\_\_ and \_\_\_\_\_,  
14 witnesses, this \_\_\_\_\_ day of \_\_\_\_\_ A.D.  
15 \_\_\_\_\_.

16 (SEAL)  
17 (Signed) \_\_\_\_\_  
18 (Official Capacity of Officer)

19 (Tex. Prob. Code, Secs. 59(a) (part), (b) (part).)

20 Sec. 251.105. EFFECT OF SIGNATURE ON SELF-PROVING  
21 AFFIDAVIT. A signature on a self-proving affidavit is considered a  
22 signature to the will if necessary to prove that the will was signed  
23 by the testator or witnesses or both, except that, in that case, the  
24 will may not be considered a self-proved will. (Tex. Prob. Code,  
25 Sec. 59(b) (part).)

26 Sec. 251.106. CONTEST, REVOCATION, OR AMENDMENT OF  
27 SELF-PROVED WILL. A self-proved will may be contested, revoked, or  
28 amended by a codicil in the same manner as a will that is not



1 self-proved. (Tex. Prob. Code, Sec. 59(c) (part).)

2           Sec. 251.107. SELF-PROVED                   HOLOGRAPHIC                   WILL.

3 Notwithstanding any other provision of this subchapter, a will  
4 written wholly in the testator's handwriting may be made  
5 self-proved at any time during the testator's lifetime by the  
6 attachment or annexation to the will of an affidavit by the testator  
7 to the effect that:

8                   (1) the instrument is the testator's last will;

9                   (2) the testator was 18 years of age or older at the  
10 time the will was executed or, if the testator was younger than 18  
11 years of age, that the testator:

12                               (A) was or had been married; or

13                               (B) was a member of the armed forces of the United  
14 States, an auxiliary of the armed forces of the United States, or  
15 the United States Maritime Service at the time the will was  
16 executed;

17                   (3) the testator was of sound mind; and

18                   (4) the testator has not revoked the will. (Tex. Prob.  
19 Code, Sec. 60 (part).)

20                   CHAPTER 252. SAFEKEEPING AND CUSTODY OF WILLS

21                               SUBCHAPTER A. DEPOSIT OF WILL WITH COUNTY CLERK

22                   Sec. 252.001. WILL DEPOSIT; CERTIFICATE

23                   Sec. 252.002. SEALED WRAPPER REQUIRED

24                   Sec. 252.003. NUMBERING OF FILED WILLS AND

25   CORRESPONDING CERTIFICATES

26                   Sec. 252.004. INDEX

27                   [Sections 252.005-252.050 reserved for expansion]

1 SUBCHAPTER B. WILL DELIVERY DURING LIFE OF TESTATOR

2 Sec. 252.051. WILL DELIVERY

3 Sec. 252.052. SURRENDER OF CERTIFICATE OF DEPOSIT;

4 EXCEPTION

5 [Sections 252.053-252.100 reserved for expansion]

6 SUBCHAPTER C. ACTIONS BY COUNTY CLERK ON DEATH OF TESTATOR

7 Sec. 252.101. NOTIFICATION BY COUNTY CLERK

8 Sec. 252.102. WILL DELIVERY ON TESTATOR'S DEATH

9 Sec. 252.103. INSPECTION OF WILL BY COUNTY CLERK

10 Sec. 252.104. NOTICE AND DELIVERY OF WILL TO EXECUTOR

11 Sec. 252.105. NOTICE AND DELIVERY OF WILL TO DEVISEES

12 [Sections 252.106-252.150 reserved for expansion]

13 SUBCHAPTER D. LEGAL EFFECT OF WILL DEPOSIT

14 Sec. 252.151. DEPOSIT HAS NO LEGAL SIGNIFICANCE

15 Sec. 252.152. PRIOR DEPOSITED WILL IN RELATION TO

16 LATER WILL

17 Sec. 252.153. WILL DEPOSIT DOES NOT CONSTITUTE NOTICE

18 [Sections 252.154-252.200 reserved for expansion]

19 SUBCHAPTER E. DUTY AND LIABILITY OF CUSTODIAN OF ESTATE PAPERS

20 Sec. 252.201. WILL DELIVERY

21 Sec. 252.202. PERSONAL SERVICE ON CUSTODIAN OF ESTATE

22 PAPERS

23 Sec. 252.203. ARREST; CONFINEMENT

24 Sec. 252.204. DAMAGES

25 CHAPTER 252. SAFEKEEPING AND CUSTODY OF WILLS

26 SUBCHAPTER A. DEPOSIT OF WILL WITH COUNTY CLERK

27 Sec. 252.001. WILL DEPOSIT; CERTIFICATE. (a) A testator,

1 or another person for the testator, may deposit the testator's will  
2 with the county clerk of the county of the testator's residence.  
3 Before accepting the will for deposit, the clerk may require proof  
4 satisfactory to the clerk concerning the testator's identity and  
5 residence.

6 (b) The county clerk shall receive and keep the will on the  
7 payment of a \$5 fee.

8 (c) On the deposit of the will, the county clerk shall issue  
9 a certificate of deposit for the will. (Tex. Prob. Code, Sec. 71(a)  
10 (part).)

11 Sec. 252.002. SEALED WRAPPER REQUIRED. (a) A will intended  
12 to be deposited with a county clerk shall be enclosed in a sealed  
13 wrapper.

14 (b) The wrapper must be endorsed with:

15 (1) "Will of," followed by the name, address, and  
16 signature of the testator; and

17 (2) the name and current address of each person who is  
18 to be notified of the deposit of the will after the testator's  
19 death. (Tex. Prob. Code, Sec. 71(b).)

20 Sec. 252.003. NUMBERING OF FILED WILLS AND CORRESPONDING  
21 CERTIFICATES. (a) A county clerk shall number wills deposited with  
22 the clerk in consecutive order.

23 (b) A certificate of deposit issued under Section  
24 252.001(c) on receipt of a will must bear the same number as the  
25 will for which the certificate is issued. (Tex. Prob. Code, Sec.  
26 71(a) (part).)

27 Sec. 252.004. INDEX. A county clerk shall keep an index of

1 all wills deposited with the clerk under Section 252.001. (Tex.  
2 Prob. Code, Sec. 71(c).)

3 [Sections 252.005-252.050 reserved for expansion]

4 SUBCHAPTER B. WILL DELIVERY DURING LIFE OF TESTATOR

5 Sec. 252.051. WILL DELIVERY. During the lifetime of the  
6 testator, a will deposited with a county clerk under Subchapter A  
7 may be delivered only to:

8 (1) the testator; or

9 (2) another person authorized by the testator by a  
10 sworn written order. (Tex. Prob. Code, Sec. 71(d) (part).)

11 Sec. 252.052. SURRENDER OF CERTIFICATE OF DEPOSIT;  
12 EXCEPTION. (a) Except as provided by Subsection (b), on delivery  
13 of a will to the testator or a person authorized by the testator  
14 under Section 252.051, the certificate of deposit issued for the  
15 will must be surrendered by the person to whom delivery of the will  
16 is made.

17 (b) A county clerk may instead accept and file an affidavit  
18 by the testator stating that the certificate of deposit issued for  
19 the will has been lost, stolen, or destroyed. (Tex. Prob. Code,  
20 Sec. 71(d) (part).)

21 [Sections 252.053-252.100 reserved for expansion]

22 SUBCHAPTER C. ACTIONS BY COUNTY CLERK ON DEATH OF TESTATOR

23 Sec. 252.101. NOTIFICATION BY COUNTY CLERK. A county clerk  
24 shall notify, by registered mail, return receipt requested, each  
25 person named on the endorsement of the will wrapper that the will is  
26 on deposit in the clerk's office if:

27 (1) an affidavit is submitted to the clerk stating

1 that the testator has died; or

2 (2) the clerk receives other notice or proof of the  
3 testator's death sufficient to convince the clerk that the testator  
4 has died. (Tex. Prob. Code, Sec. 71(e) (part).)

5 Sec. 252.102. WILL DELIVERY ON TESTATOR'S DEATH. On the  
6 request of one or more persons notified under Section 252.101, the  
7 county clerk shall deliver the will that is the subject of the  
8 notice to the person or persons. The clerk shall obtain a receipt  
9 for delivery of the will. (Tex. Prob. Code, Sec. 71(e) (part).)

10 Sec. 252.103. INSPECTION OF WILL BY COUNTY CLERK. A county  
11 clerk shall open a will wrapper and inspect the will if:

12 (1) the notice required by Section 252.101 is returned  
13 as undelivered; or

14 (2) the clerk has accepted for deposit a will that does  
15 not specify on the will wrapper the person to whom the will is to be  
16 delivered on the testator's death. (Tex. Prob. Code, Sec. 71(e)  
17 (part).)

18 Sec. 252.104. NOTICE AND DELIVERY OF WILL TO EXECUTOR. If a  
19 county clerk inspects a will under Section 252.103 and the will  
20 names an executor, the clerk shall:

21 (1) notify the person named as executor, by registered  
22 mail, return receipt requested, that the will is on deposit with the  
23 clerk; and

24 (2) deliver, on request, the will to the person named  
25 as executor. (Tex. Prob. Code, Sec. 71(e) (part).)

26 Sec. 252.105. NOTICE AND DELIVERY OF WILL TO DEVISEES. (a)  
27 If a county clerk inspects a will under Section 252.103, the clerk

1 shall notify by registered mail, return receipt requested, the  
2 devisees named in the will that the will is on deposit with the  
3 clerk if:

4 (1) the will does not name an executor;

5 (2) the person named as executor in the will:

6 (A) has died; or

7 (B) fails to take the will before the 31st day  
8 after the date the notice required by Section 252.104 is mailed to  
9 the person; or

10 (3) the notice mailed to the person named as executor  
11 is returned as undelivered.

12 (b) On request, the county clerk shall deliver the will to  
13 any or all of the devisees notified under Subsection (a). (Tex.  
14 Prob. Code, Sec. 71(e) (part).)

15 [Sections 252.106-252.150 reserved for expansion]

16 SUBCHAPTER D. LEGAL EFFECT OF WILL DEPOSIT

17 Sec. 252.151. DEPOSIT HAS NO LEGAL SIGNIFICANCE. The  
18 provisions of Subchapter A providing for the deposit of a will with  
19 a county clerk during the lifetime of a testator are solely for the  
20 purpose of providing a safe and convenient repository for a will.  
21 For purposes of probate, a will deposited as provided by Subchapter  
22 A may not be treated differently than a will that has not been  
23 deposited. (Tex. Prob. Code, Sec. 71(f) (part).)

24 Sec. 252.152. PRIOR DEPOSITED WILL IN RELATION TO LATER  
25 WILL. A will that is not deposited as provided by Subchapter A  
26 shall be admitted to probate on proof that the will is the last will  
27 and testament of the testator, notwithstanding the fact that the

1 testator has a prior will that has been deposited in accordance with  
2 Subchapter A. (Tex. Prob. Code, Sec. 71(f) (part).)

3       Sec. 252.153. WILL DEPOSIT DOES NOT CONSTITUTE NOTICE. The  
4 deposit of a will as provided by Subchapter A does not constitute  
5 notice, constructive or otherwise, to any person as to the  
6 existence or the contents of the will. (Tex. Prob. Code, Sec.  
7 71(g).)

8       [Sections 252.154-252.200 reserved for expansion]

9       SUBCHAPTER E. DUTY AND LIABILITY OF CUSTODIAN OF ESTATE PAPERS

10       Sec. 252.201. WILL DELIVERY. On receiving notice of a  
11 testator's death, the person who has custody of the testator's will  
12 shall deliver the will to the clerk of the court that has  
13 jurisdiction of the testator's estate. (Tex. Prob. Code, Sec. 75  
14 (part).)

15       Sec. 252.202. PERSONAL SERVICE ON CUSTODIAN OF ESTATE  
16 PAPERS. On a sworn written complaint that a person has custody of  
17 the last will of a testator or any papers belonging to the estate of  
18 a testator or intestate, the judge of the court that has  
19 jurisdiction of the estate shall have the person cited by personal  
20 service to appear and show cause why the person should not deliver:

- 21           (1) the will to the court for probate; or  
22           (2) the papers to the executor or administrator.  
23 (Tex. Prob. Code, Sec. 75 (part).)

24       Sec. 252.203. ARREST; CONFINEMENT. On the return of a  
25 citation served under Section 252.202, if the judge is satisfied  
26 that the person served with the citation had custody of the will or  
27 papers at the time the complaint under that section was filed and

1 the person does not deliver the will or papers or show good cause  
2 why the will or papers have not been delivered, the judge may have  
3 the person arrested and confined until the person delivers the will  
4 or papers. (Tex. Prob. Code, Sec. 75 (part).)

5 Sec. 252.204. DAMAGES. (a) A person who refuses to deliver  
6 a will or papers described by Section 252.202 is liable to any  
7 person aggrieved by the refusal for all damages sustained as a  
8 result of the refusal.

9 (b) Damages may be recovered under this section in any court  
10 of competent jurisdiction. (Tex. Prob. Code, Sec. 75 (part).)

11 CHAPTER 253. CHANGE AND REVOCATION OF WILLS

12 Sec. 253.001. COURT MAY NOT PROHIBIT CHANGING A WILL

13 Sec. 253.002. REVOCATION OF WILL

14 CHAPTER 253. CHANGE AND REVOCATION OF WILLS

15 Sec. 253.001. COURT MAY NOT PROHIBIT CHANGING A WILL. (a)  
16 Notwithstanding Section 22.007(a), in this section, "court" means a  
17 constitutional county court, district court, or statutory county  
18 court, including a statutory probate court.

19 (b) A court may not prohibit a person from executing a new  
20 will or a codicil to an existing will. (Tex. Prob. Code, Sec. 69A.)

21 Sec. 253.002. REVOCATION OF WILL. A written will, or a  
22 clause or devise in a written will, may not be revoked, except by a  
23 subsequent will, codicil, or declaration in writing that is  
24 executed with like formalities, or by the testator destroying or  
25 canceling the same, or causing it to be destroyed or canceled in the  
26 testator's presence. (Tex. Prob. Code, Sec. 63.)



1 CHAPTER 254. VALIDITY OF CERTAIN PROVISIONS IN, AND CONTRACTS

2 RELATING TO, WILLS

3 Sec. 254.001. DEVICES TO TRUSTEES

4 Sec. 254.002. BEQUESTS TO CERTAIN SUBSCRIBING

5 WITNESSES

6 Sec. 254.003. DEVICES TO CERTAIN ATTORNEYS AND OTHER

7 PERSONS

8 Sec. 254.004. CONTRACTS CONCERNING WILLS OR DEVICES;

9 JOINT OR RECIPROCAL WILLS

10 CHAPTER 254. VALIDITY OF CERTAIN PROVISIONS IN, AND CONTRACTS

11 RELATING TO, WILLS

12 Sec. 254.001. DEVICES TO TRUSTEES. (a) A testator may  
13 validly devise property in a will to the trustee of a trust  
14 established or to be established:

15 (1) during the testator's lifetime by the testator,  
16 the testator and another person, or another person, including a  
17 funded or unfunded life insurance trust in which the settlor has  
18 reserved any or all rights of ownership of the insurance contracts;  
19 or

20 (2) at the testator's death by the testator's devise to  
21 the trustee, regardless of the existence, size, or character of the  
22 corpus of the trust, if:

23 (A) the trust is identified in the testator's  
24 will; and

25 (B) the terms of the trust are in:

26 (i) a written instrument, other than a  
27 will, executed before, with, or after the execution of the

1 testator's will; or

2 (ii) another person's will if that person  
3 predeceased the testator.

4 (b) A devise under Subsection (a) is not invalid because the  
5 trust:

6 (1) is amendable or revocable; or

7 (2) was amended after the execution of the will or the  
8 testator's death.

9 (c) Unless the testator's will provides otherwise, property  
10 devised to a trust described by Subsection (a) is not held under a  
11 testamentary trust of the testator. The property:

12 (1) becomes part of the trust to which the property is  
13 devised; and

14 (2) must be administered and disposed of according to  
15 the provisions of the instrument establishing the trust, including  
16 any amendment to the instrument made before or after the testator's  
17 death.

18 (d) Unless the testator's will provides otherwise, a  
19 revocation or termination of the trust before the testator's death  
20 causes the devise to lapse. (Tex. Prob. Code, Sec. 58a.)

21 Sec. 254.002. BEQUESTS TO CERTAIN SUBSCRIBING WITNESSES.

22 (a) Except as provided by Subsection (c), if a devisee under a will  
23 is also a subscribing witness to the will and the will cannot be  
24 otherwise established:

25 (1) the bequest is void; and

26 (2) the subscribing witness shall be allowed and  
27 compelled to appear and give the witness's testimony in the same

1 manner as if the bequest to the witness had not been made.

2 (b) Notwithstanding Subsection (a), if the subscribing  
3 witness described by that subsection would have been entitled to a  
4 share of the testator's estate had the testator died intestate, the  
5 witness is entitled to as much of that share as does not exceed the  
6 value of the bequest to the witness under the will.

7 (c) If the testimony of a subscribing witness described by  
8 Subsection (a) proving the will is corroborated by at least one  
9 disinterested and credible person who testifies that the  
10 subscribing witness's testimony is true and correct:

11 (1) the bequest to the subscribing witness is not void  
12 under Subsection (a); and

13 (2) the subscribing witness is not regarded as an  
14 incompetent or noncredible witness under Subchapters B and C,  
15 Chapter 251. (Tex. Prob. Code, Secs. 61, 62.)

16 Sec. 254.003. DEVISES TO CERTAIN ATTORNEYS AND OTHER  
17 PERSONS. (a) A devise of property in a will is void if the devise  
18 is made to:

19 (1) an attorney who prepares or supervises the  
20 preparation of the will;

21 (2) a parent, descendant of a parent, or employee of  
22 the attorney described by Subdivision (1); or

23 (3) the spouse of a person described by Subdivision  
24 (1) or (2).

25 (b) This section does not apply to:

26 (1) a devise made to a person who:

27 (A) is the testator's spouse;

1 (B) is an ascendant or descendant of the  
2 testator; or

3 (C) is related within the third degree by  
4 consanguinity or affinity to the testator; or

5 (2) a bona fide purchaser for value from a devisee in a  
6 will. (Tex. Prob. Code, Sec. 58b.)

7 Sec. 254.004. CONTRACTS CONCERNING WILLS OR DEVISES; JOINT  
8 OR RECIPROCAL WILLS. (a) A contract executed or entered into on or  
9 after September 1, 1979, to make a will or devise, or not to revoke a  
10 will or devise, may be established only by:

11 (1) a written agreement that is binding and  
12 enforceable; or

13 (2) a will stating:

14 (A) that a contract exists; and

15 (B) the material provisions of the contract.

16 (b) The execution of a joint will or reciprocal wills does  
17 not constitute by itself sufficient evidence of the existence of a  
18 contract. (Tex. Prob. Code, Sec. 59A.)

19 CHAPTER 255. CONSTRUCTION AND INTERPRETATION OF WILLS

20 SUBCHAPTER A. CERTAIN PERSONAL PROPERTY EXCLUDED FROM DEVISE OR  
21 LEGACY

22 Sec. 255.001. DEFINITIONS

23 Sec. 255.002. CERTAIN PERSONAL PROPERTY EXCLUDED FROM  
24 DEVISE OF REAL PROPERTY

25 Sec. 255.003. CONTENTS EXCLUDED FROM LEGACY OF  
26 PERSONAL PROPERTY

27 [Sections 255.004-255.050 reserved for expansion]

1                   SUBCHAPTER B. SUCCESSION BY PRETERMITTED CHILD

2   Sec. 255.051.   DEFINITION

3   Sec. 255.052.   APPLICABILITY AND CONSTRUCTION

4   Sec. 255.053.   SUCCESSION BY PRETERMITTED CHILD IF  
5                   TESTATOR HAS LIVING CHILD AT WILL'S  
6                   EXECUTION

7   Sec. 255.054.   SUCCESSION BY PRETERMITTED CHILD IF  
8                   TESTATOR HAS NO LIVING CHILD AT WILL'S  
9                   EXECUTION

10   Sec. 255.055.   RATABLE RECOVERY BY PRETERMITTED CHILD  
11                   FROM PORTIONS PASSING TO OTHER  
12                   BENEFICIARIES

13                   [Sections 255.056-255.100 reserved for expansion]

14                   SUBCHAPTER C. LIFETIME GIFTS AS SATISFACTION OF DEVISE

15   Sec. 255.101.   CERTAIN LIFETIME GIFTS CONSIDERED  
16                   SATISFACTION OF DEVISE

17   Sec. 255.102.   VALUATION OF PROPERTY

18                   [Sections 255.103-255.150 reserved for expansion]

19                   SUBCHAPTER D. FAILURE OF DEVISE; DISPOSITION OF PROPERTY TO  
20                   DEVISEE WHO PREDECEASES TESTATOR

21   Sec. 255.151.   APPLICABILITY OF SUBCHAPTER

22   Sec. 255.152.   FAILURE OF DEVISE; EFFECT ON RESIDUARY  
23                   ESTATE

24   Sec. 255.153.   DISPOSITION OF PROPERTY TO CERTAIN  
25                   DEVISEES WHO PREDECEASE TESTATOR

26   Sec. 255.154.   DEVISEE UNDER CLASS GIFT

27                   [Sections 255.155-255.200 reserved for expansion]

1 SUBCHAPTER E. WILL PROVISION FOR MANAGEMENT OF SEPARATE PROPERTY  
2 BY SURVIVING SPOUSE

3 Sec. 255.201. MANAGEMENT OF SEPARATE PROPERTY BY  
4 SURVIVING SPOUSE

5 [Sections 255.202-255.250 reserved for expansion]

6 SUBCHAPTER F. DEVISE OF SECURITIES

7 Sec. 255.251. DEFINITIONS

8 Sec. 255.252. INCREASE IN SECURITIES; ACCESSIONS

9 Sec. 255.253. CASH DISTRIBUTION NOT INCLUDED IN DEVISE

10 [Sections 255.254-255.300 reserved for expansion]

11 SUBCHAPTER G. EXONERATION OF DEBTS SECURED BY SPECIFIC DEVISES

12 Sec. 255.301. NO RIGHT TO EXONERATION OF DEBTS

13 Sec. 255.302. EXCEPTION

14 Sec. 255.303. RIGHTS OF CERTAIN CREDITORS AND OTHER  
15 PERSONS

16 [Sections 255.304-255.350 reserved for expansion]

17 SUBCHAPTER H. EXERCISE OF POWER OF APPOINTMENT THROUGH WILL

18 Sec. 255.351. EXERCISE OF POWER OF APPOINTMENT THROUGH  
19 WILL

20 CHAPTER 255. CONSTRUCTION AND INTERPRETATION OF WILLS

21 SUBCHAPTER A. CERTAIN PERSONAL PROPERTY EXCLUDED FROM DEVISE OR  
22 LEGACY

23 Sec. 255.001. DEFINITIONS. In this subchapter:

24 (1) "Contents" means tangible personal property,  
25 other than titled personal property, found inside of or on a  
26 specifically devised item. The term includes clothing, pictures,  
27 furniture, coin collections, and other items of tangible personal

1 property that:

2 (A) do not require a formal transfer of title;  
3 and

4 (B) are located in another item of tangible  
5 personal property such as a cedar chest or other furniture.

6 (2) "Titled personal property" includes all tangible  
7 personal property represented by a certificate of title,  
8 certificate of ownership, written label, marking, or designation  
9 that signifies ownership by a person. The term includes a motor  
10 vehicle, motor home, motorboat, or other similar property that  
11 requires a formal transfer of title. (Tex. Prob. Code, Sec. 58(d).)

12 Sec. 255.002. CERTAIN PERSONAL PROPERTY EXCLUDED FROM  
13 DEVISE OF REAL PROPERTY. A devise of real property does not include  
14 any personal property located on, or associated with, the real  
15 property or any contents of personal property located on the real  
16 property unless the will directs that the personal property or  
17 contents are included in the devise. (Tex. Prob. Code, Sec. 58(c)  
18 (part).)

19 Sec. 255.003. CONTENTS EXCLUDED FROM LEGACY OF PERSONAL  
20 PROPERTY. A legacy of personal property does not include any  
21 contents of the property unless the will directs that the contents  
22 are included in the legacy. (Tex. Prob. Code, Sec. 58(c) (part).)

23 [Sections 255.004-255.050 reserved for expansion]

24 SUBCHAPTER B. SUCCESSION BY PRETERMITTED CHILD

25 Sec. 255.051. DEFINITION. In this subchapter,  
26 "pretermitted child" means a testator's child who is born or  
27 adopted:

1           (1) during the testator's lifetime or after the  
2 testator's death; and

3           (2) after the execution of the testator's will. (Tex.  
4 Prob. Code, Sec. 67(c).)

5           Sec. 255.052. APPLICABILITY AND CONSTRUCTION.       (a)  
6 Sections 255.053 and 255.054 apply only to a pretermitted child who  
7 is not:

8           (1) mentioned in the testator's will;

9           (2) provided for in the testator's will; or

10          (3) otherwise provided for by the testator.

11          (b) For purposes of this subchapter, a child is provided for  
12 or a provision is made for a child if a disposition of property to or  
13 for the benefit of the pretermitted child, whether vested or  
14 contingent, is made:

15          (1) in the testator's will, including a devise to a  
16 trustee under Section 254.001; or

17          (2) outside the testator's will and is intended to take  
18 effect at the testator's death. (Tex. Prob. Code, Secs. 67(a)  
19 (part), (d).)

20          Sec. 255.053. SUCCESSION BY PRETERMITTED CHILD IF TESTATOR  
21 HAS LIVING CHILD AT WILL'S EXECUTION. (a) If no provision is made  
22 in the testator's last will for any child of the testator who is  
23 living when the testator executes the will, a pretermitted child  
24 succeeds to the portion of the testator's separate and community  
25 estate, other than any portion of the estate devised to the  
26 pretermitted child's other parent, to which the pretermitted child  
27 would have been entitled under Section 201.001 if the testator had



1 died intestate without a surviving spouse.

2 (b) If a provision, whether vested or contingent, is made in  
3 the testator's last will for one or more children of the testator  
4 who are living when the testator executes the will, a pretermitted  
5 child is entitled only to a portion of the disposition made to  
6 children under the will that is equal to the portion the child would  
7 have received if the testator had:

8 (1) included all of the testator's pretermitted  
9 children with the children on whom benefits were conferred under  
10 the will; and

11 (2) given an equal share of those benefits to each  
12 child.

13 (c) To the extent feasible, the interest in the testator's  
14 estate to which the pretermitted child is entitled under Subsection  
15 (b) must be of the same character, whether an equitable or legal  
16 life estate or in fee, as the interest that the testator conferred  
17 on the testator's children under the will. (Tex. Prob. Code, Sec.  
18 67(a)(1).)

19 Sec. 255.054. SUCCESSION BY PRETERMITTED CHILD IF TESTATOR  
20 HAS NO LIVING CHILD AT WILL'S EXECUTION. If a testator has no child  
21 living when the testator executes the testator's last will, a  
22 pretermitted child succeeds to the portion of the testator's  
23 separate and community estate, other than any portion of the estate  
24 devised to the pretermitted child's other parent, to which the  
25 pretermitted child would have been entitled under Section 201.001  
26 if the testator had died intestate without a surviving spouse.  
27 (Tex. Prob. Code, Sec. 67(a)(2).)

1           Sec. 255.055.   RATABLE RECOVERY BY PRETERMITTED CHILD FROM  
2 PORTIONS PASSING TO OTHER BENEFICIARIES. (a) A pretermitted child  
3 may recover the share of the testator's estate to which the child is  
4 entitled from the testator's other children under Section  
5 255.053(b) or from the testamentary beneficiaries under Sections  
6 255.053(a) and 255.054, other than the pretermitted child's other  
7 parent, ratably, out of the portions of the estate passing to those  
8 persons under the will.

9           (b) In abating the interests of the beneficiaries described  
10 by Subsection (a), the character of the testamentary plan adopted  
11 by the testator must be preserved to the maximum extent possible.  
12 (Tex. Prob. Code, Sec. 67(b).)

13           [Sections 255.056-255.100 reserved for expansion]

14           SUBCHAPTER C. LIFETIME GIFTS AS SATISFACTION OF DEVISE

15           Sec. 255.101.   CERTAIN       LIFETIME       GIFTS       CONSIDERED  
16 SATISFACTION OF DEVISE. Property that a testator gives to a person  
17 during the testator's lifetime is considered a satisfaction, either  
18 wholly or partly, of a devise to the person if:

19           (1) the testator's will provides for deduction of the  
20 lifetime gift from the devise;

21           (2) the testator declares in a contemporaneous writing  
22 that the lifetime gift is to be deducted from, or is in satisfaction  
23 of, the devise; or

24           (3) the devisee acknowledges in writing that the  
25 lifetime gift is in satisfaction of the devise. (Tex. Prob. Code,  
26 Sec. 37C(a).)

27           Sec. 255.102.   VALUATION OF PROPERTY. Property given in

1 partial satisfaction of a devise shall be valued as of the earlier  
2 of:

3 (1) the date the devisee acquires possession of or  
4 enjoys the property; or

5 (2) the date of the testator's death. (Tex. Prob.  
6 Code, Sec. 37C(b).)

7 [Sections 255.103-255.150 reserved for expansion]

8 SUBCHAPTER D. FAILURE OF DEVISE; DISPOSITION OF PROPERTY TO  
9 DEVISEE WHO PREDECEASES TESTATOR

10 Sec. 255.151. APPLICABILITY OF SUBCHAPTER. This subchapter  
11 applies unless the testator's last will and testament provides  
12 otherwise. For example, a devise in the testator's will stating "to  
13 my surviving children" or "to such of my children as shall survive  
14 me" prevents the application of Sections 255.153 and 255.154.  
15 (Tex. Prob. Code, Sec. 68(e).)

16 Sec. 255.152. FAILURE OF DEVISE; EFFECT ON RESIDUARY  
17 ESTATE. (a) Except as provided by Sections 255.153 and 255.154, if  
18 a devise, other than a residuary devise, fails for any reason, the  
19 devise becomes a part of the residuary estate.

20 (b) Except as provided by Sections 255.153 and 255.154, if  
21 the residuary estate is devised to two or more persons and the share  
22 of one of the residuary devisees fails for any reason, that  
23 residuary devisee's share passes to the other residuary devisees,  
24 in proportion to the residuary devisee's interest in the residuary  
25 estate.

26 (c) Except as provided by Sections 255.153 and 255.154, the  
27 residuary estate passes as if the testator had died intestate if all

1 residuary devisees:

2           (1) are deceased at the time the testator's will is  
3 executed;

4           (2) fail to survive the testator; or

5           (3) are treated as if the residuary devisees  
6 predeceased the testator. (Tex. Prob. Code, Secs. 68(b), (c), (d).)

7           Sec. 255.153. DISPOSITION OF PROPERTY TO CERTAIN DEVISEES  
8 WHO PREDECEASE TESTATOR. (a) If a devisee who is a descendant of  
9 the testator or a descendant of a testator's parent is deceased at  
10 the time the will is executed, fails to survive the testator, or is  
11 treated as if the devisee predeceased the testator by Chapter 121 or  
12 otherwise, the descendants of the devisee who survived the testator  
13 by 120 hours take the devised property in place of the devisee.

14           (b) Devised property to which Subsection (a) applies shall  
15 be divided into the number of shares equal to the total number of  
16 surviving descendants in the nearest degree of kinship to the  
17 devisee and deceased persons in the same degree of kinship to the  
18 devisee whose descendants survived the testator. Each surviving  
19 descendant in the nearest degree of kinship to the devisee receives  
20 one share, and the share of each deceased person in the same degree  
21 of kinship to the devisee whose descendants survived the testator  
22 is divided among the descendants by representation. (Tex. Prob.  
23 Code, Sec. 68(a) (part).)

24           Sec. 255.154. DEVISEE UNDER CLASS GIFT. For purposes of  
25 this subchapter, a person who would have been a devisee under a  
26 class gift if the person had survived the testator is treated as a  
27 devisee unless the person died before the date the will was

1 executed. (Tex. Prob. Code, Sec. 68(a) (part).)

2 [Sections 255.155-255.200 reserved for expansion]

3 SUBCHAPTER E. WILL PROVISION FOR MANAGEMENT OF SEPARATE PROPERTY  
4 BY SURVIVING SPOUSE

5 Sec. 255.201. MANAGEMENT OF SEPARATE PROPERTY BY SURVIVING  
6 SPOUSE. (a) Subject to Subsection (b) and any other restrictions  
7 imposed by the will, a spouse by last will and testament may give to  
8 the survivor of the marriage the power to:

9 (1) keep the testator's separate property together  
10 until each distributee becomes of legal age; and

11 (2) manage and control the separate property under the  
12 provisions of law relating to community property.

13 (b) A child or distributee entitled to any portion of the  
14 separate property described by Subsection (a) is entitled to  
15 receive the child's or distributee's distributive portion of the  
16 estate at any time after the child or distributee becomes of legal  
17 age. (Tex. Prob. Code, Sec. 70.)

18 [Sections 255.202-255.250 reserved for expansion]

19 SUBCHAPTER F. DEVISE OF SECURITIES

20 Sec. 255.251. DEFINITIONS. In this subchapter:

21 (1) "Securities" has the meaning assigned by Section  
22 4, The Securities Act (Article 581-4, Vernon's Texas Civil  
23 Statutes).

24 (2) "Stock" means securities. (Tex. Prob. Code, Sec.  
25 70A(c).)

26 Sec. 255.252. INCREASE IN SECURITIES; ACCESSIONS. Unless  
27 the will of a testator clearly provides otherwise, a devise of

1 securities that are owned by the testator on the date the will is  
2 executed includes the following additional securities subsequently  
3 acquired by the testator as a result of the testator's ownership of  
4 the devised securities:

5           (1) securities of the same organization acquired  
6 because of an action initiated by the organization or any  
7 successor, related, or acquiring organization, including stock  
8 splits, stock dividends, and new issues of stock acquired in a  
9 reorganization, redemption, or exchange, other than securities  
10 acquired through the exercise of purchase options or through a plan  
11 of reinvestment; and

12           (2) securities of another organization acquired as a  
13 result of a merger, consolidation, reorganization, or other  
14 distribution by the organization or any successor, related, or  
15 acquiring organization, including stock splits, stock dividends,  
16 and new issues of stock acquired in a reorganization, redemption,  
17 or exchange, other than securities acquired through the exercise of  
18 purchase options or through a plan of reinvestment. (Tex. Prob.  
19 Code, Sec. 70A(a).)

20           Sec. 255.253. CASH DISTRIBUTION NOT INCLUDED IN DEVISE.  
21 Unless the will of a testator clearly provides otherwise, a devise  
22 of securities does not include a cash distribution relating to the  
23 securities that accrues before the testator's death, regardless of  
24 whether the distribution is paid before the testator's death.  
25 (Tex. Prob. Code, Sec. 70A(b).)

26           [Sections 255.254-255.300 reserved for expansion]

1 SUBCHAPTER G. EXONERATION OF DEBTS SECURED BY SPECIFIC DEVISES

2 Sec. 255.301. NO RIGHT TO EXONERATION OF DEBTS. Except as  
3 provided by Section 255.302, a specific devise passes to the  
4 devisee subject to each debt secured by the property that exists on  
5 the date of the testator's death, and the devisee is not entitled to  
6 exoneration from the testator's estate for payment of the debt.  
7 (Tex. Prob. Code, Sec. 71A(a).)

8 Sec. 255.302. EXCEPTION. A specific devise does not pass to  
9 the devisee subject to a debt described by Section 255.301 if the  
10 will in which the devise is made specifically states that the devise  
11 passes without being subject to the debt. A general provision in  
12 the will stating that debts are to be paid is not a specific  
13 statement for purposes of this section. (Tex. Prob. Code, Sec.  
14 71A(b).)

15 Sec. 255.303. RIGHTS OF CERTAIN CREDITORS AND OTHER  
16 PERSONS. (a) Section 255.301 does not affect the rights of  
17 creditors provided under this title or the rights of other persons  
18 or entities provided under Chapters 102 and 353.

19 (b) A debt described by Section 255.301 that a creditor  
20 elects to have allowed and approved as a matured secured claim shall  
21 be paid in accordance with Sections 355.153(b), (c), (d), and (e).  
22 (Tex. Prob. Code, Sec. 71A(c).)

23 [Sections 255.304-255.350 reserved for expansion]

24 SUBCHAPTER H. EXERCISE OF POWER OF APPOINTMENT THROUGH WILL

25 Sec. 255.351. EXERCISE OF POWER OF APPOINTMENT THROUGH  
26 WILL. A testator may not exercise a power of appointment through a  
27 residuary clause in the testator's will or through a will providing

1 for general disposition of all of the testator's property unless:

2 (1) the testator makes a specific reference to the  
3 power in the will; or

4 (2) there is some other indication in writing that the  
5 testator intended to include the property subject to the power in  
6 the will. (Tex. Prob. Code, Sec. 58c.)

7 CHAPTER 256. PROBATE OF WILLS GENERALLY

8 SUBCHAPTER A. EFFECTIVENESS OF WILL; PERIOD FOR PROBATE

9 Sec. 256.001. WILL NOT EFFECTIVE UNTIL PROBATED

10 Sec. 256.002. PROBATE BEFORE DEATH VOID

11 Sec. 256.003. PERIOD FOR ADMITTING WILL TO PROBATE;

12 PROTECTION FOR CERTAIN PURCHASERS

13 [Sections 256.004-256.050 reserved for expansion]

14 SUBCHAPTER B. APPLICATION REQUIREMENTS

15 Sec. 256.051. ELIGIBLE APPLICANTS FOR PROBATE OF WILL

16 Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF

17 WRITTEN WILL GENERALLY

18 Sec. 256.053. FILING OF WRITTEN WILL WITH APPLICATION

19 FOR PROBATE GENERALLY REQUIRED

20 Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN

21 NO WRITTEN WILL IS PRODUCED

22 [Sections 256.055-256.100 reserved for expansion]

23 SUBCHAPTER C. PROCEDURES FOR SECOND APPLICATION

24 Sec. 256.101. PROCEDURE ON FILING OF SECOND

25 APPLICATION WHEN ORIGINAL APPLICATION

26 HAS NOT BEEN HEARD



1 Sec. 256.102. PROCEDURE ON FILING OF SECOND

2 APPLICATION FOR PROBATE AFTER FIRST

3 WILL HAS BEEN ADMITTED

4 Sec. 256.103. PROCEDURE WHEN APPLICATION FOR PROBATE

5 IS FILED AFTER LETTERS OF

6 ADMINISTRATION HAVE BEEN GRANTED

7 [Sections 256.104-256.150 reserved for expansion]

8 SUBCHAPTER D. REQUIRED PROOF FOR PROBATE OF WILL

9 Sec. 256.151. GENERAL PROOF REQUIREMENTS

10 Sec. 256.152. ADDITIONAL PROOF REQUIRED FOR PROBATE OF

11 WILL

12 Sec. 256.153. AUTHORIZED METHODS OF PROVING ATTESTED

13 WRITTEN WILL

14 Sec. 256.154. AUTHORIZED METHODS OF PROVING

15 HOLOGRAPHIC WILL

16 Sec. 256.155. PROCEDURES FOR DEPOSITIONS WHEN NO

17 CONTEST IS FILED

18 Sec. 256.156. PROOF OF WRITTEN WILL NOT PRODUCED IN

19 COURT

20 Sec. 256.157. TESTIMONY REGARDING PROBATE TO BE

21 COMMITTED TO WRITING

22 [Sections 256.158-256.200 reserved for expansion]

23 SUBCHAPTER E. ADMISSION OF WILL TO, AND PROCEDURES FOLLOWING,

24 PROBATE

25 Sec. 256.201. ADMISSION OF WILL TO PROBATE

26 Sec. 256.202. CUSTODY OF PROBATED WILL

1 Sec. 256.203. ESTABLISHING CONTENTS OF WILL NOT IN

2 COURT'S CUSTODY

3 Sec. 256.204. PERIOD FOR CONTEST

4 CHAPTER 256. PROBATE OF WILLS GENERALLY

5 SUBCHAPTER A. EFFECTIVENESS OF WILL; PERIOD FOR PROBATE

6 Sec. 256.001. WILL NOT EFFECTIVE UNTIL PROBATED. Except as  
7 provided by Subtitle K with respect to foreign wills, a will is not  
8 effective to prove title to, or the right to possession of, any  
9 property disposed of by the will until the will is admitted to  
10 probate. (Tex. Prob. Code, Sec. 94.)

11 Sec. 256.002. PROBATE BEFORE DEATH VOID. The probate of a  
12 will of a living person is void. (Tex. Prob. Code, Sec. 72(a)  
13 (part).)

14 Sec. 256.003. PERIOD FOR ADMITTING WILL TO PROBATE;  
15 PROTECTION FOR CERTAIN PURCHASERS. (a) A will may not be admitted  
16 to probate after the fourth anniversary of the testator's death  
17 unless it is shown by proof that the applicant for the probate of  
18 the will was not in default in failing to present the will for  
19 probate on or before the fourth anniversary of the testator's  
20 death.

21 (b) Letters testamentary may not be issued if a will is  
22 admitted to probate after the fourth anniversary of the testator's  
23 death.

24 (c) A person who for value, in good faith, and without  
25 knowledge of the existence of a will purchases property from a  
26 decedent's heirs after the fourth anniversary of the decedent's  
27 death shall be held to have good title to the interest that the heir

1 or heirs would have had in the absence of a will, as against the  
2 claim of any devisee under any will that is subsequently offered for  
3 probate. (Tex. Prob. Code, Sec. 73.)

4 [Sections 256.004-256.050 reserved for expansion]

5 SUBCHAPTER B. APPLICATION REQUIREMENTS

6 Sec. 256.051. ELIGIBLE APPLICANTS FOR PROBATE OF WILL. (a)

7 An executor named in a will or an interested person may file an  
8 application with the court for an order admitting a will to probate,  
9 whether the will is:

- 10 (1) written or unwritten;  
11 (2) in the applicant's possession or not;  
12 (3) lost;  
13 (4) destroyed; or  
14 (5) outside of this state.

15 (b) An application for the probate of a will may be combined  
16 with an application for the appointment of an executor or  
17 administrator. A person interested in either the probate or the  
18 appointment may apply for both. (Tex. Prob. Code, Sec. 76 (part).)

19 Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF  
20 WRITTEN WILL GENERALLY. (a) An application for the probate of a  
21 written will must state and aver the following to the extent each is  
22 known to the applicant or can, with reasonable diligence, be  
23 ascertained by the applicant:

- 24 (1) each applicant's name and domicile;  
25 (2) the testator's name, domicile, and, if known, age,  
26 on the date of the testator's death;  
27 (3) the fact, time, and place of the testator's death;

1           (4) facts showing that the court with which the  
2 application is filed has venue;

3           (5) that the testator owned property, including a  
4 statement generally describing the property and the property's  
5 probable value;

6           (6) the date of the will;

7           (7) the name and residence of:

8                 (A) any executor named in the will or, if no  
9 executor is named, of the person to whom the applicant desires that  
10 letters be issued; and

11                 (B) each subscribing witness to the will, if any;

12           (8) whether one or more children born to or adopted by  
13 the testator after the testator executed the will survived the  
14 testator and, if so, the name of each of those children;

15           (9) whether the testator was ever divorced and, if so,  
16 when and from whom;

17           (10) whether the state, a governmental agency of the  
18 state, or a charitable organization is named in the will as a  
19 devisee; and

20           (11) that the executor named in the will, the  
21 applicant, or another person to whom the applicant desires that  
22 letters be issued is not disqualified by law from accepting the  
23 letters.

24           (b) If an applicant does not state or aver any matter  
25 required by Subsection (a) in the application, the application must  
26 state the reason the matter is not stated and averred. (Tex. Prob.  
27 Code, Sec. 81(a) (part).)

1           Sec. 256.053. FILING OF WRITTEN WILL WITH APPLICATION FOR  
2 PROBATE GENERALLY REQUIRED. (a) An applicant for the probate of a  
3 written will shall file the will with the application if the will is  
4 in the applicant's control.

5           (b) A will filed under Subsection (a) must remain in the  
6 custody of the county clerk unless removed from the clerk's custody  
7 by a court order. (Tex. Prob. Code, Sec. 81(a) (part).)

8           Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO  
9 WRITTEN WILL IS PRODUCED. In addition to the requirements for an  
10 application under Section 256.052, if an applicant for the probate  
11 of a written will cannot produce the will in court, the application  
12 must state:

- 13                   (1) the reason the will cannot be produced;
- 14                   (2) the contents of the will, as far as known; and
- 15                   (3) the name, age, marital status, and address, if  
16 known, and the relationship to the testator, if any, of:
- 17                           (A) each devisee;
- 18                           (B) each person who would inherit as an heir of  
19 the testator in the absence of a valid will; and
- 20                           (C) in the case of partial intestacy, each heir  
21 of the testator. (Tex. Prob. Code, Sec. 81(b).)

22                   [Sections 256.055-256.100 reserved for expansion]

23                   SUBCHAPTER C. PROCEDURES FOR SECOND APPLICATION

24           Sec. 256.101. PROCEDURE ON FILING OF SECOND APPLICATION  
25 WHEN ORIGINAL APPLICATION HAS NOT BEEN HEARD. If, after an  
26 application for the probate of a decedent's will or the appointment  
27 of a personal representative for the decedent's estate has been

1 filed but before the application is heard, an application is filed  
2 for the probate of a will of the same decedent that has not  
3 previously been presented for probate, the court shall:

4 (1) hear both applications together; and

5 (2) determine:

6 (A) if both applications are for the probate of a  
7 will, which will should be admitted to probate, if either, or  
8 whether the decedent died intestate; or

9 (B) if only one application is for the probate of  
10 a will, whether the will should be admitted to probate or whether  
11 the decedent died intestate. (Tex. Prob. Code, Sec. 83(a).)

12 Sec. 256.102. PROCEDURE ON FILING OF SECOND APPLICATION FOR  
13 PROBATE AFTER FIRST WILL HAS BEEN ADMITTED. If, after a decedent's  
14 will has been admitted to probate, an application is filed for the  
15 probate of a will of the same decedent that has not previously been  
16 presented for probate, the court shall determine:

17 (1) whether the former probate should be set aside;  
18 and

19 (2) if the former probate is to be set aside, whether:

20 (A) the other will should be admitted to probate;

21 or

22 (B) the decedent died intestate. (Tex. Prob.  
23 Code, Sec. 83(b).)

24 Sec. 256.103. PROCEDURE WHEN APPLICATION FOR PROBATE IS  
25 FILED AFTER LETTERS OF ADMINISTRATION HAVE BEEN GRANTED. (a) A  
26 lawful will of a decedent that is discovered after letters of  
27 administration have been granted on the decedent's estate may be

1 proved in the manner provided for the proof of wills.

2 (b) The court shall allow an executor named in a will  
3 described by Subsection (a) who is not disqualified to qualify and  
4 accept as executor. The court shall revoke the previously granted  
5 letters of administration.

6 (c) If an executor is not named in a will described by  
7 Subsection (a), or if the executor named is disqualified or dead,  
8 renounces the executorship, fails or is unable to accept and  
9 qualify before the 21st day after the date of the probate of the  
10 will, or fails to present the will for probate before the 31st day  
11 after the discovery of the will, the court, as in other cases, shall  
12 grant an administration with the will annexed of the testator's  
13 estate.

14 (d) An act performed by the first administrator before the  
15 executor described by Subsection (b) or the administrator with the  
16 will annexed described by Subsection (c) qualifies is as valid as if  
17 no will had been discovered. (Tex. Prob. Code, Sec. 83(c).)

18 [Sections 256.104-256.150 reserved for expansion]

19 SUBCHAPTER D. REQUIRED PROOF FOR PROBATE OF WILL

20 Sec. 256.151. GENERAL PROOF REQUIREMENTS. An applicant for  
21 the probate of a will must prove to the court's satisfaction that:

- 22 (1) the testator is dead;
- 23 (2) four years have not elapsed since the date of the  
24 testator's death and before the application;
- 25 (3) the court has jurisdiction and venue over the  
26 estate;
- 27 (4) citation has been served and returned in the

1 manner and for the period required by this title; and

2 (5) the person for whom letters testamentary or of  
3 administration are sought is entitled by law to the letters and is  
4 not disqualified. (Tex. Prob. Code, Sec. 88(a) (part).)

5 Sec. 256.152. ADDITIONAL PROOF REQUIRED FOR PROBATE OF  
6 WILL. (a) An applicant for the probate of a will must prove the  
7 following to the court's satisfaction, in addition to the proof  
8 required by Section 256.151, to obtain the probate:

9 (1) the testator did not revoke the will; and

10 (2) if the will is not self-proved as provided by this  
11 title, the testator:

12 (A) executed the will with the formalities and  
13 solemnities and under the circumstances required by law to make the  
14 will valid; and

15 (B) at the time of executing the will, was of  
16 sound mind and:

17 (i) was 18 years of age or older;

18 (ii) was or had been married; or

19 (iii) was a member of the armed forces of  
20 the United States, an auxiliary of the armed forces of the United  
21 States, or the United States Maritime Service.

22 (b) A will that is self-proved as provided by this title is  
23 not required to have any additional proof that the will was executed  
24 with the formalities and solemnities and under the circumstances  
25 required to make the will valid. (Tex. Prob. Code, Secs. 84(a),  
26 88(b).)

27 Sec. 256.153. AUTHORIZED METHODS OF PROVING ATTESTED



1 WRITTEN WILL. (a) An attested written will produced in court that  
2 is not self-proved as provided by this title may be proved in the  
3 manner provided by this section.

4 (b) A will described by Subsection (a) may be proved by the  
5 sworn testimony or affidavit of one or more of the subscribing  
6 witnesses to the will taken in open court.

7 (c) If all the witnesses to a will described by Subsection  
8 (a) are nonresidents of the county or the witnesses who are  
9 residents of the county are unable to attend court, the will may be  
10 proved:

11 (1) by the sworn testimony of one or more of the  
12 witnesses by written or oral deposition taken in the same manner and  
13 under the same rules as depositions are taken in other civil  
14 actions;

15 (2) if no opposition in writing to the will is filed on  
16 or before the date set for the hearing on the will, by the sworn  
17 testimony or affidavit of two witnesses taken in open court, or by  
18 deposition as provided by Subdivision (1), to the signature or the  
19 handwriting evidenced by the signature of:

20 (A) one or more of the attesting witnesses; or

21 (B) the testator, if the testator signed the  
22 will; or

23 (3) if it is shown under oath to the court's  
24 satisfaction that, after a diligent search was made, only one  
25 witness can be found who can make the required proof, by the sworn  
26 testimony or affidavit of that witness taken in open court, or by  
27 deposition as provided by Subdivision (1), to a signature, or the

1 handwriting evidenced by a signature, described by Subdivision (2).

2 (d) If none of the witnesses to a will described by  
3 Subsection (a) are living, or if each of the witnesses is a member  
4 of the armed forces or the armed forces reserves of the United  
5 States, an auxiliary of the armed forces or armed forces reserves,  
6 or the United States Maritime Service and is beyond the court's  
7 jurisdiction, the will may be proved:

8 (1) by two witnesses to the handwriting of one or both  
9 of the subscribing witnesses to the will or the testator, if the  
10 testator signed the will, by:

11 (A) sworn testimony or affidavit taken in open  
12 court; or

13 (B) written or oral deposition taken in the same  
14 manner and under the same rules as depositions are taken in other  
15 civil actions; or

16 (2) if it is shown under oath to the court's  
17 satisfaction that, after a diligent search was made, only one  
18 witness can be found who can make the required proof, by the sworn  
19 testimony or affidavit of that witness taken in open court, or by  
20 deposition as provided by Subdivision (1), to a signature or the  
21 handwriting described by Subdivision (1). (Tex. Prob. Code, Sec.  
22 84(b).)

23 Sec. 256.154. AUTHORIZED METHODS OF PROVING HOLOGRAPHIC  
24 WILL. A will wholly in the handwriting of the testator that is not  
25 self-proved as provided by this title may be proved by two witnesses  
26 to the testator's handwriting. The evidence may be by:

27 (1) sworn testimony or affidavit taken in open court;

1 or

2 (2) if the witnesses are nonresidents of the county or  
3 are residents who are unable to attend court, written or oral  
4 deposition taken in the same manner and under the same rules as  
5 depositions are taken in other civil actions. (Tex. Prob. Code,  
6 Sec. 84(c).)

7 Sec. 256.155. PROCEDURES FOR DEPOSITIONS WHEN NO CONTEST IS  
8 FILED. (a) This section, rather than Sections 256.153(c) and (d)  
9 and 256.154 regarding the taking of depositions under the same  
10 rules as depositions in other civil actions, applies if no contest  
11 has been filed with respect to an application for the probate of a  
12 will.

13 (b) Depositions for the purpose of establishing a will may  
14 be taken in the manner provided by Section 51.203 for the taking of  
15 depositions when there is no opposing party or attorney of record on  
16 whom notice and copies of interrogatories may be served. (Tex.  
17 Prob. Code, Sec. 84(d).)

18 Sec. 256.156. PROOF OF WRITTEN WILL NOT PRODUCED IN COURT.  
19 (a) A written will that cannot be produced in court must be proved  
20 in the same manner as provided in Section 256.153 for an attested  
21 written will or Section 256.154 for a holographic will, as  
22 applicable. The same amount and character of testimony is required  
23 to prove the written will not produced in court as is required to  
24 prove a written will produced in court.

25 (b) In addition to the proof required by Subsection (a):

26 (1) the cause of the nonproduction of a written will  
27 not produced in court must be proved, which must be sufficient to

1 satisfy the court that the will cannot by any reasonable diligence  
2 be produced; and

3 (2) the contents of the will must be substantially  
4 proved by the testimony of a credible witness who has read the will,  
5 has heard the will read, or can identify a copy of the will. (Tex.  
6 Prob. Code, Sec. 85.)

7 Sec. 256.157. TESTIMONY REGARDING PROBATE TO BE COMMITTED  
8 TO WRITING. (a) Except as provided by Subsection (b), all  
9 testimony taken in open court on the hearing of an application to  
10 probate a will must be:

11 (1) committed to writing at the time the testimony is  
12 taken;

13 (2) subscribed and sworn to in open court by the  
14 witness; and

15 (3) filed by the clerk.

16 (b) In a contested case, the court, on the agreement of the  
17 parties or, if there is no agreement, on the court's own motion, may  
18 waive the requirements of Subsection (a). (Tex. Prob. Code, Sec.  
19 87.)

20 [Sections 256.158-256.200 reserved for expansion]

21 SUBCHAPTER E. ADMISSION OF WILL TO, AND PROCEDURES FOLLOWING,  
22 PROBATE

23 Sec. 256.201. ADMISSION OF WILL TO PROBATE. If the court is  
24 satisfied on the completion of hearing an application for the  
25 probate of a will that the will should be admitted to probate, the  
26 court shall enter an order admitting the will to probate. Certified  
27 copies of the will and the order admitting the will to probate, or

1 of the record of the will and order, and the record of testimony,  
2 may be:

3 (1) recorded in other counties; and

4 (2) used in evidence, as the originals may be used, on  
5 the trial of the same matter in any other court when taken to that  
6 court by appeal or otherwise. (Tex. Prob. Code, Sec. 89.)

7 Sec. 256.202. CUSTODY OF PROBATED WILL. An original will  
8 and the probate of the will shall be deposited in the office of the  
9 county clerk of the county in which the will was probated. The will  
10 and probate of the will shall remain in that office except during a  
11 time the will and the probate of the will are removed for inspection  
12 to another place on an order of the court where the will was  
13 probated. If that court orders the original will to be removed to  
14 another place for inspection:

15 (1) the person removing the will shall give a receipt  
16 for the will; and

17 (2) the court clerk shall make and retain a copy of the  
18 will. (Tex. Prob. Code, Sec. 90.)

19 Sec. 256.203. ESTABLISHING CONTENTS OF WILL NOT IN COURT'S  
20 CUSTODY. If for any reason a written will is not in the court's  
21 custody, the court shall find the contents of the will by written  
22 order. Certified copies of the contents as established by the order  
23 may be:

24 (1) recorded in other counties; and

25 (2) used in evidence, as certified copies of written  
26 wills in the custody of the court may be used. (Tex. Prob. Code,  
27 Sec. 91.)

1           Sec. 256.204. PERIOD FOR CONTEST. (a) After a will is  
2 admitted to probate, an interested person may commence a suit to  
3 contest the validity thereof not later than the second anniversary  
4 of the date the will was admitted to probate, except that an  
5 interested person may commence a suit to cancel a will for forgery  
6 or other fraud not later than the second anniversary of the date the  
7 forgery or fraud was discovered.

8           (b) Notwithstanding Subsection (a), an incapacitated person  
9 may commence the contest under that subsection on or before the  
10 second anniversary of the date the person's disabilities are  
11 removed. (Tex. Prob. Code, Sec. 93.)

12           CHAPTER 257. PROBATE OF WILL AS MUNIMENT OF TITLE

13                   SUBCHAPTER A. AUTHORIZATION

14   Sec. 257.001. PROBATE OF WILL AS MUNIMENT OF TITLE

15                   AUTHORIZED

16           [Sections 257.002-257.050 reserved for expansion]

17                   SUBCHAPTER B. APPLICATION AND PROOF REQUIREMENTS

18   Sec. 257.051. CONTENTS OF APPLICATION GENERALLY

19   Sec. 257.052. FILING OF WRITTEN WILL WITH APPLICATION

20                   GENERALLY REQUIRED

21   Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN

22                   NO WRITTEN WILL IS PRODUCED

23   Sec. 257.054. PROOF REQUIRED

24           [Sections 257.055-257.100 reserved for expansion]

25                   SUBCHAPTER C. ORDER ADMITTING WILL; REPORT

26   Sec. 257.101. DECLARATORY JUDGMENT CONSTRUING WILL

1 Sec. 257.102. AUTHORITY OF CERTAIN PERSONS ACTING IN

2 ACCORDANCE WITH ORDER

3 Sec. 257.103. REPORT BY APPLICANT AFTER PROBATE

4 CHAPTER 257. PROBATE OF WILL AS MUNIMENT OF TITLE

5 SUBCHAPTER A. AUTHORIZATION

6 Sec. 257.001. PROBATE OF WILL AS MUNIMENT OF TITLE

7 AUTHORIZED. A court may admit a will to probate as a muniment of  
8 title if the court is satisfied that the will should be admitted to  
9 probate and the court:

10 (1) is satisfied that the testator's estate does not  
11 owe an unpaid debt, other than any debt secured by a lien on real  
12 estate; or

13 (2) finds for another reason that there is no  
14 necessity for administration of the estate. (Tex. Prob. Code, Sec.  
15 89C(a).)

16 [Sections 257.002-257.050 reserved for expansion]

17 SUBCHAPTER B. APPLICATION AND PROOF REQUIREMENTS

18 Sec. 257.051. CONTENTS OF APPLICATION GENERALLY. (a) An  
19 application for the probate of a will as a muniment of title must  
20 state and aver the following to the extent each is known to the  
21 applicant or can, with reasonable diligence, be ascertained by the  
22 applicant:

23 (1) each applicant's name and domicile;

24 (2) the testator's name, domicile, and, if known, age,  
25 on the date of the testator's death;

26 (3) the fact, time, and place of the testator's death;

27 (4) facts showing that the court with which the

1 application is filed has venue;

2 (5) that the testator owned property, including a  
3 statement generally describing the property and the property's  
4 probable value;

5 (6) the date of the will;

6 (7) the name and residence of:

7 (A) any executor named in the will; and

8 (B) each subscribing witness to the will, if any;

9 (8) whether one or more children born to or adopted by  
10 the testator after the testator executed the will survived the  
11 testator and, if so, the name of each of those children;

12 (9) that the testator's estate does not owe an unpaid  
13 debt, other than any debt secured by a lien on real estate;

14 (10) whether the testator was ever divorced and, if  
15 so, when and from whom; and

16 (11) whether the state, a governmental agency of the  
17 state, or a charitable organization is named in the will as a  
18 devisee.

19 (b) If an applicant does not state or aver any matter  
20 required by Subsection (a) in the application, the application must  
21 state the reason the matter is not stated and averred. (Tex. Prob.  
22 Code, Sec. 89A(a) (part).)

23 Sec. 257.052. FILING OF WRITTEN WILL WITH APPLICATION  
24 GENERALLY REQUIRED. (a) An applicant for the probate of a written  
25 will as a muniment of title shall file the will with the application  
26 if the will is in the applicant's control.

27 (b) A will filed under Subsection (a) must remain in the



1 custody of the county clerk unless removed from the clerk's custody  
2 by court order. (Tex. Prob. Code, Sec. 89A(a) (part).)

3 Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO  
4 WRITTEN WILL IS PRODUCED. In addition to the requirements for an  
5 application under Section 257.051, if an applicant for the probate  
6 of a written will as a muniment of title cannot produce the will in  
7 court, the application must state:

8 (1) the reason the will cannot be produced;

9 (2) the contents of the will, to the extent known; and

10 (3) the name, age, marital status, and address, if  
11 known, and the relationship to the testator, if any, of:

12 (A) each devisee;

13 (B) each person who would inherit as an heir of  
14 the testator in the absence of a valid will; and

15 (C) in the case of partial intestacy, each heir  
16 of the testator. (Tex. Prob. Code, Sec. 89A(b).)

17 Sec. 257.054. PROOF REQUIRED. An applicant for the probate  
18 of a will as a muniment of title must prove to the court's  
19 satisfaction that:

20 (1) the testator is dead;

21 (2) four years have not elapsed since the date of the  
22 testator's death and before the application;

23 (3) the court has jurisdiction and venue over the  
24 estate;

25 (4) citation has been served and returned in the  
26 manner and for the period required by this title;

27 (5) the testator's estate does not owe an unpaid debt,

1 other than any debt secured by a lien on real estate;

2 (6) the testator did not revoke the will; and

3 (7) if the will is not self-proved in the manner  
4 provided by this title, the testator:

5 (A) executed the will with the formalities and  
6 solemnities and under the circumstances required by law to make the  
7 will valid; and

8 (B) at the time of executing the will was of sound  
9 mind and:

10 (i) was 18 years of age or older;

11 (ii) was or had been married; or

12 (iii) was a member of the armed forces of  
13 the United States, an auxiliary of the armed forces of the United  
14 States, or the United States Maritime Service. (Tex. Prob. Code,  
15 Sec. 89B.)

16 [Sections 257.055-257.100 reserved for expansion]

17 SUBCHAPTER C. ORDER ADMITTING WILL; REPORT

18 Sec. 257.101. DECLARATORY JUDGMENT CONSTRUING WILL. (a)  
19 On application and notice as provided by Chapter 37, Civil Practice  
20 and Remedies Code, the court may hear evidence and include in an  
21 order probating a will as a muniment of title a declaratory  
22 judgment:

23 (1) construing the will, if a question of construction  
24 of the will exists; or

25 (2) determining those persons who are entitled to  
26 receive property under the will and the persons' shares or  
27 interests in the estate, if a person who is entitled to property

1 under the provisions of the will cannot be ascertained solely by  
2 reference to the will.

3 (b) A declaratory judgment under this section is conclusive  
4 in any suit between a person omitted from the judgment and a bona  
5 fide purchaser for value who purchased property after entry of the  
6 judgment without actual notice of the claim of the omitted person to  
7 an interest in the estate.

8 (c) A person who delivered the testator's property to a  
9 person declared to be entitled to the property under the  
10 declaratory judgment under this section or engaged in any other  
11 transaction with the person in good faith after entry of the  
12 judgment is not liable to any person for actions taken in reliance  
13 on the judgment. (Tex. Prob. Code, Sec. 89C(b).)

14 Sec. 257.102. AUTHORITY OF CERTAIN PERSONS ACTING IN  
15 ACCORDANCE WITH ORDER. (a) An order admitting a will to probate as  
16 a muniment of title constitutes sufficient legal authority for each  
17 person who owes money to the testator's estate, has custody of  
18 property, acts as registrar or transfer agent of any evidence of  
19 interest, indebtedness, property, or right belonging to the estate,  
20 or purchases from or otherwise deals with the estate, to pay or  
21 transfer without administration the applicable asset without  
22 liability to a person described in the will as entitled to receive  
23 the asset.

24 (b) A person who is entitled to property under the  
25 provisions of a will admitted to probate as a muniment of title is  
26 entitled to deal with and treat the property in the same manner as  
27 if the record of title to the property was vested in the person's

1 name. (Tex. Prob. Code, Sec. 89C(c).)

2 Sec. 257.103. REPORT BY APPLICANT AFTER PROBATE. (a)  
3 Except as provided by Subsection (b), not later than the 180th day  
4 after the date a will is admitted to probate as a muniment of title,  
5 the applicant for the probate of the will shall file with the court  
6 clerk a sworn affidavit stating specifically the terms of the will  
7 that have been fulfilled and the terms that have not been fulfilled.

8 (b) The court may:

9 (1) waive the requirement under Subsection (a); or

10 (2) extend the time for filing the affidavit under  
11 Subsection (a).

12 (c) The failure of an applicant for probate of a will to file  
13 the affidavit required by Subsection (a) does not affect title to  
14 property passing under the terms of the will. (Tex. Prob. Code,  
15 Sec. 89C(d).)

16 CHAPTER 258. CITATIONS AND NOTICES RELATING TO PROBATE OF WILL

17 SUBCHAPTER A. CITATIONS WITH RESPECT TO APPLICATIONS FOR PROBATE  
18 OF WILL

19 Sec. 258.001. CITATION ON APPLICATION FOR PROBATE OF  
20 WILL PRODUCED IN COURT

21 Sec. 258.002. CITATION ON APPLICATION FOR PROBATE OF  
22 WILL NOT PRODUCED IN COURT

23 Sec. 258.003. COURT ACTION PROHIBITED BEFORE SERVICE  
24 OF CITATION

25 [Sections 258.004-258.050 reserved for expansion]

1 SUBCHAPTER B. NOTICES WITH RESPECT TO APPLICATION TO PROBATE WILL  
2 AFTER THE PERIOD FOR PROBATE

3 Sec. 258.051. NOTICE TO HEIRS

4 Sec. 258.052. APPOINTMENT OF ATTORNEY AD LITEM

5 Sec. 258.053. PREVIOUSLY PROBATED WILL

6 [Sections 258.054-258.100 reserved for expansion]

7 SUBCHAPTER C. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE

8 Sec. 258.101. SERVICE BY PUBLICATION OR OTHER  
9 SUBSTITUTED SERVICE

10 CHAPTER 258. CITATIONS AND NOTICES RELATING TO PROBATE OF WILL

11 SUBCHAPTER A. CITATIONS WITH RESPECT TO APPLICATIONS FOR PROBATE  
12 OF WILL

13 Sec. 258.001. CITATION ON APPLICATION FOR PROBATE OF WILL  
14 PRODUCED IN COURT. (a) On the filing with the clerk of an  
15 application for the probate of a written will produced in court, the  
16 clerk shall issue a citation to all parties interested in the  
17 estate.

18 (b) The citation required by Subsection (a) shall be served  
19 by posting and must state:

20 (1) that the application has been filed;

21 (2) the nature of the application;

22 (3) the testator's name;

23 (4) the applicant's name;

24 (5) the time when the court will act on the  
25 application; and

26 (6) that any person interested in the estate may  
27 appear at the time stated in the citation to contest the

1 application. (Tex. Prob. Code, Sec. 128(a) (part).)

2           Sec. 258.002. CITATION ON APPLICATION FOR PROBATE OF WILL  
3 NOT PRODUCED IN COURT. (a) On the filing of an application for the  
4 probate of a written will that cannot be produced in court, the  
5 clerk shall issue a citation to all parties interested in the  
6 estate. The citation must:

7                   (1) contain substantially the statements made in the  
8 application for probate;

9                   (2) identify the court that will act on the  
10 application; and

11                   (3) state the time and place of the court's action on  
12 the application.

13           (b) The citation required by Subsection (a) shall be served  
14 on the testator's heirs by personal service if the heirs are  
15 residents of this state and their addresses are known.

16           (c) Service of the citation required by Subsection (a) may  
17 be made by publication if:

18                   (1) the heirs are not residents of this state;

19                   (2) the names or addresses of the heirs are unknown; or

20                   (3) the heirs are transient persons. (Tex. Prob.  
21 Code, Sec. 128(b).)

22           Sec. 258.003. COURT ACTION PROHIBITED BEFORE SERVICE OF  
23 CITATION. A court may not act on an application for the probate of a  
24 will until service of citation has been made in the manner provided  
25 by this subchapter. (Tex. Prob. Code, Sec. 128(c) (part).)

26                   [Sections 258.004-258.050 reserved for expansion]

1 SUBCHAPTER B. NOTICES WITH RESPECT TO APPLICATION TO PROBATE WILL

2 AFTER THE PERIOD FOR PROBATE

3 Sec. 258.051. NOTICE TO HEIRS. (a) Except as provided by  
4 Subsection (c), an applicant for the probate of a will under Section  
5 256.003(a) must give notice by service of process to each of the  
6 testator's heirs whose address can be ascertained by the applicant  
7 with reasonable diligence.

8 (b) The notice required by Subsection (a) must:

9 (1) contain a statement that:

10 (A) the testator's property will pass to the  
11 testator's heirs if the will is not admitted to probate; and

12 (B) the person offering the testator's will for  
13 probate may not be in default for failing to present the will for  
14 probate during the four-year period immediately following the  
15 testator's death; and

16 (2) be given before the probate of the testator's will.

17 (c) Notice otherwise required by Subsection (a) is not  
18 required to be given to an heir who has delivered to the court an  
19 affidavit signed by the heir that:

20 (1) contains the statement described by Subsection  
21 (b)(1); and

22 (2) states that the heir does not object to the offer  
23 of the testator's will for probate. (Tex. Prob. Code, Secs.  
24 128B(a), (b), (c).)

25 Sec. 258.052. APPOINTMENT OF ATTORNEY AD LITEM. If an  
26 applicant described by Section 258.051(a) cannot, with reasonable  
27 diligence, ascertain the address of any of the testator's heirs,

1 the court shall appoint an attorney ad litem to protect the  
2 interests of the testator's unknown heirs after an application for  
3 the probate of a will is made under Section 256.003(a). (Tex. Prob.  
4 Code, Sec. 128B(d).)

5 Sec. 258.053. PREVIOUSLY PROBATED WILL. With respect to an  
6 application under Section 256.003(a) for the probate of a will of a  
7 testator who has had another will admitted to probate, this  
8 subchapter applies so as to require notice to the beneficiaries of  
9 the testator's probated will instead of to the testator's heirs.  
10 (Tex. Prob. Code, Sec. 128B(e).)

11 [Sections 258.054-258.100 reserved for expansion]

12 SUBCHAPTER C. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE

13 Sec. 258.101. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED  
14 SERVICE. Notwithstanding any other provision of this chapter, if  
15 an attempt to make service under this chapter is unsuccessful,  
16 service may be made in the manner provided by Rule 109 or 109a,  
17 Texas Rules of Civil Procedure, for the service of a citation on a  
18 party by publication or other substituted service. (Tex. Prob.  
19 Code, Sec. 129A.)

20 [Chapters 259-300 reserved for expansion]

21 SUBTITLE G. INITIAL APPOINTMENT OF PERSONAL REPRESENTATIVE AND

22 OPENING OF ADMINISTRATION

23 CHAPTER 301. APPLICATION FOR LETTERS TESTAMENTARY OR OF

24 ADMINISTRATION

25 SUBCHAPTER A. PERIOD FOR APPLICATION FOR LETTERS

26 Sec. 301.001. ADMINISTRATION BEFORE DEATH VOID



1 Sec. 301.002. PERIOD FOR FILING APPLICATION FOR  
2 LETTERS TESTAMENTARY OR OF  
3 ADMINISTRATION

4 [Sections 301.003-301.050 reserved for expansion]

5 SUBCHAPTER B. APPLICATION REQUIREMENTS

6 Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS

7 Sec. 301.052. CONTENTS OF APPLICATION FOR LETTERS OF  
8 ADMINISTRATION

9 [Sections 301.053-301.100 reserved for expansion]

10 SUBCHAPTER C. OPPOSITION TO CERTAIN APPLICATIONS

11 Sec. 301.101. OPPOSITION TO APPLICATION FOR LETTERS OF  
12 ADMINISTRATION

13 [Sections 301.102-301.150 reserved for expansion]

14 SUBCHAPTER D. REQUIRED PROOF FOR ISSUANCE OF LETTERS

15 Sec. 301.151. GENERAL PROOF REQUIREMENTS

16 Sec. 301.152. ADDITIONAL PROOF REQUIRED FOR LETTERS  
17 TESTAMENTARY

18 Sec. 301.153. ADDITIONAL PROOF REQUIRED FOR LETTERS OF  
19 ADMINISTRATION; EFFECT OF FINDING NO  
20 NECESSITY FOR ADMINISTRATION EXISTS

21 Sec. 301.154. PROOF REQUIRED WHEN LETTERS HAVE  
22 PREVIOUSLY BEEN GRANTED

23 [Sections 301.155-301.200 reserved for expansion]

24 SUBCHAPTER E. PREVENTION OF ADMINISTRATION

25 Sec. 301.201. METHOD OF PREVENTING ADMINISTRATION  
26 REQUESTED BY CREDITOR

27 Sec. 301.202. SUIT ON BOND

1 Sec. 301.203. BOND SECURED BY LIEN

2 CHAPTER 301. APPLICATION FOR LETTERS TESTAMENTARY OR OF  
3 ADMINISTRATION

4 SUBCHAPTER A. PERIOD FOR APPLICATION FOR LETTERS

5 Sec. 301.001. ADMINISTRATION BEFORE DEATH VOID. The  
6 administration of an estate of a living person is void. (Tex. Prob.  
7 Code, Sec. 72(a) (part).)

8 Sec. 301.002. PERIOD FOR FILING APPLICATION FOR LETTERS  
9 TESTAMENTARY OR OF ADMINISTRATION. (a) Except as provided by  
10 Subsection (b), an application for the grant of letters  
11 testamentary or of administration of an estate must be filed not  
12 later than the fourth anniversary of the decedent's death.

13 (b) This section does not apply if administration is  
14 necessary to receive or recover property due a decedent's estate.  
15 (Tex. Prob. Code, Sec. 74.)

16 [Sections 301.003-301.050 reserved for expansion]

17 SUBCHAPTER B. APPLICATION REQUIREMENTS

18 Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS. An executor  
19 named in a will or an interested person may file an application with  
20 the court for:

21 (1) the appointment of the executor named in the will;

22 or

23 (2) the appointment of an administrator, if:

24 (A) there is a will, but:

25 (i) no executor is named in the will; or

26 (ii) the executor named in the will is  
27 disqualified, refuses to serve, is dead, or resigns; or

1 (B) there is no will. (Tex. Prob. Code, Sec. 76  
2 (part).)

3 Sec. 301.052. CONTENTS OF APPLICATION FOR LETTERS OF  
4 ADMINISTRATION. An application for letters of administration when  
5 no will is alleged to exist must state:

6 (1) the applicant's name, domicile, and, if any,  
7 relationship to the decedent;

8 (2) the decedent's name and that the decedent died  
9 intestate;

10 (3) the fact, time, and place of the decedent's death;

11 (4) facts necessary to show that the court with which  
12 the application is filed has venue;

13 (5) whether the decedent owned property and, if so,  
14 include a statement of the property's probable value;

15 (6) the name, age, marital status, and address, if  
16 known, and the relationship to the decedent of each of the  
17 decedent's heirs;

18 (7) if known by the applicant at the time the applicant  
19 files the application, whether one or more children were born to or  
20 adopted by the decedent and, if so, the name, birth date, and place  
21 of birth of each child;

22 (8) if known by the applicant at the time the applicant  
23 files the application, whether the decedent was ever divorced and,  
24 if so, when and from whom;

25 (9) that a necessity exists for administration of the  
26 decedent's estate and an allegation of the facts that show that  
27 necessity; and

1           (10) that the applicant is not disqualified by law  
2 from acting as administrator. (Tex. Prob. Code, Sec. 82.)

3           [Sections 301.053-301.100 reserved for expansion]

4           SUBCHAPTER C. OPPOSITION TO CERTAIN APPLICATIONS

5           Sec. 301.101. OPPOSITION TO APPLICATION FOR LETTERS OF  
6 ADMINISTRATION. An interested person may, at any time before an  
7 application for letters of administration is granted, file an  
8 opposition to the application in writing and may apply for the grant  
9 of letters to the interested person or any other person. On the  
10 trial, the court, considering the applicable provisions of this  
11 code, shall grant letters to the person that seems best entitled to  
12 the letters without notice other than the notice given on the  
13 original application. (Tex. Prob. Code, Sec. 179.)

14          [Sections 301.102-301.150 reserved for expansion]

15          SUBCHAPTER D. REQUIRED PROOF FOR ISSUANCE OF LETTERS

16          Sec. 301.151. GENERAL PROOF REQUIREMENTS. An applicant for  
17 the issuance of letters testamentary or of administration of an  
18 estate must prove to the court's satisfaction that:

19           (1) the person whose estate is the subject of the  
20 application is dead;

21           (2) four years have not elapsed since the date of the  
22 decedent's death and before the application;

23           (3) the court has jurisdiction and venue over the  
24 estate;

25           (4) citation has been served and returned in the  
26 manner and for the period required by this title; and

27           (5) the person for whom letters testamentary or of

1 administration are sought is entitled by law to the letters and is  
2 not disqualified. (Tex. Prob. Code, Sec. 88(a) (part).)

3 Sec. 301.152. ADDITIONAL PROOF REQUIRED FOR LETTERS  
4 TESTAMENTARY. If letters testamentary are to be granted, it must  
5 appear to the court that:

6 (1) the proof required for the probate of the will has  
7 been made; and

8 (2) the person to whom the letters are to be granted is  
9 named as executor in the will. (Tex. Prob. Code, Sec. 88(c).)

10 Sec. 301.153. ADDITIONAL PROOF REQUIRED FOR LETTERS OF  
11 ADMINISTRATION; EFFECT OF FINDING NO NECESSITY FOR ADMINISTRATION  
12 EXISTS. (a) If letters of administration are to be granted, the  
13 applicant for the letters must prove to the court's satisfaction  
14 that a necessity for an administration of the estate exists.

15 (b) If an application is filed for letters of administration  
16 but the court finds that no necessity for an administration of the  
17 estate exists, the court shall recite in the court's order refusing  
18 the application that no necessity for an administration exists.

19 (c) A court order containing a recital that no necessity for  
20 an administration of the estate exists constitutes sufficient legal  
21 authority for each person who owes money, has custody of property,  
22 or acts as registrar or transfer agent of any evidence of interest,  
23 indebtedness, property, or right belonging to the estate, and to  
24 each person purchasing or otherwise dealing with the estate, for  
25 payment or transfer to the distributees.

26 (d) A distributee is entitled to enforce by suit the  
27 distributee's right to payment or transfer described by Subsection

1 (c). (Tex. Prob. Code, Secs. 88(d), 180.)

2 Sec. 301.154. PROOF REQUIRED WHEN LETTERS HAVE PREVIOUSLY  
3 BEEN GRANTED. If letters testamentary or of administration have  
4 previously been granted with respect to an estate, an applicant for  
5 the granting of subsequent letters must show only that the person  
6 for whom the letters are sought is entitled by law to the letters  
7 and is not disqualified. (Tex. Prob. Code, Sec. 88(e).)

8 [Sections 301.155-301.200 reserved for expansion]

9 SUBCHAPTER E. PREVENTION OF ADMINISTRATION

10 Sec. 301.201. METHOD OF PREVENTING ADMINISTRATION  
11 REQUESTED BY CREDITOR. (a) If a creditor files an application for  
12 letters of administration of an estate, another interested person  
13 who does not desire the administration can defeat the application  
14 by:

15 (1) paying the creditor's claim;

16 (2) proving to the court's satisfaction that the  
17 creditor's claim is fictitious, fraudulent, illegal, or barred by  
18 limitation; or

19 (3) executing a bond that is:

20 (A) payable to, and to be approved by, the judge  
21 in an amount that is twice the amount of the creditor's claim; and

22 (B) conditioned on the obligors paying the claim  
23 on the establishment of the claim by suit in any court in the county  
24 having jurisdiction of the amount.

25 (b) A bond executed and approved under Subsection (a)(3)  
26 must be filed with the county clerk. (Tex. Prob. Code, Secs. 80(a),  
27 (b) (part).)

1           Sec. 301.202. SUIT ON BOND. Any creditor for whose  
2 protection a bond is executed under Section 301.201(a)(3) may sue  
3 on the bond in the creditor's own name to recover the creditor's  
4 claim. (Tex. Prob. Code, Sec. 80(b) (part).)

5           Sec. 301.203. BOND SECURED BY LIEN. If a bond is executed  
6 and approved under Section 301.201(a)(3), a lien exists on all of  
7 the estate in the possession of the distributees, and those  
8 claiming under the distributees with notice of the lien, to secure  
9 the ultimate payment of the bond. (Tex. Prob. Code, Sec. 80(c).)

10                           [Chapter 302 reserved for expansion]

11           CHAPTER 303. CITATIONS AND NOTICES IN GENERAL ON OPENING OF  
12                           ADMINISTRATION

13           Sec. 303.001. CITATION ON APPLICATION FOR ISSUANCE OF  
14                           LETTERS OF ADMINISTRATION

15           Sec. 303.002. COURT ACTION PROHIBITED BEFORE SERVICE  
16                           OF CITATION

17           Sec. 303.003. SERVICE BY PUBLICATION OR OTHER  
18                           SUBSTITUTED SERVICE

19           CHAPTER 303. CITATIONS AND NOTICES IN GENERAL ON OPENING OF  
20                           ADMINISTRATION

21           Sec. 303.001. CITATION ON APPLICATION FOR ISSUANCE OF  
22 LETTERS OF ADMINISTRATION. (a) On the filing with the clerk of an  
23 application for letters of administration, the clerk shall issue a  
24 citation to all parties interested in the estate.

25           (b) The citation required by Subsection (a) shall be served  
26 by posting and must state:

27                           (1) that the application has been filed;

1 (2) the nature of the application;  
2 (3) the decedent's name;  
3 (4) the applicant's name;  
4 (5) the time when the court will act on the  
5 application; and

6 (6) that any person interested in the estate may  
7 appear at the time stated in the citation to contest the  
8 application. (Tex. Prob. Code, Sec. 128(a) (part).)

9 Sec. 303.002. COURT ACTION PROHIBITED BEFORE SERVICE OF  
10 CITATION. A court may not act on an application for the issuance of  
11 letters of administration until service of citation has been made  
12 in the manner provided by this chapter. (Tex. Prob. Code, Sec.  
13 128(c) (part).)

14 Sec. 303.003. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED  
15 SERVICE. Notwithstanding any other provision of this chapter, if  
16 an attempt to make service under this chapter is unsuccessful,  
17 service may be made in the manner provided by Rule 109 or 109a,  
18 Texas Rules of Civil Procedure, for the service of a citation on a  
19 party by publication or other substituted service. (Tex. Prob.  
20 Code, Sec. 129A.)

21 CHAPTER 304. PERSONS WHO MAY SERVE AS PERSONAL REPRESENTATIVES

22 Sec. 304.001. ORDER OF PERSONS QUALIFIED TO SERVE AS  
23 PERSONAL REPRESENTATIVE

24 Sec. 304.002. RENOUNCING RIGHT TO SERVE AS PERSONAL  
25 REPRESENTATIVE

26 Sec. 304.003. PERSONS DISQUALIFIED TO SERVE AS  
27 EXECUTOR OR ADMINISTRATOR



1 CHAPTER 304. PERSONS WHO MAY SERVE AS PERSONAL REPRESENTATIVES

2 Sec. 304.001. ORDER OF PERSONS QUALIFIED TO SERVE AS  
3 PERSONAL REPRESENTATIVE. (a) The court shall grant letters  
4 testamentary or of administration to persons qualified to act, in  
5 the following order:

6 (1) the person named as executor in the decedent's  
7 will;

8 (2) the decedent's surviving spouse;

9 (3) the principal devisee of the decedent;

10 (4) any devisee of the decedent;

11 (5) the next of kin of the decedent;

12 (6) a creditor of the decedent;

13 (7) any person of good character residing in the  
14 county who applies for the letters; and

15 (8) any other person who is not disqualified under  
16 Section 304.003.

17 (b) For purposes of Subsection (a)(5), the decedent's next  
18 of kin:

19 (1) is determined in accordance with order of descent,  
20 with the person nearest in order of descent first, and so on; and

21 (2) includes a person and the person's descendants who  
22 legally adopted the decedent or who have been legally adopted by the  
23 decedent.

24 (c) If applicants for letters testamentary or of  
25 administration are equally entitled to the letters, the court:

26 (1) shall grant the letters to the applicant who, in  
27 the judgment of the court, is most likely to administer the estate

1 advantageously; or

2           (2) may grant the letters to two or more of those  
3 applicants. (Tex. Prob. Code, Sec. 77.)

4           Sec. 304.002. RENOUNCING RIGHT TO SERVE AS PERSONAL  
5 REPRESENTATIVE. A decedent's surviving spouse, or, if there is no  
6 surviving spouse, the heirs or any one of the heirs of the decedent  
7 to the exclusion of any person not equally entitled to letters  
8 testamentary or of administration, may renounce the right to the  
9 letters in favor of another qualified person in open court or by a  
10 power of attorney authenticated and filed with the county clerk of  
11 the county where the application for the letters is filed. After  
12 the right to the letters has been renounced, the court may grant the  
13 letters to the other qualified person. (Tex. Prob. Code, Sec. 79.)

14           Sec. 304.003. PERSONS DISQUALIFIED TO SERVE AS EXECUTOR OR  
15 ADMINISTRATOR. A person is not qualified to serve as an executor or  
16 administrator if the person is:

17           (1) incapacitated;

18           (2) a felon convicted under the laws of the United  
19 States or of any state of the United States unless, in accordance  
20 with law, the person has been pardoned or has had the person's civil  
21 rights restored;

22           (3) a nonresident of this state who:

23                   (A) is a natural person or corporation; and

24                   (B) has not:

25                           (i) appointed a resident agent to accept  
26 service of process in all actions or proceedings with respect to the  
27 estate; or

1 (ii) had that appointment filed with the  
2 court;

3 (4) a corporation not authorized to act as a fiduciary  
4 in this state; or

5 (5) a person whom the court finds unsuitable. (Tex.  
6 Prob. Code, Sec. 78.)

7 CHAPTER 305. QUALIFICATION OF PERSONAL REPRESENTATIVES

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 305.001. DEFINITIONS

10 Sec. 305.002. MANNER OF QUALIFICATION OF PERSONAL  
11 REPRESENTATIVE

12 Sec. 305.003. PERIOD FOR TAKING OATH AND GIVING BOND

13 [Sections 305.004-305.050 reserved for expansion]

14 SUBCHAPTER B. OATHS

15 Sec. 305.051. OATH OF EXECUTOR OR ADMINISTRATOR WITH  
16 WILL ANNEXED

17 Sec. 305.052. OATH OF ADMINISTRATOR

18 Sec. 305.053. OATH OF TEMPORARY ADMINISTRATOR

19 Sec. 305.054. ADMINISTRATION OF OATH

20 Sec. 305.055. FILING AND RECORDING OF OATH

21 [Sections 305.056-305.100 reserved for expansion]

22 SUBCHAPTER C. GENERAL PROVISIONS RELATING TO BONDS

23 Sec. 305.101. BOND GENERALLY REQUIRED; EXCEPTIONS

24 Sec. 305.102. BOND REQUIRED FROM EXECUTOR OTHERWISE  
25 EXEMPT

26 Sec. 305.103. BONDS OF JOINT PERSONAL REPRESENTATIVES

27 Sec. 305.104. BOND OF MARRIED PERSON

- 1 Sec. 305.105. BOND OF MARRIED PERSON UNDER 18 YEARS OF  
2 AGE
- 3 Sec. 305.106. GENERAL FORMALITIES
- 4 Sec. 305.107. SUBSCRIPTION OF BOND BY PRINCIPALS AND  
5 SURETIES
- 6 Sec. 305.108. FORM OF BOND
- 7 Sec. 305.109. FILING OF BOND
- 8 Sec. 305.110. FAILURE TO GIVE BOND
- 9 Sec. 305.111. BOND NOT VOID ON FIRST RECOVERY
- 10 [Sections 305.112-305.150 reserved for expansion]
- 11 SUBCHAPTER D. AMOUNT OF BOND AND ASSOCIATED DEPOSITS
- 12 Sec. 305.151. GENERAL STANDARD REGARDING AMOUNT OF  
13 BOND
- 14 Sec. 305.152. EVIDENTIARY HEARING ON AMOUNT OF BOND
- 15 Sec. 305.153. SPECIFIC BOND AMOUNT
- 16 Sec. 305.154. AGREEMENT REGARDING DEPOSIT OF ESTATE  
17 ASSETS
- 18 Sec. 305.155. DEPOSIT OF ESTATE ASSETS ON TERMS  
19 PRESCRIBED BY COURT
- 20 Sec. 305.156. DEPOSITS OF PERSONAL REPRESENTATIVE
- 21 Sec. 305.157. RECEIPT FOR DEPOSITS OF PERSONAL  
22 REPRESENTATIVE
- 23 Sec. 305.158. BOND REQUIRED INSTEAD OF DEPOSITS BY  
24 PERSONAL REPRESENTATIVE
- 25 Sec. 305.159. WITHDRAWAL OF DEPOSITS ON CLOSING OF  
26 ADMINISTRATION

1 Sec. 305.160. INCREASED OR ADDITIONAL BONDS IN CERTAIN  
2 CIRCUMSTANCES  
3 [Sections 305.161-305.200 reserved for expansion]  
4 SUBCHAPTER E. BOND SURETIES  
5 Sec. 305.201. PERSONAL OR AUTHORIZED CORPORATE  
6 SURETIES  
7 Sec. 305.202. SURETIES FOR CERTAIN BONDS  
8 Sec. 305.203. AFFIDAVIT OF PERSONAL SURETY  
9 Sec. 305.204. LIEN ON REAL PROPERTY OWNED BY PERSONAL  
10 SURETIES  
11 Sec. 305.205. SUBORDINATION OF LIEN ON REAL PROPERTY  
12 OWNED BY PERSONAL SURETIES  
13 Sec. 305.206. RELEASE OF LIEN ON REAL PROPERTY OWNED  
14 BY PERSONAL SURETIES  
15 Sec. 305.207. DEPOSITS BY PERSONAL SURETY  
16 [Sections 305.208-305.250 reserved for expansion]  
17 SUBCHAPTER F. NEW BONDS  
18 Sec. 305.251. GROUNDS FOR REQUIRING NEW BOND  
19 Sec. 305.252. COURT ORDER OR CITATION ON NEW BOND  
20 Sec. 305.253. SHOW CAUSE HEARING ON NEW BOND  
21 REQUIREMENT  
22 Sec. 305.254. EFFECT OF ORDER REQUIRING NEW BOND  
23 Sec. 305.255. NEW BOND IN DECREASED AMOUNT  
24 Sec. 305.256. REQUEST BY SURETY FOR NEW BOND  
25 Sec. 305.257. DISCHARGE OF FORMER SURETIES ON  
26 EXECUTION OF NEW BOND

1 CHAPTER 305. QUALIFICATION OF PERSONAL REPRESENTATIVES

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 305.001. DEFINITIONS. In this chapter:

4 (1) "Bond" means a bond required by this chapter to be  
5 given by a person appointed to serve as a personal representative.

6 (2) "Oath" means an oath required by this chapter to be  
7 taken by a person appointed to serve as a personal representative.

8 (New.)

9 Sec. 305.002. MANNER OF QUALIFICATION OF PERSONAL  
10 REPRESENTATIVE. (a) A personal representative, other than an  
11 executor described by Subsection (b), is considered to have  
12 qualified when the representative has:

13 (1) taken and filed the oath prescribed by Subchapter  
14 B;

15 (2) given the required bond;

16 (3) obtained the judge's approval of the bond; and

17 (4) filed the bond with the clerk.

18 (b) An executor who is not required to give a bond is  
19 considered to have qualified when the executor has taken and filed  
20 the oath prescribed by Subchapter B. (Tex. Prob. Code, Sec. 189.)

21 Sec. 305.003. PERIOD FOR TAKING OATH AND GIVING BOND. An  
22 oath may be taken and subscribed and a bond may be given and  
23 approved at any time before:

24 (1) the 21st day after the date of the order granting  
25 letters testamentary or of administration, as applicable; or

26 (2) the letters testamentary or of administration, as  
27 applicable, are revoked for a failure to qualify within the period

1 allowed. (Tex. Prob. Code, Sec. 192 (part).)

2 [Sections 305.004-305.050 reserved for expansion]

3 SUBCHAPTER B. OATHS

4 Sec. 305.051. OATH OF EXECUTOR OR ADMINISTRATOR WITH WILL  
5 ANNEXED. Before the issuance of letters testamentary or letters of  
6 administration with the will annexed, the person named as executor  
7 or appointed as administrator with the will annexed shall take and  
8 subscribe an oath in substantially the following form:

9 I do solemnly swear that the writing offered for probate is  
10 the last will of \_\_\_\_\_ (insert name of testator), so far as I  
11 know or believe, and that I will well and truly perform all the  
12 duties of \_\_\_\_\_ (insert "executor of the will" or  
13 "administrator with the will annexed," as applicable) for the  
14 estate of \_\_\_\_\_ (insert name of testator). (Tex. Prob. Code, Sec.  
15 190(a).)

16 Sec. 305.052. OATH OF ADMINISTRATOR. Before the issuance  
17 of letters of administration, the person appointed as administrator  
18 shall take and subscribe an oath in substantially the following  
19 form:

20 I do solemnly swear that \_\_\_\_\_ (insert name of  
21 decedent), deceased, died \_\_\_\_\_ (insert "without leaving any  
22 lawful will" or "leaving a lawful will, but the executor named in  
23 the will is dead or has failed to offer the will for probate or to  
24 accept and qualify as executor, within the period required," as  
25 applicable), so far as I know or believe, and that I will well and  
26 truly perform all the duties of administrator of the estate of the  
27 deceased. (Tex. Prob. Code, Sec. 190(b).)

1           Sec. 305.053. OATH OF TEMPORARY ADMINISTRATOR. Before the  
2 issuance of temporary letters of administration, the person  
3 appointed as temporary administrator shall take and subscribe an  
4 oath in substantially the following form:

5           I do solemnly swear that I will well and truly perform the  
6 duties of temporary administrator of the estate of \_\_\_\_\_  
7 (insert name of decedent), deceased, in accordance with the law,  
8 and with the order of the court appointing me as temporary  
9 administrator. (Tex. Prob. Code, Sec. 190(c).)

10          Sec. 305.054. ADMINISTRATION OF OATH. An oath may be taken  
11 before any person authorized to administer oaths under the laws of  
12 this state. (Tex. Prob. Code, Secs. 190(d) (part), 192 (part).)

13          Sec. 305.055. FILING AND RECORDING OF OATH. An oath shall  
14 be:

15               (1) filed with the clerk of the court granting the  
16 letters testamentary or of administration, as applicable; and

17               (2) recorded in the minutes of that court. (Tex. Prob.  
18 Code, Sec. 190(d) (part).)

19               [Sections 305.056-305.100 reserved for expansion]

20               SUBCHAPTER C. GENERAL PROVISIONS RELATING TO BONDS

21          Sec. 305.101. BOND GENERALLY REQUIRED; EXCEPTIONS. (a)  
22 Except as otherwise provided by this title, a person to whom letters  
23 testamentary or of administration will be issued must enter into a  
24 bond before issuance of the letters.

25               (b) Letters testamentary shall be issued without the  
26 requirement of a bond to a person named as executor in a will  
27 probated in a court of this state if:



1           (1) the will directs that no bond or security be  
2 required of the person; and

3           (2) the court finds that the person is qualified.

4           (c) A bond is not required if a personal representative is a  
5 corporate fiduciary. (Tex. Prob. Code, Secs. 194 (part), 195.)

6           Sec. 305.102. BOND REQUIRED FROM EXECUTOR OTHERWISE EXEMPT.

7 (a) This section applies only to an estate for which an executor  
8 was appointed under a will, but from whom no bond was required.

9           (b) A person who has a debt, claim, or demand against the  
10 estate, with respect to the justice of which the person or the  
11 person's agent or attorney has made an oath, or another person  
12 interested in the estate, whether in person or as the  
13 representative of another, may file a written complaint in the  
14 court where the will is probated.

15           (c) On the filing of the complaint, the court shall cite the  
16 executor to appear and show cause why the executor should not be  
17 required to give a bond.

18           (d) On hearing the complaint, the court shall enter an order  
19 requiring the executor to give a bond not later than the 10th day  
20 after the date of the order if it appears to the court that:

21           (1) the executor is wasting, mismanaging, or  
22 misapplying the estate; and

23           (2) as a result of conduct described by Subdivision  
24 (1):

25                   (A) a creditor may probably lose the creditor's  
26 debt; or

27                   (B) a person's interest in the estate may be

1 diminished or lost.

2 (e) A bond required under this section must be:

3 (1) in an amount sufficient to protect the estate and  
4 the estate's creditors;

5 (2) payable to and approved by the judge; and

6 (3) conditioned that the executor:

7 (A) will well and truly administer the estate;  
8 and

9 (B) will not waste, mismanage, or misapply the  
10 estate.

11 (f) If the executor fails to give a bond required under this  
12 section on or before the 10th day after the date of the order and the  
13 judge has not extended the period for giving the bond, the judge,  
14 without citation, shall remove the executor and appoint a competent  
15 person in the executor's place who shall administer the estate  
16 according to the will and law. Before entering into the  
17 administration of the estate, the appointed person must:

18 (1) take the oath required of an administrator with  
19 the will annexed under Section 305.051; and

20 (2) give a bond in the manner and amount provided by  
21 this chapter for the issuance of original letters of  
22 administration. (Tex. Prob. Code, Secs. 214, 215, 216, 217.)

23 Sec. 305.103. BONDS OF JOINT PERSONAL REPRESENTATIVES. If  
24 two or more persons are appointed as personal representatives of an  
25 estate and are required by this chapter or by the court to give a  
26 bond, the court may require:

27 (1) a separate bond from each person; or

1           (2) a joint bond from all of the persons. (Tex. Prob.  
2 Code, Sec. 198.)

3           Sec. 305.104. BOND OF MARRIED PERSON. (a) A married person  
4 appointed as a personal representative may execute a bond required  
5 by law:

6           (1) jointly with the person's spouse; or

7           (2) separately without the person's spouse.

8           (b) A bond executed by a married person binds the person's  
9 separate estate, but does not bind the person's spouse unless the  
10 spouse signed the bond. (Tex. Prob. Code, Sec. 199.)

11          Sec. 305.105. BOND OF MARRIED PERSON UNDER 18 YEARS OF AGE.  
12 Any bond required to be executed by a person who is under 18 years of  
13 age, is or has been married, and accepts and qualifies as an  
14 executor or administrator is as valid and binding for all purposes  
15 as if the person were of legal age. (Tex. Prob. Code, Sec. 200.)

16          Sec. 305.106. GENERAL FORMALITIES. A bond required under  
17 Section 305.101(a) must:

18           (1) be conditioned as required by law;

19           (2) be payable to the judge and the judge's successors  
20 in office;

21           (3) bear the written approval of the judge in the  
22 judge's official capacity; and

23           (4) be executed and approved in accordance with this  
24 chapter. (Tex. Prob. Code, Sec. 194 (part).)

25          Sec. 305.107. SUBSCRIPTION OF BOND BY PRINCIPALS AND  
26 SURETIES. A bond required under Section 305.101 shall be  
27 subscribed by both principals and sureties. (Tex. Prob. Code, Sec.

1 197 (part).)

2           Sec. 305.108. FORM OF BOND. The following form, or a form  
3 with the same substance, may be used for the bond of a personal  
4 representative:

5           The State of Texas

6           County of \_\_\_\_\_

7           Know all persons by these presents that we, \_\_\_\_\_ (insert  
8 name of each principal), as principal, and \_\_\_\_\_ (insert name of  
9 each surety), as sureties, are held and firmly bound unto the judge  
10 of \_\_\_\_\_ (insert reference to appropriate judge), and that  
11 judge's successors in office, in the sum of \_\_\_\_\_ dollars,  
12 conditioned that the above bound principal or principals, appointed  
13 as \_\_\_\_\_ (insert "executor of the last will and testament,"  
14 "administrator with the will annexed of the estate," "administrator  
15 of the estate," or "temporary administrator of the estate," as  
16 applicable) of \_\_\_\_\_ (insert name of decedent), deceased, shall  
17 well and truly perform all of the duties required of the principal  
18 or principals by law under that appointment. (Tex. Prob. Code, Sec.  
19 196.)

20           Sec. 305.109. FILING OF BOND. A bond required under Section  
21 305.101 shall be filed with the clerk after the court approves the  
22 bond. (Tex. Prob. Code, Sec. 197 (part).)

23           Sec. 305.110. FAILURE TO GIVE BOND. Another person may be  
24 appointed as personal representative to replace a personal  
25 representative who at any time fails to give a bond as required by  
26 the court in the period prescribed by this chapter. (Tex. Prob.  
27 Code, Sec. 213.)

1           Sec. 305.111. BOND NOT VOID ON FIRST RECOVERY. A personal  
2 representative's bond does not become void on the first recovery  
3 but may be put in suit and prosecuted from time to time until the  
4 entire amount of the bond has been recovered. (Tex. Prob. Code,  
5 Sec. 218.)

6           [Sections 305.112-305.150 reserved for expansion]

7           SUBCHAPTER D. AMOUNT OF BOND AND ASSOCIATED DEPOSITS

8           Sec. 305.151. GENERAL STANDARD REGARDING AMOUNT OF BOND.

9           (a) The judge shall set the amount of a bond, in an amount  
10 considered sufficient to protect the estate and the estate's  
11 creditors, as provided by this chapter.

12           (b) Notwithstanding Subsection (a) or other provisions  
13 generally applicable to bonds of personal representatives, if the  
14 person to whom letters testamentary or of administration are  
15 granted is entitled to all of the decedent's estate after payment of  
16 debts, a bond shall be in an amount sufficient to protect creditors  
17 only. (Tex. Prob. Code, Sec. 194, Subdivs. 1, 2.)

18           Sec. 305.152. EVIDENTIARY HEARING ON AMOUNT OF BOND.  
19 Before setting the amount of a bond, the court shall hear evidence  
20 and determine:

21                   (1) the amount of cash on hand and where that cash is  
22 deposited;

23                   (2) the amount of cash estimated to be needed for  
24 administrative purposes, including operation of a business,  
25 factory, farm, or ranch owned by the estate, and expenses of  
26 administration for one year;

27                   (3) the revenue anticipated to be received in the

1 succeeding 12 months from dividends, interest, rentals, or use of  
2 property belonging to the estate and the aggregate amount of any  
3 installments or periodic payments to be collected;

4 (4) the estimated value of certificates of stock,  
5 bonds, notes, or other securities of the estate and the name of the  
6 depository, if any, in which those assets are deposited;

7 (5) the face value of life insurance or other policies  
8 payable to the person on whose estate administration is sought or to  
9 the estate;

10 (6) the estimated value of other personal property  
11 owned by the estate; and

12 (7) the estimated amount of debts due and owing by the  
13 estate. (Tex. Prob. Code, Sec. 194, Subdiv. 3.)

14 Sec. 305.153. SPECIFIC BOND AMOUNT. (a) Except as  
15 otherwise provided by this section, the judge shall set the bond in  
16 an amount equal to the sum of:

17 (1) the estimated value of all personal property  
18 belonging to the estate; and

19 (2) an additional amount to cover revenue anticipated  
20 to be derived during the succeeding 12 months from:

21 (A) interest and dividends;

22 (B) collectible claims;

23 (C) the aggregate amount of any installments or  
24 periodic payments, excluding income derived or to be derived from  
25 federal social security payments; and

26 (D) rentals for the use of property.

27 (b) The judge shall reduce the amount of the original bond

1 under Subsection (a) in proportion to the amount of cash or the  
2 value of securities or other assets:

3 (1) authorized or required to be deposited by court  
4 order; or

5 (2) voluntarily deposited by the personal  
6 representative or the sureties on the representative's bond, as  
7 provided by Sections 305.155 and 305.156.

8 (c) A bond required to be given by a temporary administrator  
9 shall be in the amount that the judge directs. (Tex. Prob. Code,  
10 Sec. 194, Subdivs. 4, 13.)

11 Sec. 305.154. AGREEMENT REGARDING DEPOSIT OF ESTATE ASSETS.

12 (a) A personal representative may agree with the surety or sureties  
13 on a bond, either corporate or personal, for the deposit of any cash  
14 and other estate assets in a depository described by Subsection  
15 (c), if the deposit is otherwise proper, in a manner that prevents  
16 the withdrawal of the cash or other assets without:

17 (1) the written consent of the surety or sureties; or

18 (2) a court order entered after notice to the surety or  
19 sureties as directed by the court.

20 (b) The court may require the action described by Subsection  
21 (a) if the court considers that action to be in the best interest of  
22 the estate.

23 (c) Cash and assets must be deposited under this section in  
24 a financial institution, as defined by Section 201.101, Finance  
25 Code, that:

26 (1) has its main office or a branch office in this  
27 state; and

1           (2) is qualified to act as a depository in this state  
2 under the laws of this state or the United States.

3           (d) An agreement under this section may not release the  
4 principal or sureties from liability, or change the liability of  
5 the principal or sureties, as established by the terms of the bond.  
6 (Tex. Prob. Code, Sec. 194, Subdiv. 5.)

7           Sec. 305.155. DEPOSIT OF ESTATE ASSETS ON TERMS PRESCRIBED  
8 BY COURT. (a) Cash, securities, or other personal assets of an  
9 estate or to which the estate is entitled may or, if considered by  
10 the court to be in the best interest of the estate, shall, be  
11 deposited in one or more depositories described by Section  
12 305.154(c) on terms prescribed by the court.

13           (b) The court in which the proceedings are pending may  
14 authorize or require additional estate assets currently on hand or  
15 that accrue during the pendency of the proceedings to be deposited  
16 as provided by Subsection (a) on:

17                 (1) the court's own motion; or

18                 (2) the written application of the personal  
19 representative or any other person interested in the estate.

20           (c) The amount of the bond required to be given by the  
21 personal representative shall be reduced in proportion to the  
22 amount of the cash and the value of the securities or other assets  
23 deposited under this section.

24           (d) Cash, securities, or other assets deposited under this  
25 section may be withdrawn in whole or in part from the depository  
26 only in accordance with a court order, and the amount of the  
27 personal representative's bond shall be increased in proportion to



1 the amount of the cash and the value of the securities or other  
2 assets authorized to be withdrawn. (Tex. Prob. Code, Sec. 194,  
3 Subdiv. 6.)

4 Sec. 305.156. DEPOSITS OF PERSONAL REPRESENTATIVE. (a)  
5 Instead of giving a surety or sureties on a bond, or to reduce the  
6 amount of a bond, a personal representative may deposit the  
7 representative's own cash or securities acceptable to the court  
8 with a depository described by Subsection (b), if the deposit is  
9 otherwise proper.

10 (b) Cash or securities must be deposited under this section  
11 in:

- 12 (1) a depository described by Section 305.154(c); or  
13 (2) any other corporate depository approved by the  
14 court.

15 (c) A deposit may be in an amount or value equal to the  
16 amount of the bond required or in a lesser amount or value, in which  
17 case the amount of the bond is reduced by the amount or value of the  
18 deposit.

19 (d) The amount of cash or securities on deposit may be  
20 increased or decreased, by court order from time to time, as the  
21 interest of the estate requires.

22 (e) A deposit of cash or securities made instead of a surety  
23 or sureties on a bond may be withdrawn or released only on order of a  
24 court having jurisdiction.

25 (f) A creditor has the same rights against a personal  
26 representative and deposits made under this section as are provided  
27 for recovery against sureties on a bond. (Tex. Prob. Code, Sec. 194,

1 Subdivs. 7, 8(b), (c), (d).)

2           Sec. 305.157. RECEIPT FOR DEPOSITS OF PERSONAL  
3 REPRESENTATIVE. (a) A depository that receives a deposit made  
4 under Section 305.156 instead of a surety or sureties on a bond  
5 shall issue a receipt for the deposit that:

6           (1) shows the amount of cash deposited or the amount  
7 and description of the securities deposited, as applicable; and

8           (2) states that the depository agrees to disburse or  
9 deliver the cash or securities only on receipt of a certified copy  
10 of an order of the court in which the proceedings are pending.

11           (b) A receipt issued by a depository under Subsection (a)  
12 shall be attached to the personal representative's bond and be  
13 delivered to and filed by the county clerk after approval by the  
14 judge. (Tex. Prob. Code, Sec. 194, Subdiv. 8(a).)

15           Sec. 305.158. BOND REQUIRED INSTEAD OF DEPOSITS BY PERSONAL  
16 REPRESENTATIVE. (a) The court may on its own motion or on the  
17 written application by the personal representative or any other  
18 person interested in the estate:

19           (1) require that an adequate bond be given instead of a  
20 deposit under Section 305.156; or

21           (2) authorize withdrawal of a deposit made under  
22 Section 305.156 and substitution of a bond with sureties.

23           (b) Not later than the 20th day after the date of entry of  
24 the court's motion or the date the personal representative is  
25 personally served with notice of the filing of an application by  
26 another person interested in the estate, the representative shall  
27 file a sworn statement showing the condition of the estate.

1 (c) A personal representative who fails to comply with  
2 Subsection (b) is subject to removal as in other cases.

3 (d) The personal representative's deposit under Section  
4 305.156 may not be released or withdrawn until the court has:

5 (1) been satisfied as to the condition of the estate;

6 (2) determined the amount of the bond; and

7 (3) received and approved the bond. (Tex. Prob. Code,  
8 Sec. 194, Subdiv. 8(e).)

9 Sec. 305.159. WITHDRAWAL OF DEPOSITS ON CLOSING OF  
10 ADMINISTRATION. (a) Any deposit of assets of the personal  
11 representative, the estate, or a surety that remains at the time an  
12 estate is closed shall be released by court order and paid to the  
13 person or persons entitled to the deposit.

14 (b) Except as provided by Subsection (c), a writ of  
15 attachment or garnishment does not lie against a deposit described  
16 by Subsection (a).

17 (c) A writ of attachment or garnishment may lie against a  
18 deposit described by Subsection (a) as to a claim of a creditor of  
19 the estate being administered or a person interested in the estate,  
20 including a distributee or ward, to the extent the court has ordered  
21 distribution. (Tex. Prob. Code, Sec. 194, Subdiv. 9.)

22 Sec. 305.160. INCREASED OR ADDITIONAL BONDS IN CERTAIN  
23 CIRCUMSTANCES. The provisions of this subchapter regarding the  
24 deposit of cash and securities govern, to the extent the provisions  
25 may be applicable, the court orders to be entered when:

26 (1) one of the following circumstances occurs:

27 (A) estate property has been authorized to be

1 sold or rented;

2 (B) money has been borrowed on estate property;

3 or

4 (C) real property, or an interest in real  
5 property, has been authorized to be leased for mineral development  
6 or subjected to unitization; and

7 (2) the general bond has been found to be  
8 insufficient. (Tex. Prob. Code, Sec. 194, Subdiv. 14.)

9 [Sections 305.161-305.200 reserved for expansion]

10 SUBCHAPTER E. BOND SURETIES

11 Sec. 305.201. PERSONAL OR AUTHORIZED CORPORATE SURETIES.

12 (a) The surety or sureties on a bond may be personal or authorized  
13 corporate sureties.

14 (b) A bond with sureties who are individuals must have at  
15 least two sureties, each of whom must:

16 (1) execute an affidavit in the manner provided by  
17 this subchapter; and

18 (2) own property in this state, excluding property  
19 exempt by law, that the judge is satisfied is sufficient to qualify  
20 the person as a surety as required by law.

21 (c) A bond with an authorized corporate surety is only  
22 required to have one surety, except as provided by law. (Tex. Prob.  
23 Code, Sec. 194, Subdivs. 10, 12 (part).)

24 Sec. 305.202. SURETIES FOR CERTAIN BONDS. (a) If the  
25 amount of a bond exceeds \$50,000, the court may require that the  
26 bond be signed by:

27 (1) at least two authorized corporate sureties; or

1           (2) one authorized corporate surety and at least two  
2 good and sufficient personal sureties.

3           (b) The estate shall pay the cost of a bond with corporate  
4 sureties. (Tex. Prob. Code, Sec. 194, Subdiv. 11.)

5           Sec. 305.203. AFFIDAVIT OF PERSONAL SURETY. (a) Before a  
6 judge may consider a bond with personal sureties, each person  
7 offered as surety must execute an affidavit stating the amount by  
8 which the person's assets that are reachable by creditors exceeds  
9 the person's liabilities, and each affidavit must be presented to  
10 the judge for consideration.

11           (b) The total worth of the personal sureties on a bond must  
12 equal at least twice the amount of the bond.

13           (c) An affidavit presented to and approved by the judge  
14 under this section shall be attached to and form part of the bond.  
15 (Tex. Prob. Code, Sec. 201(a).)

16           Sec. 305.204. LIEN ON REAL PROPERTY OWNED BY PERSONAL  
17 SURETIES. (a) If a judge finds that the estimated value of  
18 personal property of the estate that cannot be deposited, as  
19 provided by Subchapter D, is such that personal sureties cannot be  
20 accepted without the creation of a specific lien on real property  
21 owned by each of the sureties, the judge shall enter an order  
22 requiring each surety to:

23           (1) designate real property that:

24                   (A) is owned by the surety and located in this  
25 state;

26                   (B) is subject to execution; and

27                   (C) has a value that exceeds all liens and unpaid

1 taxes by an amount at least equal to the amount of the bond; and

2 (2) give an adequate legal description of the real  
3 property designated under Subdivision (1).

4 (b) The surety shall incorporate the information required  
5 in the order under Subsection (a) in an affidavit. Following  
6 approval by the judge, the affidavit shall be attached to and form  
7 part of the bond.

8 (c) A lien arises as security for the performance of the  
9 obligation of the bond only on the real property designated in the  
10 affidavit.

11 (d) Before letters testamentary or of administration are  
12 issued to the personal representative whose bond includes an  
13 affidavit under this section, the court clerk shall mail a  
14 statement to the office of the county clerk of each county in which  
15 any real property designated in the affidavit is located. The  
16 statement must be signed by the court clerk and include:

17 (1) a sufficient description of the real property  
18 located in that county;

19 (2) the names of the principal and sureties on the  
20 bond;

21 (3) the amount of the bond; and

22 (4) the name of the estate and court in which the bond  
23 is given.

24 (e) Each county clerk who receives a statement required by  
25 Subsection (d) shall record the statement in the county deed  
26 records. Each recorded statement shall be indexed in a manner that  
27 permits the convenient determination of the existence and character

1 of the liens described in the statements.

2 (f) The recording and indexing required by Subsection (e)  
3 constitutes constructive notice to all persons regarding the  
4 existence of the lien on real property located in the county,  
5 effective as of the date of the indexing.

6 (g) If each personal surety subject to a court order under  
7 this section does not comply with the order, the judge may require  
8 that the bond be signed by:

9 (1) an authorized corporate surety; or

10 (2) an authorized corporate surety and at least two  
11 personal sureties. (Tex. Prob. Code, Secs. 201(b), 202.)

12 Sec. 305.205. SUBORDINATION OF LIEN ON REAL PROPERTY OWNED  
13 BY PERSONAL SURETIES. (a) A personal surety required to create a  
14 lien on specific real property under Section 305.204 who wishes to  
15 lease the real property for mineral development may file a written  
16 application in the court in which the proceedings are pending  
17 requesting subordination of the lien to the proposed lease.

18 (b) The judge may enter an order granting the application.

19 (c) A certified copy of the order, filed and recorded in the  
20 deed records of the proper county, is sufficient to subordinate the  
21 lien to the rights of a lessee under the proposed lease. (Tex.  
22 Prob. Code, Sec. 201(c).)

23 Sec. 305.206. RELEASE OF LIEN ON REAL PROPERTY OWNED BY  
24 PERSONAL SURETIES. (a) A personal surety who has given a lien  
25 under Section 305.204 may apply to the court to have the lien  
26 released.

27 (b) The court shall order the lien released if:

1           (1) the court is satisfied that the bond is sufficient  
2 without the lien; or

3           (2) sufficient other real or personal property of the  
4 surety is substituted on the same terms required for the lien that  
5 is to be released.

6           (c) If the personal surety does not offer a lien on other  
7 substituted property under Subsection (b)(2) and the court is not  
8 satisfied that the bond is sufficient without the substitution of  
9 other property, the court shall order the personal representative  
10 to appear and give a new bond.

11           (d) A certified copy of the court's order releasing the lien  
12 and describing the property that was subject to the lien has the  
13 effect of cancelling the lien if the order is filed with the county  
14 clerk of the county in which the property is located and recorded in  
15 the deed records of that county. (Tex. Prob. Code, Secs. 211, 212.)

16           Sec. 305.207. DEPOSITS BY PERSONAL SURETY. Instead of  
17 executing an affidavit under Section 305.203 or creating a lien  
18 under Section 305.204 when required, a personal surety may deposit  
19 the surety's own cash or securities instead of pledging real  
20 property as security. The deposit:

21           (1) must be made in the same manner a personal  
22 representative deposits the representative's own cash or  
23 securities; and

24           (2) is subject, to the extent applicable, to the  
25 provisions governing the same type of deposits made by personal  
26 representatives. (Tex. Prob. Code, Sec. 194, Subdiv. 12 (part).)

27           [Sections 305.208-305.250 reserved for expansion]



SUBCHAPTER F. NEW BONDS

Sec. 305.251. GROUNDS FOR REQUIRING NEW BOND. (a) A personal representative may be required to give a new bond if:

(1) a surety on a bond dies, moves out of this state, or becomes insolvent;

(2) in the court's opinion:

(A) the sureties on a bond are insufficient; or

(B) a bond is defective;

(3) the amount of a bond is insufficient;

(4) a surety on a bond petitions the court to be discharged from future liability on the bond; or

(5) a bond and the record of the bond have been lost or destroyed.

(b) Any person interested in the estate may have the personal representative cited to appear and show cause why the representative should not be required to give a new bond by filing a written application with the county clerk of the county in which the probate proceedings are pending. The application must allege that:

(1) the bond is insufficient or defective; or

(2) the bond and the record of the bond have been lost or destroyed. (Tex. Prob. Code, Secs. 203, 204.)

Sec. 305.252. COURT ORDER OR CITATION ON NEW BOND. (a) When a judge becomes aware that a bond is in any respect insufficient or that a bond and the record of the bond have been lost or destroyed, the judge shall:

(1) without delay and without notice enter an order requiring the personal representative to give a new bond; or

1           (2) without delay have the representative cited to  
2 show cause why the representative should not be required to give a  
3 new bond.

4           (b) An order entered under Subsection (a)(1) must state:

5                 (1) the reasons for requiring a new bond;

6                 (2) the amount of the new bond; and

7                 (3) the period within which the new bond must be given,  
8 which may not be earlier than the 10th day after the date of the  
9 order.

10           (c) A personal representative who opposes an order entered  
11 under Subsection (a)(1) may demand a hearing on the order. The  
12 hearing must be held before the expiration of the period within  
13 which the new bond must be given. (Tex. Prob. Code, Secs. 205,  
14 206(a).)

15           Sec. 305.253. SHOW CAUSE HEARING ON NEW BOND REQUIREMENT.

16           (a) On the return of a citation ordering a personal representative  
17 to show cause why the representative should not be required to give  
18 a new bond, the judge shall, on the date specified for the hearing  
19 of the matter, inquire into the sufficiency of the reasons for  
20 requiring a new bond.

21           (b) If the judge is satisfied that a new bond should be  
22 required, the judge shall enter an order requiring a new bond. The  
23 order must state:

24                 (1) the amount of the new bond; and

25                 (2) the period within which the new bond must be given,  
26 which may not be later than the 20th day after the date of the order.

27 (Tex. Prob. Code, Sec. 206(b).)

1           Sec. 305.254.   EFFECT OF ORDER REQUIRING NEW BOND.   (a) An  
2 order requiring a personal representative to give a new bond has the  
3 effect of suspending the representative's powers.

4           (b) After the order is entered, the personal representative  
5 may not pay out any of the estate's money or take any other official  
6 action, except to preserve estate property, until the new bond is  
7 given and approved. (Tex. Prob. Code, Sec. 207.)

8           Sec. 305.255.   NEW BOND IN DECREASED AMOUNT. (a) A personal  
9 representative required to give a bond may at any time file with the  
10 clerk a written application requesting that the court reduce the  
11 amount of the bond.

12           (b) On the filing of an application under Subsection (a),  
13 the clerk shall promptly issue and have notice posted to all  
14 interested persons and the sureties on the bond. The notice must  
15 inform the interested persons and sureties of:

- 16                   (1) the fact that the application has been filed;  
17                   (2) the nature of the application; and  
18                   (3) the time the judge will hear the application.

19           (c) The judge may permit the filing of a new bond in a  
20 reduced amount if:

21                   (1) proof is submitted that a bond in an amount less  
22 than the bond in effect will be adequate to meet the requirements of  
23 law and protect the estate; and

24                   (2) the judge approves an accounting filed at the time  
25 of the application. (Tex. Prob. Code, Sec. 208.)

26           Sec. 305.256.   REQUEST BY SURETY FOR NEW BOND. (a) A surety  
27 on a bond may at any time file with the clerk a petition requesting

1 that the court in which the proceedings are pending:

2 (1) require the personal representative to give a new  
3 bond; and

4 (2) discharge the petitioner from all liability for  
5 the future acts of the representative.

6 (b) On the filing of a petition under Subsection (a), the  
7 personal representative shall be cited to appear and give a new  
8 bond. (Tex. Prob. Code, Sec. 210.)

9 Sec. 305.257. DISCHARGE OF FORMER SURETIES ON EXECUTION OF  
10 NEW BOND. When a new bond has been given and approved, the court  
11 shall enter an order discharging the sureties on the former bond  
12 from all liability for the future acts of the principal on the bond.  
13 (Tex. Prob. Code, Sec. 209.)

14 CHAPTER 306. GRANTING AND

15 ISSUANCE OF LETTERS

16 Sec. 306.001. GRANTING OF LETTERS TESTAMENTARY

17 Sec. 306.002. GRANTING OF LETTERS OF ADMINISTRATION

18 Sec. 306.003. ORDER GRANTING LETTERS

19 Sec. 306.004. ISSUANCE OF ORIGINAL LETTERS

20 Sec. 306.005. FORM AND CONTENT OF LETTERS

21 Sec. 306.006. REPLACEMENT AND OTHER ADDITIONAL LETTERS

22 Sec. 306.007. EFFECT OF LETTERS OR CERTIFICATE

23 CHAPTER 306. GRANTING AND

24 ISSUANCE OF LETTERS

25 Sec. 306.001. GRANTING OF LETTERS TESTAMENTARY. (a)

26 Before the 21st day after the date a will has been probated, the  
27 court shall grant letters testamentary, if permitted by law, to

1 each executor appointed by the will who:

2 (1) is not disqualified; and

3 (2) is willing to accept the trust and qualify  
4 according to law.

5 (b) Failure of the court to issue letters testamentary  
6 within the period prescribed by this section does not affect the  
7 validity of any letters testamentary issued in accordance with law  
8 after that period. (Tex. Prob. Code, Secs. 178(a), (c).)

9 Sec. 306.002. GRANTING OF LETTERS OF ADMINISTRATION. (a)  
10 Subject to Subsection (b), the court hearing an application under  
11 Chapter 301 shall grant:

12 (1) the administration of a decedent's estate if the  
13 decedent died intestate; or

14 (2) the administration of the decedent's estate with  
15 the will annexed if the decedent died leaving a will but:

16 (A) the will does not name an executor; or

17 (B) the executor named in the will:

18 (i) is deceased;

19 (ii) fails to accept and qualify before the  
20 21st day after the date the will is probated; or

21 (iii) fails to present the will for probate  
22 before the 31st day after the date of the decedent's death and the  
23 court finds there was no good cause for that failure.

24 (b) The court may not grant any administration of an estate  
25 unless a necessity for the administration exists, as determined by  
26 the court.

27 (c) The court may find other instances of necessity for an

1 administration based on proof before the court, but a necessity is  
2 considered to exist if:

- 3 (1) there are two or more debts against the estate;
- 4 (2) there is a desire for the county court to partition  
5 the estate among the distributees; or
- 6 (3) the administration is necessary to receive or  
7 recover funds or other property due the estate. (Tex. Prob. Code,  
8 Sec. 178(b).)

9 Sec. 306.003. ORDER GRANTING LETTERS. When letters  
10 testamentary or of administration are granted, the court shall  
11 enter an order to that effect stating:

- 12 (1) the name of the decedent;
- 13 (2) the name of the person to whom the letters are  
14 granted;
- 15 (3) the amount of any required bond;
- 16 (4) the name of at least one but not more than three  
17 disinterested persons appointed to appraise the estate and return  
18 the appraisement to the court, if:
  - 19 (A) any interested person applies to the court  
20 for the appointment of an appraiser; or
  - 21 (B) the court considers an appraisement to be  
22 necessary; and
- 23 (5) that the clerk shall issue letters in accordance  
24 with the order when the person to whom the letters are granted has  
25 qualified according to law. (Tex. Prob. Code, Sec. 181.)

26 Sec. 306.004. ISSUANCE OF ORIGINAL LETTERS. When an  
27 executor or administrator has qualified in the manner required by

1 law, the clerk of the court granting the letters testamentary or of  
2 administration shall promptly issue and deliver the letters to the  
3 executor or administrator. If more than one person qualifies as  
4 executor or administrator, the clerk shall issue the letters to  
5 each person who qualifies. (Tex. Prob. Code, Sec. 182.)

6       Sec. 306.005. FORM AND CONTENT OF LETTERS. Letters  
7 testamentary or of administration shall be in the form of a  
8 certificate of the clerk of the court granting the letters,  
9 attested by the court's seal, that states:

10           (1) the executor or administrator, as applicable, has  
11 qualified as executor or administrator in the manner required by  
12 law;

13           (2) the date of the qualification; and

14           (3) the name of the decedent. (Tex. Prob. Code, Sec.  
15 183.)

16       Sec. 306.006. REPLACEMENT AND OTHER ADDITIONAL LETTERS.  
17 When letters testamentary or of administration have been destroyed  
18 or lost, the clerk shall issue other letters to replace the original  
19 letters, which have the same effect as the original letters. The  
20 clerk shall also issue any number of letters as and when requested  
21 by the person or persons who hold the letters. (Tex. Prob. Code,  
22 Sec. 187.)

23       Sec. 306.007. EFFECT OF LETTERS OR CERTIFICATE. Letters  
24 testamentary or of administration or a certificate of the clerk of  
25 the court that granted the letters, under the court's seal,  
26 indicating that the letters have been issued, is sufficient  
27 evidence of:

1 (1) the appointment and qualification of the personal  
2 representative of an estate; and

3 (2) the date of qualification. (Tex. Prob. Code, Sec.  
4 186.)

5 CHAPTER 307. VALIDITY OF CERTAIN ACTS OF EXECUTORS AND  
6 ADMINISTRATORS

7 Sec. 307.001. RIGHTS OF GOOD FAITH PURCHASERS

8 Sec. 307.002. JOINT EXECUTORS OR ADMINISTRATORS

9 CHAPTER 307. VALIDITY OF CERTAIN ACTS OF EXECUTORS AND  
10 ADMINISTRATORS

11 Sec. 307.001. RIGHTS OF GOOD FAITH PURCHASERS. (a) This  
12 section applies only to an act performed by a qualified executor or  
13 administrator in that capacity and in conformity with the law and  
14 the executor's or administrator's authority.

15 (b) An act continues to be valid for all intents and  
16 purposes in regard to the rights of an innocent purchaser who  
17 purchases any of the estate property from the executor or  
18 administrator for valuable consideration, in good faith, and  
19 without notice of any illegality in the title to the property, even  
20 if the act or the authority under which the act was performed is  
21 subsequently set aside, annulled, and declared invalid. (Tex.  
22 Prob. Code, Sec. 188.)

23 Sec. 307.002. JOINT EXECUTORS OR ADMINISTRATORS. (a)  
24 Except as provided by Subsection (b), if there is more than one  
25 executor or administrator of an estate at the same time, the acts of  
26 one of the executors or administrators in that capacity are valid as  
27 if all the executors or administrators had acted jointly. If one of



1 the executors or administrators dies, resigns, or is removed, a  
2 co-executor or co-administrator of the estate shall proceed with  
3 the administration as if the death, resignation, or removal had not  
4 occurred.

5 (b) If there is more than one executor or administrator of  
6 an estate at the same time, all of the qualified executors or  
7 administrators who are acting in that capacity must join in the  
8 conveyance of real estate unless the court, after due hearing,  
9 authorizes fewer than all to act. (Tex. Prob. Code, Sec. 240.)

10 CHAPTER 308. NOTICE TO BENEFICIARIES AND CLAIMANTS

11 SUBCHAPTER A. NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF

12 WILL

13 Sec. 308.001. DEFINITION

14 Sec. 308.002. REQUIRED NOTICE TO CERTAIN BENEFICIARIES

15 AFTER PROBATE OF WILL

16 Sec. 308.003. CONTENTS OF NOTICE

17 Sec. 308.004. AFFIDAVIT OR CERTIFICATE

18 [Sections 308.005-308.050 reserved for expansion]

19 SUBCHAPTER B. NOTICE TO CLAIMANTS

20 Sec. 308.051. REQUIRED NOTICE REGARDING PRESENTMENT OF

21 CLAIMS IN GENERAL

22 Sec. 308.052. PROOF OF PUBLICATION

23 Sec. 308.053. REQUIRED NOTICE TO SECURED CREDITOR

24 Sec. 308.054. PERMISSIVE NOTICE TO UNSECURED CREDITOR

25 Sec. 308.055. ONE NOTICE SUFFICIENT

26 Sec. 308.056. LIABILITY FOR FAILURE TO GIVE REQUIRED

27 NOTICE

1 CHAPTER 308. NOTICE TO BENEFICIARIES AND CLAIMANTS

2 SUBCHAPTER A. NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF  
3 WILL

4 Sec. 308.001. DEFINITION. In this subchapter,  
5 "beneficiary" means a person, entity, state, governmental agency of  
6 the state, charitable organization, or trust entitled to receive  
7 property under the terms of a decedent's will, to be determined for  
8 purposes of this subchapter with the assumption that each person  
9 who is alive on the date of the decedent's death survives any period  
10 required to receive the bequest as specified by the terms of the  
11 will. (Tex. Prob. Code, Sec. 128A(a), as amended Ch. 801, Acts 80th  
12 Leg., R.S., 2007.)

13 Sec. 308.002. REQUIRED NOTICE TO CERTAIN BENEFICIARIES  
14 AFTER PROBATE OF WILL. (a) Except as provided by Subsection (c),  
15 not later than the 60th day after the date of an order admitting a  
16 decedent's will to probate, the personal representative of the  
17 decedent's estate, including an independent executor or  
18 independent administrator, shall give notice that complies with  
19 Section 308.003 to each beneficiary named in the will whose  
20 identity and address are known to the representative or, through  
21 reasonable diligence, can be ascertained. If, after the 60th day  
22 after the date of the order, the representative becomes aware of the  
23 identity and address of a beneficiary who was not given notice on or  
24 before the 60th day, the representative shall give the notice as  
25 soon as possible after becoming aware of that information.

26 (b) Notwithstanding the requirement under Subsection (a)  
27 that the personal representative give the notice to the

1 beneficiary, the representative shall give the notice with respect  
2 to a beneficiary described by this subsection as follows:

3 (1) if the beneficiary is a trust, to the trustee,  
4 unless the representative is the trustee, in which case the  
5 representative shall give the notice to the person or class of  
6 persons first eligible to receive the trust income, to be  
7 determined for purposes of this subdivision as if the trust were in  
8 existence on the date of the decedent's death;

9 (2) if the beneficiary has a court-appointed guardian  
10 or conservator, to that guardian or conservator;

11 (3) if the beneficiary is a minor for whom no guardian  
12 or conservator has been appointed, to a parent of the minor; and

13 (4) if the beneficiary is a charity that for any reason  
14 cannot be notified, to the attorney general.

15 (c) A personal representative is not required to give the  
16 notice otherwise required by this section to a beneficiary who:

17 (1) made an appearance in the proceeding with respect  
18 to the decedent's estate before the will was admitted to probate; or

19 (2) received a copy of the will that was admitted to  
20 probate and waived the right to receive the notice in an instrument  
21 that:

22 (A) acknowledges the receipt of the copy of the  
23 will;

24 (B) is signed by the beneficiary; and

25 (C) is filed with the court.

26 (d) The notice required by this section must be sent by  
27 registered or certified mail, return receipt requested. (Tex.

1 Prob. Code, Secs. 128A(b), (c), (d), (f).)

2           Sec. 308.003. CONTENTS OF NOTICE. The notice required by  
3 Section 308.002 must:

4           (1) state:

5                   (A) the name and address of the beneficiary to  
6 whom the notice is given or, for a beneficiary described by Section  
7 308.002(b), the name and address of the beneficiary for whom the  
8 notice is given and of the person to whom the notice is given;

9                   (B) the decedent's name;

10                   (C) that the decedent's will has been admitted to  
11 probate;

12                   (D) that the beneficiary to whom or for whom the  
13 notice is given is named as a beneficiary in the will; and

14                   (E) the personal representative's name and  
15 contact information; and

16           (2) contain as attachments a copy of the will admitted  
17 to probate and of the order admitting the will to probate. (Tex.  
18 Prob. Code, Sec. 128A(e).)

19           Sec. 308.004. AFFIDAVIT OR CERTIFICATE. (a) Not later than  
20 the 90th day after the date of an order admitting a will to probate,  
21 the personal representative shall file with the clerk of the court  
22 in which the decedent's estate is pending a sworn affidavit of the  
23 representative or a certificate signed by the representative's  
24 attorney stating:

25                   (1) for each beneficiary to whom notice was required  
26 to be given under this subchapter, the name and address of the  
27 beneficiary to whom the representative gave the notice or, for a

1 beneficiary described by Section 308.002(b), the name and address  
2 of the beneficiary and of the person to whom the notice was given;

3 (2) the name and address of each beneficiary who filed  
4 a waiver of the notice;

5 (3) the name of each beneficiary whose identity or  
6 address could not be ascertained despite the representative's  
7 exercise of reasonable diligence; and

8 (4) any other information necessary to explain the  
9 representative's inability to give the notice to or for any  
10 beneficiary as required by this subchapter.

11 (b) The affidavit or certificate required by Subsection (a)  
12 may be included with any pleading or other document filed with the  
13 court clerk, including the inventory, appraisement, and list of  
14 claims or an application for an extension of the deadline to file  
15 the inventory, appraisement, and list of claims, provided that the  
16 pleading or other document is filed not later than the date the  
17 affidavit or certificate is required to be filed under Subsection  
18 (a). (Tex. Prob. Code, Secs. 128A(g), (h).)

19 [Sections 308.005-308.050 reserved for expansion]

20 SUBCHAPTER B. NOTICE TO CLAIMANTS

21 Sec. 308.051. REQUIRED NOTICE REGARDING PRESENTMENT OF  
22 CLAIMS IN GENERAL. (a) Within one month after receiving letters  
23 testamentary or of administration, a personal representative of an  
24 estate shall provide notice requiring each person who has a claim  
25 against the estate to present the claim within the period  
26 prescribed by law by:

27 (1) having the notice published in a newspaper printed

1 in the county in which the letters were issued; and

2 (2) if the decedent remitted or should have remitted  
3 taxes administered by the comptroller, sending the notice to the  
4 comptroller by certified or registered mail.

5 (b) Notice provided under Subsection (a) must include:

6 (1) the date the letters testamentary or of  
7 administration were issued to the personal representative;

8 (2) the address to which a claim may be presented; and

9 (3) an instruction of the representative's choice that  
10 the claim be addressed in care of:

11 (A) the representative;

12 (B) the representative's attorney; or

13 (C) "Representative, Estate of \_\_\_\_\_"

14 (naming the estate).

15 (c) If a newspaper is not printed in the county in which the  
16 letters testamentary or of administration were issued, the notice  
17 must be posted and the return made and filed as otherwise required  
18 by this title. (Tex. Prob. Code, Secs. 294(a), (c).)

19 Sec. 308.052. PROOF OF PUBLICATION. A copy of the published  
20 notice required by Section 308.051(a)(1), together with the  
21 publisher's affidavit, sworn to and subscribed before a proper  
22 officer, to the effect that the notice was published as provided in  
23 this title for the service of citation or notice by publication,  
24 shall be filed in the court in which the cause is pending. (Tex.  
25 Prob. Code, Sec. 294(b).)

26 Sec. 308.053. REQUIRED NOTICE TO SECURED CREDITOR. (a)  
27 Within two months after receiving letters testamentary or of

1 administration, a personal representative of an estate shall give  
2 notice of the issuance of the letters to each person the  
3 representative knows to have a claim for money against the estate  
4 that is secured by estate property.

5 (b) Within a reasonable period after a personal  
6 representative obtains actual knowledge of the existence of a  
7 person who has a secured claim for money against the estate and to  
8 whom notice was not previously given, the representative shall give  
9 notice to the person of the issuance of the letters testamentary or  
10 of administration.

11 (c) Notice provided under this section must be:

12 (1) sent by certified or registered mail, return  
13 receipt requested; and

14 (2) addressed to the record holder of the claim at the  
15 record holder's last known post office address.

16 (d) The following shall be filed with the clerk of the court  
17 in which the letters testamentary or of administration were issued:

18 (1) a copy of each notice and of each return receipt;  
19 and

20 (2) the personal representative's affidavit stating:

21 (A) that the notice was mailed as required by  
22 law; and

23 (B) the name of the person to whom the notice was  
24 mailed, if that name is not shown on the notice or receipt. (Tex.  
25 Prob. Code, Sec. 295.)

26 Sec. 308.054. PERMISSIVE NOTICE TO UNSECURED CREDITOR. (a)  
27 At any time before an estate administration is closed, a personal

1 representative may give notice by certified or registered mail,  
2 return receipt requested, to an unsecured creditor who has a claim  
3 for money against the estate.

4 (b) Notice given under Subsection (a) must:

5 (1) expressly state that the creditor must present the  
6 claim within four months after the date of the receipt of the notice  
7 or the claim is barred, if the claim is not barred by the general  
8 statutes of limitation; and

9 (2) include:

10 (A) the date the letters testamentary or of  
11 administration held by the personal representative were issued to  
12 the representative;

13 (B) the address to which the claim may be  
14 presented; and

15 (C) an instruction of the representative's  
16 choice that the claim be addressed in care of:

17 (i) the representative;

18 (ii) the representative's attorney; or

19 (iii) "Representative, Estate of \_\_\_\_\_"

20 (naming the estate). (Tex. Prob. Code, Sec. 294(d).)

21 Sec. 308.055. ONE NOTICE SUFFICIENT. A personal  
22 representative is not required to give a notice required by Section  
23 308.051 or 308.053 if another person also appointed as personal  
24 representative of the estate or a former personal representative of  
25 the estate has given that notice. (Tex. Prob. Code, Sec. 296.)

26 Sec. 308.056. LIABILITY FOR FAILURE TO GIVE REQUIRED  
27 NOTICE. A personal representative who fails to give a notice



1 required by Section 308.051 or 308.053, or to cause the notice to be  
2 given, and the sureties on the representative's bond are liable for  
3 any damage a person suffers due to that neglect, unless it appears  
4 that the person otherwise had notice. (Tex. Prob. Code, Sec. 297.)

5 CHAPTER 309. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

6 SUBCHAPTER A. APPRAISERS

7 Sec. 309.001. APPOINTMENT OF APPRAISERS

8 Sec. 309.002. APPRAISERS' FEES

9 Sec. 309.003. FAILURE OR REFUSAL TO ACT BY APPRAISERS

10 [Sections 309.004-309.050 reserved for expansion]

11 SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST  
12 OF CLAIMS

13 Sec. 309.051. INVENTORY AND APPRAISEMENT

14 Sec. 309.052. LIST OF CLAIMS

15 Sec. 309.053. AFFIDAVIT OF PERSONAL REPRESENTATIVE

16 Sec. 309.054. APPROVAL OR DISAPPROVAL BY THE COURT

17 Sec. 309.055. FAILURE OF JOINT PERSONAL

18 REPRESENTATIVES TO FILE INVENTORY,

19 APPRAISEMENT, AND LIST OF CLAIMS

20 [Sections 309.056-309.100 reserved for expansion]

21 SUBCHAPTER C. CHANGES TO INVENTORY, APPRAISEMENT, AND LIST OF  
22 CLAIMS

23 Sec. 309.101. DISCOVERY OF ADDITIONAL PROPERTY OR

24 CLAIMS

25 Sec. 309.102. ADDITIONAL INVENTORY AND APPRAISEMENT OR

26 LIST OF CLAIMS

1 Sec. 309.103. CORRECTION OF INVENTORY, APPRAISEMENT,  
2 OR LIST OF CLAIMS FOR ERRONEOUS OR  
3 UNJUST ITEM

4 Sec. 309.104. REAPPRAISEMENT

5 [Sections 309.105-309.150 reserved for expansion]

6 SUBCHAPTER D. USE OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS AS  
7 EVIDENCE

8 Sec. 309.151. USE OF INVENTORY, APPRAISEMENT, AND LIST  
9 OF CLAIMS AS EVIDENCE

10 CHAPTER 309. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

11 SUBCHAPTER A. APPRAISERS

12 Sec. 309.001. APPOINTMENT OF APPRAISERS. (a) At any time  
13 after letters testamentary or of administration are granted, the  
14 court, for good cause, on the court's own motion or on the motion of  
15 an interested party shall appoint at least one but not more than  
16 three disinterested persons who are residents of the county in  
17 which the letters were granted to appraise the estate property.

18 (b) At any time after letters testamentary or of  
19 administration are granted, the court, for good cause shown, on the  
20 court's own motion or on the motion of an interested person shall  
21 appoint at least one but not more than three disinterested persons  
22 who are residents of the county in which the letters were granted to  
23 appraise the estate property.

24 (c) If the court makes an appointment under Subsection (a)  
25 or (b) and part of the estate is located in a county other than the  
26 county in which the letters were granted, the court, if the court  
27 considers necessary, may appoint at least one but not more than

1 three disinterested persons who are residents of the county in  
2 which the relevant part of the estate is located to appraise the  
3 estate property located in that county. (Tex. Prob. Code, Sec. 248,  
4 as amended Acts 79th Leg., R.S., Chs. 701, 765.)

5 Sec. 309.002. APPRAISERS' FEES. An appraiser appointed by  
6 the court as herein authorized is entitled to receive compensation,  
7 payable out of the estate, of at least \$5 for each day the appraiser  
8 actually serves in performing the appraiser's duties. (Tex. Prob.  
9 Code, Sec. 253.)

10 Sec. 309.003. FAILURE OR REFUSAL TO ACT BY APPRAISERS. If  
11 an appraiser appointed under Section 309.001 fails or refuses to  
12 act, the court by one or more similar orders shall remove the  
13 appraiser and appoint one or more other appraisers, as the case  
14 requires. (Tex. Prob. Code, Sec. 249.)

15 [Sections 309.004-309.050 reserved for expansion]

16 SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST  
17 OF CLAIMS

18 Sec. 309.051. INVENTORY AND APPRAISEMENT. (a) Except as  
19 provided by Subsection (c) or unless a longer period is granted by  
20 the court, before the 91st day after the date the personal  
21 representative qualifies, the representative shall file with the  
22 court clerk a single written instrument that contains a verified,  
23 full, and detailed inventory of all estate property that has come  
24 into the representative's possession or of which the representative  
25 has knowledge. The inventory must:

26 (1) include:

27 (A) all estate real property located in this

1 state; and

2 (B) all estate personal property regardless of  
3 where the property is located; and

4 (2) specify:

5 (A) which portion of the property, if any, is  
6 separate property and which, if any, is community property; and

7 (B) if estate property is owned in common with  
8 others, the interest of the estate in that property and the names  
9 and relationship, if known, of the co-owners.

10 (b) The personal representative shall:

11 (1) set out in the inventory the representative's  
12 appraisal of the fair market value on the date of the decedent's  
13 death of each item in the inventory; or

14 (2) if the court has appointed one or more appraisers  
15 for the estate under Subchapter A:

16 (A) determine the fair market value of each item  
17 in the inventory with the assistance of the appraiser or  
18 appraisers; and

19 (B) set out that appraisal in the inventory.

20 (c) The court for good cause shown may require the personal  
21 representative to file the inventory and appraisal within a  
22 shorter period than the period prescribed by Subsection (a).

23 (d) The inventory, when approved by the court and filed with  
24 the court clerk, is for all purposes the inventory and appraisal  
25 of the estate referred to in this title. (Tex. Prob. Code, Sec.  
26 250.)

27 Sec. 309.052. LIST OF CLAIMS. A complete list of claims due

1 or owing to the estate must be attached to the inventory and  
2 appraisement required by Section 309.051. The list of claims must  
3 state:

4 (1) the name and, if known, address of each person  
5 indebted to the estate; and

6 (2) regarding each claim:

7 (A) the nature of the debt, whether by note,  
8 bill, bond, or other written obligation, or by account or verbal  
9 contract;

10 (B) the date the debt was incurred;

11 (C) the date the debt was or is due;

12 (D) the amount of the claim, the rate of interest  
13 on the claim, and the period for which the claim bears interest;

14 (E) whether the claim is separate property or  
15 community property; and

16 (F) if any portion of the claim is held in common  
17 with others, the interest of the estate in the claim and the names  
18 and relationships, if any, of the other part owners. (Tex. Prob.  
19 Code, Sec. 251.)

20 Sec. 309.053. AFFIDAVIT OF PERSONAL REPRESENTATIVE. The  
21 personal representative shall attach to the inventory,  
22 appraisement, and list of claims the representative's affidavit,  
23 subscribed and sworn to before an officer in the county authorized  
24 by law to administer oaths, that the inventory, appraisement, and  
25 list of claims are a true and complete statement of the property and  
26 claims of the estate of which the representative has knowledge.  
27 (Tex. Prob. Code, Sec. 252.)

1           Sec. 309.054. APPROVAL OR DISAPPROVAL BY THE COURT. (a) On  
2 the filing of the inventory, appraisalment, and list of claims with  
3 the court clerk, the judge shall examine and approve or disapprove  
4 the inventory, appraisalment, and list of claims.

5           (b) If the judge approves the inventory, appraisalment, and  
6 list of claims, the judge shall enter an order to that effect.

7           (c) If the judge does not approve the inventory,  
8 appraisalment, or list of claims, the judge:

9           (1) shall enter an order to that effect requiring the  
10 filing of another inventory, appraisalment, or list of claims,  
11 whichever is not approved, within a period specified in the order  
12 not to exceed 20 days after the date the order is entered; and

13           (2) may, if considered necessary, appoint new  
14 appraisers. (Tex. Prob. Code, Sec. 255.)

15           Sec. 309.055. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO  
16 FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) If more than  
17 one personal representative qualifies to serve, any one or more of  
18 the representatives, on the neglect of the other representatives,  
19 may make and file an inventory, appraisalment, and list of claims.

20           (b) A personal representative who neglects to make or file  
21 an inventory, appraisalment, and list of claims may not interfere  
22 with and does not have any power over the estate after another  
23 representative makes and files an inventory, appraisalment, and list  
24 of claims.

25           (c) The personal representative who files the inventory,  
26 appraisalment, and list of claims is entitled to the whole  
27 administration unless, before the 61st day after the date the



1 appraisalment or list of claims, or both, as applicable.

2 (b) After hearing the complaint, if the court is satisfied  
3 of the truth of the complaint, the court shall enter an order  
4 requiring the personal representative to make and file an  
5 additional inventory and appraisalment or list of claims, or both,  
6 as applicable. The additional inventory and appraisalment or list  
7 of claims:

8 (1) must be made and filed in the same manner as the  
9 original inventory and appraisalment or list of claims within the  
10 period prescribed by the court, not to exceed 20 days after the date  
11 the order is entered; and

12 (2) may include only property or claims not previously  
13 included in the inventory and appraisalment or list of claims. (Tex.  
14 Prob. Code, Sec. 257.)

15 Sec. 309.103. CORRECTION OF INVENTORY, APPRAISEMENT, OR  
16 LIST OF CLAIMS FOR ERRONEOUS OR UNJUST ITEM. (a) Any interested  
17 person who considers an inventory, appraisalment, or list of claims  
18 filed for the estate to be erroneous or unjust in any particular  
19 may:

20 (1) file a written complaint setting forth the alleged  
21 erroneous or unjust item; and

22 (2) have the personal representative cited to appear  
23 before the court and show cause why the item should not be  
24 corrected.

25 (b) On the hearing of the complaint, if the court is  
26 satisfied from the evidence that the inventory, appraisalment, or  
27 list of claims is erroneous or unjust as alleged in the complaint,



1 the court shall enter an order:

2 (1) specifying the erroneous or unjust item and the  
3 corrections to be made; and

4 (2) appointing appraisers to make a new appraisalment  
5 correcting the erroneous or unjust item and requiring the filing of  
6 the new appraisalment before the 21st day after the date of the  
7 order.

8 (c) The court on the court's own motion or that of the  
9 personal representative may also have a new appraisalment made for  
10 the purposes described by this section. (Tex. Prob. Code, Sec.  
11 258.)

12 Sec. 309.104. REAPPRAISEMENT. (a) A reappraisalment made,  
13 filed, and approved by the court replaces the original  
14 appraisalment. Not more than one reappraisalment may be made.

15 (b) Notwithstanding Subsection (a), an interested person  
16 may object to a reappraisalment regardless of whether the court has  
17 approved the reappraisalment. If the court finds that the  
18 reappraisalment is erroneous or unjust, the court shall appraise the  
19 property on the basis of the evidence before the court. (Tex. Prob.  
20 Code, Sec. 259.)

21 [Sections 309.105-309.150 reserved for expansion]

22 SUBCHAPTER D. USE OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS AS  
23 EVIDENCE

24 Sec. 309.151. USE OF INVENTORY, APPRAISEMENT, AND LIST OF  
25 CLAIMS AS EVIDENCE. Each inventory, appraisalment, and list of  
26 claims that has been made, filed, and approved in accordance with  
27 law, the record of the inventory, appraisalment, and list of claims,

1 or a copy of an original or the record that has been certified under  
2 the seal of the county court affixed by the clerk:

3 (1) may be given in evidence in any court of this state  
4 in any suit by or against the personal representative; and

5 (2) is not conclusive for or against the  
6 representative if it is shown that:

7 (A) any property or claim of the estate is not  
8 shown in the originals, the record, or the copies; or

9 (B) the value of the property or claim of the  
10 estate exceeded the value shown in the appraisal or list of  
11 claims. (Tex. Prob. Code, Sec. 261.)

12 CHAPTER 310. ALLOCATION OF ESTATE INCOME AND EXPENSES

13 Sec. 310.001. DEFINITION

14 Sec. 310.002. APPLICABILITY OF OTHER LAW

15 Sec. 310.003. ALLOCATION OF EXPENSES

16 Sec. 310.004. INCOME DETERMINATION AND DISTRIBUTION

17 Sec. 310.005. TREATMENT OF INCOME RECEIVED BY TRUSTEE

18 Sec. 310.006. FREQUENCY AND METHOD OF DETERMINING

19 INTERESTS IN CERTAIN ESTATE ASSETS

20 CHAPTER 310. ALLOCATION OF ESTATE INCOME AND EXPENSES

21 Sec. 310.001. DEFINITION. In this chapter, "undistributed  
22 assets" includes funds used to pay debts, administration expenses,  
23 and federal and state estate, inheritance, succession, and  
24 generation-skipping transfer taxes until the date the debts,  
25 expenses, and taxes are paid. (Tex. Prob. Code, Sec. 378B(h)  
26 (part).)

27 Sec. 310.002. APPLICABILITY OF OTHER LAW. Chapter 116,

1 Property Code, controls to the extent of any conflict between this  
2 chapter and Chapter 116, Property Code. (Tex. Prob. Code, Sec.  
3 378B(i).)

4 Sec. 310.003. ALLOCATION OF EXPENSES. (a) Except as  
5 provided by Section 310.004(a) and unless the will provides  
6 otherwise, all expenses incurred in connection with the settlement  
7 of a decedent's estate shall be charged against the principal of the  
8 estate, including:

- 9 (1) debts;
- 10 (2) funeral expenses;
- 11 (3) estate taxes and penalties relating to estate  
12 taxes; and
- 13 (4) family allowances.

14 (b) Fees and expenses of an attorney, accountant, or other  
15 professional advisor, commissions and expenses of a personal  
16 representative, court costs, and all other similar fees or expenses  
17 relating to the administration of the estate and interest relating  
18 to estate taxes shall be allocated between the income and principal  
19 of the estate as the executor determines in the executor's  
20 discretion to be just and equitable. (Tex. Prob. Code, Sec.  
21 378B(a).)

22 Sec. 310.004. INCOME DETERMINATION AND DISTRIBUTION. (a)  
23 Unless a will provides otherwise, income from the assets of a  
24 decedent's estate that accrues after the death of the testator and  
25 before distribution, including income from property used to  
26 discharge liabilities, shall be:

- 27 (1) determined according to the rules applicable to a

1 trustee under the Texas Trust Code (Subtitle B, Title 9, Property  
2 Code); and

3 (2) distributed as provided by Subsections (b) and (c)  
4 and by Chapter 116, Property Code.

5 (b) Income from property devised to a specific devisee shall  
6 be distributed to the devisee after reduction for:

7 (1) property taxes;

8 (2) other taxes, including taxes imposed on income  
9 that accrues during the period of administration and that is  
10 payable to the devisee;

11 (3) ordinary repairs;

12 (4) insurance premiums;

13 (5) interest accrued after the testator's death; and

14 (6) other expenses of management and operation of the  
15 property.

16 (c) The balance of the net income shall be distributed to  
17 all other devisees after reduction for the balance of property  
18 taxes, ordinary repairs, insurance premiums, interest accrued,  
19 other expenses of management and operation of all property from  
20 which the estate is entitled to income, and taxes imposed on income  
21 that accrues during the period of administration and that is  
22 payable or allocable to the devisees, in proportion to the  
23 devisees' respective interests in the undistributed assets of the  
24 estate. (Tex. Prob. Code, Secs. 378B(b), (c), (d).)

25 Sec. 310.005. TREATMENT OF INCOME RECEIVED BY TRUSTEE.  
26 Income received by a trustee under this chapter shall be treated as  
27 income of the trust as provided by Section 116.101, Property Code.

1 (Tex. Prob. Code, Sec. 378B(g).)

2           Sec. 310.006. FREQUENCY AND METHOD OF DETERMINING INTERESTS  
3 IN CERTAIN ESTATE ASSETS. Except as required by Sections 2055 and  
4 2056, Internal Revenue Code of 1986 (26 U.S.C. Sections 2055 and  
5 2056), the frequency and method of determining the beneficiaries'  
6 respective interests in the undistributed assets of an estate are  
7 in the sole and absolute discretion of the executor of the estate.  
8 The executor may consider all relevant factors, including  
9 administrative convenience and expense and the interests of the  
10 various beneficiaries of the estate, to reach a fair and equitable  
11 result among beneficiaries. (Tex. Prob. Code, Sec. 378B(h)  
12 (part).)

13                           [Chapters 311-350 reserved for expansion]

14                           SUBTITLE H. CONTINUATION OF ADMINISTRATION

15           CHAPTER 351. POWERS AND DUTIES OF PERSONAL REPRESENTATIVES IN  
16   GENERAL

17   SUBCHAPTER A. GENERAL PROVISIONS

18           Sec. 351.001. APPLICABILITY OF COMMON LAW

19           Sec. 351.002. APPEAL BOND

20           Sec. 351.003. CERTAIN COSTS ADJUDGED AGAINST PERSONAL  
21   REPRESENTATIVE

22   [Sections 351.004-351.050 reserved for expansion]

23   SUBCHAPTER B. GENERAL AUTHORITY OF PERSONAL REPRESENTATIVES

24           Sec. 351.051. EXERCISE OF AUTHORITY UNDER COURT ORDER

25           Sec. 351.052. EXERCISE OF AUTHORITY WITHOUT COURT  
26   ORDER

1 Sec. 351.053. AUTHORITY TO SERVE PENDING APPEAL OF  
2 APPOINTMENT  
3 Sec. 351.054. AUTHORITY TO COMMENCE SUITS  
4 [Sections 351.055-351.100 reserved for expansion]  
5 SUBCHAPTER C. POSSESSION AND CARE OF ESTATE PROPERTY  
6 Sec. 351.101. DUTY OF CARE  
7 Sec. 351.102. POSSESSION OF PERSONAL PROPERTY AND  
8 RECORDS  
9 Sec. 351.103. POSSESSION OF PROPERTY HELD IN COMMON  
10 OWNERSHIP  
11 Sec. 351.104. ADMINISTRATION OF PARTNERSHIP INTEREST  
12 Sec. 351.105. HOLDING OF STOCKS, BONDS, AND OTHER  
13 PERSONAL PROPERTY IN NOMINEE'S NAME  
14 [Sections 351.106-351.150 reserved for expansion]  
15 SUBCHAPTER D. COLLECTION OF CLAIMS; RECOVERY OF PROPERTY  
16 Sec. 351.151. ORDINARY DILIGENCE REQUIRED  
17 Sec. 351.152. CONTINGENT INTEREST FOR CERTAIN  
18 ATTORNEY'S FEES; COURT APPROVAL  
19 Sec. 351.153. RECOVERY OF CERTAIN EXPENSES  
20 [Sections 351.154-351.200 reserved for expansion]  
21 SUBCHAPTER E. OPERATION OF BUSINESS  
22 Sec. 351.201. DEFINITION  
23 Sec. 351.202. ORDER REQUIRING PERSONAL REPRESENTATIVE  
24 TO OPERATE BUSINESS  
25 Sec. 351.203. POWERS OF PERSONAL REPRESENTATIVE  
26 REGARDING BUSINESS

- 1 Sec. 351.204. FIDUCIARY DUTIES OF PERSONAL  
2 REPRESENTATIVE REGARDING BUSINESS
- 3 Sec. 351.205. REAL PROPERTY OF BUSINESS; NOTICE  
4 [Sections 351.206-351.250 reserved for expansion]
- 5 SUBCHAPTER F. AUTHORITY TO ENGAGE IN CERTAIN BORROWING
- 6 Sec. 351.251. MORTGAGE OR PLEDGE OF ESTATE PROPERTY  
7 AUTHORIZED IN CERTAIN CIRCUMSTANCES
- 8 Sec. 351.252. APPLICATION; ORDER
- 9 Sec. 351.253. TERM OF LOAN OR LIEN EXTENSION  
10 [Sections 351.254-351.300 reserved for expansion]
- 11 SUBCHAPTER G. PAYMENT OF INCOME OF CERTAIN ESTATES DURING  
12 ADMINISTRATION
- 13 Sec. 351.301. APPLICABILITY OF SUBCHAPTER
- 14 Sec. 351.302. APPLICATION AND ORDER FOR PAYMENT OF  
15 CERTAIN ESTATE INCOME
- 16 Sec. 351.303. TREATMENT OF CERTAIN AMOUNTS RECEIVED  
17 FROM MINERAL LEASE
- 18 [Sections 351.304-351.350 reserved for expansion]
- 19 SUBCHAPTER H. CERTAIN ADMINISTERED ESTATES
- 20 Sec. 351.351. APPLICABILITY
- 21 Sec. 351.352. ENSURING COMPLIANCE WITH LAW
- 22 Sec. 351.353. ANNUAL EXAMINATION OF CERTAIN ESTATES;  
23 BOND OF PERSONAL REPRESENTATIVE
- 24 Sec. 351.354. JUDGE'S LIABILITY
- 25 Sec. 351.355. IDENTIFYING INFORMATION

1 CHAPTER 351. POWERS AND DUTIES OF PERSONAL REPRESENTATIVES IN

2 GENERAL

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 351.001. APPLICABILITY OF COMMON LAW. The rights,  
5 powers, and duties of executors and administrators are governed by  
6 common law principles to the extent that those principles do not  
7 conflict with the statutes of this state. (Tex. Prob. Code, Sec.  
8 32.)

9 Sec. 351.002. APPEAL BOND. (a) Except as provided by  
10 Subsection (b), an appeal bond is not required if an appeal is taken  
11 by an executor or administrator.

12 (b) An executor or administrator must give an appeal bond if  
13 the appeal personally concerns the executor or administrator.  
14 (Tex. Prob. Code, Sec. 29.)

15 Sec. 351.003. CERTAIN COSTS ADJUDGED AGAINST PERSONAL  
16 REPRESENTATIVE. If a personal representative neglects to perform a  
17 required duty or is removed for cause, the representative and the  
18 sureties on the representative's bond are liable for:

19 (1) the costs of removal and other additional costs  
20 incurred that are not expenditures authorized by this title; and

21 (2) reasonable attorney's fees incurred in:

22 (A) removing the representative; or

23 (B) obtaining compliance regarding any statutory  
24 duty the representative has neglected. (Tex. Prob. Code, Sec.  
25 245.)

26 [Sections 351.004-351.050 reserved for expansion]



1 SUBCHAPTER B. GENERAL AUTHORITY OF PERSONAL REPRESENTATIVES

2 Sec. 351.051. EXERCISE OF AUTHORITY UNDER COURT ORDER. (a)

3 A personal representative of an estate may renew or extend any  
4 obligation owed by or to the estate on application and order  
5 authorizing the renewal or extension. If a personal representative  
6 considers it in the interest of the estate, the representative may,  
7 on written application to the court and if authorized by court  
8 order:

9 (1) purchase or exchange property;

10 (2) take claims or property for the use and benefit of  
11 the estate in payment of a debt due or owed to the estate;

12 (3) compound bad or doubtful debts due or owed to the  
13 estate;

14 (4) make a compromise or settlement in relation to  
15 property or a claim in dispute or litigation;

16 (5) compromise or pay in full any secured claim that  
17 has been allowed and approved as required by law against the estate  
18 by conveying to the holder of the claim the real estate or personal  
19 property securing the claim:

20 (A) in full payment, liquidation, and  
21 satisfaction of the claim; and

22 (B) in consideration of cancellation of notes,  
23 deeds of trust, mortgages, chattel mortgages, or other evidences of  
24 liens securing the payment of the claim; or

25 (6) abandon the administration of burdensome or  
26 worthless estate property.

27 (b) Abandoned property may be foreclosed on by a mortgagee

1 or other secured party or a trustee without further court order.  
2 (Tex. Prob. Code, Sec. 234(a).)

3 Sec. 351.052. EXERCISE OF AUTHORITY WITHOUT COURT ORDER.

4 (a) A personal representative of an estate may, without  
5 application to or order of the court:

6 (1) release a lien on payment at maturity of the debt  
7 secured by the lien;

8 (2) vote stocks by limited or general proxy;

9 (3) pay calls and assessments;

10 (4) insure the estate against liability in appropriate  
11 cases;

12 (5) insure estate property against fire, theft, and  
13 other hazards; or

14 (6) pay taxes, court costs, and bond premiums.

15 (b) A personal representative who is under court control may  
16 apply and obtain a court order if the representative has doubts  
17 regarding the propriety of the exercise of any power listed in  
18 Subsection (a). (Tex. Prob. Code, Sec. 234(b).)

19 Sec. 351.053. AUTHORITY TO SERVE PENDING APPEAL OF  
20 APPOINTMENT. Pending an appeal from an order or judgment  
21 appointing an administrator or temporary administrator, the  
22 appointee shall continue to:

23 (1) act as administrator or temporary administrator;  
24 and

25 (2) prosecute any suit then pending in favor of the  
26 estate. (Tex. Prob. Code, Sec. 28.)

27 Sec. 351.054. AUTHORITY TO COMMENCE SUITS. (a) An executor

1 or administrator appointed in this state may commence a suit for:

2 (1) recovery of personal property, debts, or damages;

3 or

4 (2) title to or possession of land, any right attached  
5 to or arising from that land, or an injury or damage done to that  
6 land.

7 (b) A judgment in a suit described by Subsection (a) is  
8 conclusive, but may be set aside by any interested person for fraud  
9 or collusion on the executor's or administrator's part. (Tex. Prob.  
10 Code, Sec. 233A.)

11 [Sections 351.055-351.100 reserved for expansion]

12 SUBCHAPTER C. POSSESSION AND CARE OF ESTATE PROPERTY

13 Sec. 351.101. DUTY OF CARE. An executor or administrator of  
14 an estate shall take care of estate property as a prudent person  
15 would take of that person's own property, and if any buildings  
16 belong to the estate, the executor or administrator shall keep  
17 those buildings in good repair, except for extraordinary  
18 casualties, unless directed by a court order not to do so. (Tex.  
19 Prob. Code, Sec. 230.)

20 Sec. 351.102. POSSESSION OF PERSONAL PROPERTY AND RECORDS.

21 (a) Immediately after receiving letters testamentary or of  
22 administration, the personal representative of an estate shall  
23 collect and take possession of the estate's personal property,  
24 record books, title papers, and other business papers.

25 (b) The personal representative shall deliver the property,  
26 books, and papers described by Subsection (a) that are in the  
27 representative's possession to the person or persons legally

1 entitled to the property, books, and papers when:

2 (1) the administration of the estate is closed; or

3 (2) a successor personal representative receives  
4 letters testamentary or of administration. (Tex. Prob. Code, Sec.  
5 232.)

6 Sec. 351.103. POSSESSION OF PROPERTY HELD IN COMMON  
7 OWNERSHIP. If an estate holds or owns any property in common or as  
8 part owner with another, the personal representative of the estate  
9 is entitled to possession of the property in common with the other  
10 part owner or owners in the same manner as other owners in common or  
11 joint owners are entitled to possession of the property. (Tex.  
12 Prob. Code, Sec. 235.)

13 Sec. 351.104. ADMINISTRATION OF PARTNERSHIP INTEREST. (a)  
14 If a decedent was a partner in a general partnership and the  
15 partnership agreement or articles of partnership provide that, on  
16 the death of a partner, the partner's personal representative is  
17 entitled to that partner's place in the partnership, a personal  
18 representative accordingly contracting to enter the partnership  
19 under the partnership agreement or articles of partnership is, to  
20 the extent allowed by law, liable to a third person only to the  
21 extent of:

22 (1) the deceased partner's capital in the partnership;  
23 and

24 (2) the estate's assets held by the representative.

25 (b) This section does not exonerate a personal  
26 representative from liability for the representative's negligence.  
27 (Tex. Prob. Code, Sec. 238A.)

1           Sec. 351.105. HOLDING OF STOCKS, BONDS, AND OTHER PERSONAL  
2 PROPERTY IN NOMINEE'S NAME. (a) Unless otherwise provided by the  
3 will, a personal representative of an estate may cause stocks,  
4 bonds, and other personal property of the estate to be registered  
5 and held in the name of a nominee without mentioning the fiduciary  
6 relationship in any instrument or record constituting or evidencing  
7 title to that property. The representative is liable for the acts  
8 of the nominee with respect to property registered in this manner.  
9 The representative's records must at all times show the ownership  
10 of the property.

11           (b) Any property registered in the manner described by  
12 Subsection (a) shall be kept:

13                 (1) in the possession and control of the personal  
14 representative at all times; and

15                 (2) separate from the representative's individual  
16 property. (Tex. Prob. Code, Sec. 398A.)

17           [Sections 351.106-351.150 reserved for expansion]

18           SUBCHAPTER D. COLLECTION OF CLAIMS; RECOVERY OF PROPERTY

19           Sec. 351.151. ORDINARY DILIGENCE REQUIRED. (a) If there is  
20 a reasonable prospect of collecting the claims or recovering the  
21 property of an estate, the personal representative of the estate  
22 shall use ordinary diligence to:

23                 (1) collect all claims and debts due the estate; and

24                 (2) recover possession of all property to which the  
25 estate has claim or title.

26           (b) If a personal representative wilfully neglects to use  
27 the ordinary diligence required under Subsection (a), the

1 representative and the sureties on the representative's bond are  
2 liable, on the suit of any person interested in the estate, for the  
3 use of the estate, for the amount of those claims or the value of  
4 that property lost by the neglect. (Tex. Prob. Code, Sec. 233(a).)

5       Sec. 351.152. CONTINGENT INTEREST FOR CERTAIN ATTORNEY'S  
6 FEES; COURT APPROVAL. (a) Except as provided by Subsection (b) and  
7 subject only to the approval of the court in which the estate is  
8 being administered, a personal representative may convey or enter  
9 into a contract to convey for attorney services a contingent  
10 interest in any property sought to be recovered, not to exceed a  
11 one-third interest in the property.

12       (b) A personal representative, including an independent  
13 executor or independent administrator, may convey or enter into a  
14 contract to convey for attorney services a contingent interest in  
15 any property sought to be recovered under this subchapter in an  
16 amount that exceeds a one-third interest in the property only on the  
17 approval of the court in which the estate is being administered.  
18 The court must approve a contract entered into or conveyance made  
19 under this section before an attorney performs any legal services.  
20 A contract entered into or a conveyance made in violation of this  
21 section is void unless the court ratifies or reforms the contract or  
22 documents relating to the conveyance to the extent necessary to  
23 make the contract or conveyance meet the requirements of this  
24 section.

25       (c) In approving a contract or conveyance under this  
26 section, the court shall consider:

27             (1) the time and labor required, the novelty and

1 difficulty of the questions involved, and the skill required to  
2 perform the legal services properly;

3 (2) the fee customarily charged in the locality for  
4 similar legal services;

5 (3) the value of the property recovered or sought to be  
6 recovered by the personal representative under this subchapter;

7 (4) the benefits to the estate that the attorney will  
8 be responsible for securing; and

9 (5) the experience and ability of the attorney who  
10 will perform the services. (Tex. Prob. Code, Secs. 233(b), (c),  
11 (d).)

12 Sec. 351.153. RECOVERY OF CERTAIN EXPENSES. On proof  
13 satisfactory to the court, a personal representative of an estate  
14 is entitled to all necessary and reasonable expenses incurred by  
15 the representative in:

16 (1) collecting or attempting to collect a claim or  
17 debt owed to the estate; or

18 (2) recovering or attempting to recover property to  
19 which the estate has a title or claim. (Tex. Prob. Code, Sec.  
20 233(e).)

21 [Sections 351.154-351.200 reserved for expansion]

22 SUBCHAPTER E. OPERATION OF BUSINESS

23 Sec. 351.201. DEFINITION. In this subchapter, "business"  
24 includes a farm, ranch, or factory. (Tex. Prob. Code, Sec. 238(a).)

25 Sec. 351.202. ORDER REQUIRING PERSONAL REPRESENTATIVE TO  
26 OPERATE BUSINESS. (a) A court, after notice to all interested  
27 persons and a hearing, may order the personal representative of an

1 estate to operate a business that is part of the estate and may  
2 grant the representative the powers to operate the business that  
3 the court determines are appropriate, after considering the factors  
4 listed in Subsection (b), if:

5 (1) the disposition of the business has not been  
6 specifically directed by the decedent's will;

7 (2) it is not necessary to sell the business at once  
8 for the payment of debts or for any other lawful purpose; and

9 (3) the court determines that the operation of the  
10 business by the representative is in the best interest of the  
11 estate.

12 (b) In determining which powers to grant a personal  
13 representative in an order entered under Subsection (a), the court  
14 shall consider:

15 (1) the condition of the estate and the business;

16 (2) the necessity that may exist for the future sale of  
17 the business or of business property to provide for payment of debts  
18 or claims against the estate or other lawful expenditures with  
19 respect to the estate;

20 (3) the effect of the order on the speedy settlement of  
21 the estate; and

22 (4) the best interests of the estate. (Tex. Prob.  
23 Code, Secs. 238(b), (f).)

24 Sec. 351.203. POWERS OF PERSONAL REPRESENTATIVE REGARDING  
25 BUSINESS. (a) A personal representative granted authority to  
26 operate a business in an order entered under Section 351.202(a) has  
27 the powers granted under Section 351.052, regardless of whether the



1 order specifies that the representative has those powers, unless  
2 the order specifically provides that the representative does not  
3 have one or more of the powers listed in Section 351.052.

4 (b) In addition to the powers granted to the personal  
5 representative under Section 351.052, subject to any specific  
6 limitation on those powers in accordance with Subsection (a), an  
7 order entered under Section 351.202(a) may grant the representative  
8 one or more of the following powers:

9 (1) the power to hire, pay, and terminate the  
10 employment of employees of the business;

11 (2) the power to incur debt on behalf of the business,  
12 including debt secured by liens against assets of the business or  
13 estate, if permitted or directed by the order;

14 (3) the power to purchase and sell property in the  
15 ordinary course of the operation of the business, including the  
16 power to purchase and sell real property if the court finds that the  
17 principal purpose of the business is the purchasing and selling of  
18 real property and the order states that finding;

19 (4) the power to enter into a lease or contract, the  
20 term of which may extend beyond the settlement of the estate, but  
21 only to the extent that granting the power appears to be consistent  
22 with the speedy settlement of the estate; and

23 (5) any other power the court finds necessary with  
24 respect to the operation of the business.

25 (c) If the order entered under Section 351.202(a) gives the  
26 personal representative the power to purchase, sell, lease, or  
27 otherwise encumber property:

1           (1) the purchase, sale, lease, or encumbrance is  
2 governed by the terms of the order; and

3           (2) the representative is not required to comply with  
4 any other provision of this title regarding the purchase, sale,  
5 lease, or encumbrance, including any provision requiring citation  
6 or notice. (Tex. Prob. Code, Secs. 238(c), (d), (e).)

7           Sec. 351.204. FIDUCIARY DUTIES OF PERSONAL REPRESENTATIVE  
8 REGARDING BUSINESS. (a) A personal representative who operates a  
9 business under an order entered under Section 351.202(a) has the  
10 same fiduciary duties as a representative who does not operate a  
11 business that is part of an estate.

12           (b) In operating a business under an order entered under  
13 Section 351.202(a), a personal representative shall consider:

14           (1) the condition of the estate and the business;

15           (2) the necessity that may exist for the future sale of  
16 the business or of business property to provide for payment of debts  
17 or claims against the estate or other lawful expenditures with  
18 respect to the estate;

19           (3) the effect of the order on the speedy settlement of  
20 the estate; and

21           (4) the best interests of the estate.

22           (c) A personal representative who operates a business under  
23 an order entered under Section 351.202(a) shall report to the court  
24 with respect to the operation and condition of the business as part  
25 of the accounts required by Chapters 359 and 362, unless the court  
26 orders the reports regarding the business to be made more  
27 frequently or in a different manner or form. (Tex. Prob. Code, Sec.

1 238(g).)

2           Sec. 351.205. REAL PROPERTY OF BUSINESS; NOTICE. (a) A  
3 personal representative shall file a notice in the real property  
4 records of the county in which the real property is located before  
5 purchasing, selling, leasing, or otherwise encumbering any real  
6 property of the business in accordance with an order entered under  
7 Section 351.202(a).

8           (b) The notice filed under Subsection (a) must:

9                 (1) state:

10                         (A) the decedent's name;

11                         (B) the county of the court in which the  
12 decedent's estate is pending;

13                         (C) the cause number assigned to the pending  
14 estate; and

15                         (D) that one or more orders have been entered  
16 under Section 351.202(a); and

17                 (2) include a description of the property that is the  
18 subject of the purchase, sale, lease, or other encumbrance.

19           (c) For purposes of determining a personal representative's  
20 authority with respect to a purchase, sale, lease, or other  
21 encumbrance of real property of a business that is part of an  
22 estate, a third party who deals in good faith with the  
23 representative with respect to the transaction may rely on the  
24 notice filed under Subsection (a) and an order entered under  
25 Section 351.202(a) and filed as part of the estate records  
26 maintained by the clerk of the court in which the estate is pending.

27 (Tex. Prob. Code, Secs. 238(h), (i).)

1 [Sections 351.206-351.250 reserved for expansion]

2 SUBCHAPTER F. AUTHORITY TO ENGAGE IN CERTAIN BORROWING

3 Sec. 351.251. MORTGAGE OR PLEDGE OF ESTATE PROPERTY  
4 AUTHORIZED IN CERTAIN CIRCUMSTANCES. Under order of the court, a  
5 personal representative of an estate may mortgage or pledge by deed  
6 of trust or otherwise as security for an indebtedness any property  
7 of the estate as necessary for:

8 (1) the payment of any ad valorem, income, gift,  
9 estate, inheritance, or transfer taxes on the transfer of an estate  
10 or due from a decedent or the estate, regardless of whether those  
11 taxes are assessed by a state, a political subdivision of a state,  
12 the federal government, or a foreign country;

13 (2) the payment of expenses of administration,  
14 including amounts necessary for operation of a business, farm, or  
15 ranch owned by the estate;

16 (3) the payment of claims allowed and approved, or  
17 established by suit, against the estate; or

18 (4) the renewal and extension of an existing lien.  
19 (Tex. Prob. Code, Sec. 329(a).)

20 Sec. 351.252. APPLICATION; ORDER. (a) If necessary to  
21 borrow money for a purpose described by Section 351.251 or to create  
22 or extend a lien on estate property as security, the personal  
23 representative of the estate shall file a sworn application for  
24 that authority with the court. The application must state fully and  
25 in detail the circumstances that the representative believes make  
26 the granting of the authority necessary.

27 (b) On the filing of an application under Subsection (a),

1 the clerk shall issue and have posted a citation to all interested  
2 persons, stating the nature of the application and requiring any  
3 interested person who chooses to do so to appear and show cause, if  
4 any, why the application should not be granted.

5 (c) If satisfied by the evidence adduced at the hearing on  
6 an application filed under Subsection (a) that it is in the interest  
7 of the estate to borrow money or to extend and renew an existing  
8 lien, the court shall issue an order to that effect that sets out  
9 the terms of the authority granted under the order.

10 (d) If a new lien is created on estate property, the court  
11 may require, for the protection of the estate and the creditors,  
12 that the personal representative's general bond be increased or an  
13 additional bond given, as for the sale of real property belonging to  
14 the estate. (Tex. Prob. Code, Secs. 329(b), (c) (part).)

15 Sec. 351.253. TERM OF LOAN OR LIEN EXTENSION. Except as  
16 otherwise provided by this section, the term of a loan or lien  
17 renewal authorized under Section 351.252 may not exceed a period of  
18 three years from the date original letters testamentary or of  
19 administration are granted to the personal representative of the  
20 affected estate. The court may authorize an extension of a lien  
21 renewed under Section 351.252 for not more than one additional year  
22 without further citation or notice. (Tex. Prob. Code, Sec. 329(c)  
23 (part).)

24 [Sections 351.254-351.300 reserved for expansion]

25 SUBCHAPTER G. PAYMENT OF INCOME OF CERTAIN ESTATES DURING  
26 ADMINISTRATION

27 Sec. 351.301. APPLICABILITY OF SUBCHAPTER. This subchapter

1 applies only to the estate of a decedent that is being administered  
2 under the direction, control, and orders of a court in the exercise  
3 of the court's probate jurisdiction. (Tex. Prob. Code, Sec. 239  
4 (part).)

5       Sec. 351.302. APPLICATION AND ORDER FOR PAYMENT OF CERTAIN  
6 ESTATE INCOME. (a) On the application of the executor or  
7 administrator of an estate or of any interested party, and after  
8 notice of the application has been given by posting, the court may  
9 order and direct the executor or administrator to pay, or credit to  
10 the account of, those persons who the court finds will own the  
11 estate assets when administration on the estate is completed, and  
12 in the same proportions, that part of the annual net income received  
13 by or accruing to the estate that the court finds can conveniently  
14 be paid to those owners without prejudice to the rights of  
15 creditors, legatees, or other interested parties, if:

16           (1) it appears from evidence introduced at a hearing  
17 on the application, and the court finds, that the reasonable market  
18 value of the estate assets on hand at that time, excluding the  
19 annual income from the estate assets, is at least twice the  
20 aggregate amount of all unpaid debts, administration expenses, and  
21 legacies; and

22           (2) no estate creditor or legatee has appeared and  
23 objected.

24       (b) Except as otherwise provided by this title, nothing in  
25 this subchapter authorizes the court to order paid over to the  
26 owners of the estate any part of the principal of the estate. (Tex.  
27 Prob. Code, Sec. 239 (part).)

1           Sec. 351.303. TREATMENT OF CERTAIN AMOUNTS RECEIVED FROM  
2 MINERAL LEASE. For the purposes of this subchapter, bonuses,  
3 rentals, and royalties received for or from an oil, gas, or other  
4 mineral lease shall be treated as income rather than as principal.  
5 (Tex. Prob. Code, Sec. 239 (part).)

6           [Sections 351.304-351.350 reserved for expansion]

7           SUBCHAPTER H. CERTAIN ADMINISTERED ESTATES

8           Sec. 351.351. APPLICABILITY. This subchapter does not  
9 apply to:

10           (1) the appointment of an independent executor or  
11 administrator under Section 145(c), (d), or (e); or

12           (2) the appointment of a successor independent  
13 executor under Section 154A. (Tex. Prob. Code, Secs. 145(q)  
14 (part), 154A(i) (part).)

15           Sec. 351.352. ENSURING COMPLIANCE WITH LAW. A county or  
16 probate court shall use reasonable diligence to see that personal  
17 representatives of estates administered under court orders and  
18 other officers of the court perform the duty enjoined on them by law  
19 applicable to those estates. (Tex. Prob. Code, Sec. 36(a) (part).)

20           Sec. 351.353. ANNUAL EXAMINATION OF CERTAIN ESTATES; BOND  
21 OF PERSONAL REPRESENTATIVE. For each estate administered under  
22 orders of a county or probate court, the judge shall, if the judge  
23 considers it necessary, annually examine the condition of the  
24 estate and the solvency of the bond of the estate's personal  
25 representative. If the judge finds the representative's bond is  
26 not sufficient to protect the estate, the judge shall require the  
27 representative to execute a new bond in accordance with law. In

1 each case, the judge, as provided by law, shall notify the  
2 representative and the sureties on the representative's bond.  
3 (Tex. Prob. Code, Sec. 36(a) (part).)

4       Sec. 351.354. JUDGE'S LIABILITY. A judge is liable on the  
5 judge's bond to those damaged if damage or loss results to an estate  
6 administered under orders of a county or probate court from the  
7 gross neglect of the judge to use reasonable diligence in the  
8 performance of the judge's duty under this subchapter. (Tex. Prob.  
9 Code, Sec. 36(a) (part).)

10       Sec. 351.355. IDENTIFYING INFORMATION. (a) The court may  
11 request an applicant or court-appointed fiduciary to produce other  
12 information identifying an applicant, decedent, or personal  
13 representative, including a social security number, in addition to  
14 identifying information the applicant or fiduciary is required to  
15 produce under this title.

16       (b) The court shall maintain any information required under  
17 this section, and the information may not be filed with the clerk.  
18 (Tex. Prob. Code, Sec. 36(b).)

19 CHAPTER 352. COMPENSATION AND EXPENSES OF PERSONAL REPRESENTATIVES  
20 AND OTHERS

21 SUBCHAPTER A. COMPENSATION OF PERSONAL REPRESENTATIVES

22 Sec. 352.001. DEFINITION

23 Sec. 352.002. STANDARD COMPENSATION

24 Sec. 352.003. ALTERNATE COMPENSATION

25 Sec. 352.004. DENIAL OF COMPENSATION

26 [Sections 352.005-352.050 reserved for expansion]



1 SUBCHAPTER B. EXPENSES OF PERSONAL REPRESENTATIVES AND OTHERS

2 Sec. 352.051. EXPENSES; ATTORNEY'S FEES

3 Sec. 352.052. ALLOWANCE FOR DEFENSE OF WILL

4 Sec. 352.053. EXPENSE CHARGES

5 CHAPTER 352. COMPENSATION AND EXPENSES OF PERSONAL REPRESENTATIVES  
6 AND OTHERS

7 SUBCHAPTER A. COMPENSATION OF PERSONAL REPRESENTATIVES

8 Sec. 352.001. DEFINITION. In this subchapter, "financial  
9 institution" means an organization authorized to engage in business  
10 under state or federal laws relating to financial institutions,  
11 including:

- 12 (1) a bank;
- 13 (2) a trust company;
- 14 (3) a savings bank;
- 15 (4) a building and loan association;
- 16 (5) a savings and loan company or association; and
- 17 (6) a credit union. (Tex. Prob. Code, Sec. 241(b).)

18 Sec. 352.002. STANDARD COMPENSATION. (a) An executor,  
19 administrator, or temporary administrator a court finds to have  
20 taken care of and managed an estate in compliance with the standards  
21 of this title is entitled to receive a five percent commission on  
22 all amounts that the executor or administrator actually receives or  
23 pays out in cash in the administration of the estate.

24 (b) The commission described by Subsection (a):

- 25 (1) may not exceed, in the aggregate, more than five  
26 percent of the gross fair market value of the estate subject to  
27 administration; and

1           (2) is not allowed for:

2           (A) receiving funds belonging to the testator or  
3 intestate that were, at the time of the testator's or intestate's  
4 death, either on hand or held for the testator or intestate in a  
5 financial institution or a brokerage firm, including cash or a cash  
6 equivalent held in a checking account, savings account, certificate  
7 of deposit, or money market account;

8           (B) collecting the proceeds of a life insurance  
9 policy; or

10           (C) paying out cash to an heir or legatee in that  
11 person's capacity as an heir or legatee. (Tex. Prob. Code, Sec.  
12 241(a) (part).)

13           Sec. 352.003. ALTERNATE COMPENSATION. (a) The court may  
14 allow an executor, administrator, or temporary administrator  
15 reasonable compensation for the executor's or administrator's  
16 services, including unusual efforts to collect funds or life  
17 insurance, if:

18           (1) the executor or administrator manages a farm,  
19 ranch, factory, or other business of the estate; or

20           (2) the compensation calculated under Section 352.002  
21 is unreasonably low.

22           (b) The county court has jurisdiction to receive, consider,  
23 and act on applications from independent executors for purposes of  
24 this section. (Tex. Prob. Code, Sec. 241(a) (part).)

25           Sec. 352.004. DENIAL OF COMPENSATION. The court may, on  
26 application of an interested person or on the court's own motion,  
27 wholly or partly deny a commission allowed by this subchapter if:

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

3           (2) the executor or administrator has been removed  
4 under Section 149C or Subchapter B, Chapter 361. (Tex. Prob. Code,  
5 Sec. 241(a) (part).)

6           [Sections 352.005-352.050 reserved for expansion]

7           SUBCHAPTER B. EXPENSES OF PERSONAL REPRESENTATIVES AND OTHERS

8           Sec. 352.051. EXPENSES; ATTORNEY'S FEES. On proof  
9 satisfactory to the court, a personal representative of an estate  
10 is entitled to:

11           (1) necessary and reasonable expenses incurred by the  
12 representative in:

13                   (A) preserving, safekeeping, and managing the  
14 estate;

15                   (B) collecting or attempting to collect claims or  
16 debts; and

17                   (C) recovering or attempting to recover property  
18 to which the estate has a title or claim; and

19           (2) reasonable attorney's fees necessarily incurred in  
20 connection with the proceedings and management of the estate. (Tex.  
21 Prob. Code, Sec. 242.)

22           Sec. 352.052. ALLOWANCE FOR DEFENSE OF WILL. (a) A person  
23 designated as executor in a will or an alleged will, or as  
24 administrator with the will or alleged will annexed, who, for the  
25 purpose of having the will or alleged will admitted to probate,  
26 defends the will or alleged will or prosecutes any proceeding in  
27 good faith and with just cause, whether or not successful, shall be

1 allowed out of the estate the executor's or administrator's  
2 necessary expenses and disbursements in those proceedings,  
3 including reasonable attorney's fees.

4 (b) A person designated as a devisee in or beneficiary of a  
5 will or an alleged will, or as administrator with the will or  
6 alleged will annexed, who, for the purpose of having the will or  
7 alleged will admitted to probate, defends the will or alleged will  
8 or prosecutes any proceeding in good faith and with just cause,  
9 whether or not successful, may be allowed out of the estate the  
10 person's necessary expenses and disbursements in those  
11 proceedings, including reasonable attorney's fees. (Tex. Prob.  
12 Code, Sec. 243.)

13 Sec. 352.053. EXPENSE CHARGES. (a) The court shall act on  
14 expense charges in the same manner as other claims against the  
15 estate.

16 (b) All expense charges shall be:

17 (1) made in writing, showing specifically each item of  
18 expense and the date of the expense;

19 (2) verified by the personal representative's  
20 affidavit;

21 (3) filed with the clerk; and

22 (4) entered on the claim docket. (Tex. Prob. Code,  
23 Sec. 244.)

24 CHAPTER 353. EXEMPT PROPERTY AND FAMILY ALLOWANCE

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 353.001. TREATMENT OF CERTAIN CHILDREN

27 [Sections 353.002-353.050 reserved for expansion]

1 SUBCHAPTER B. EXEMPT PROPERTY; ALLOWANCE IN LIEU OF EXEMPT

2 PROPERTY

3 Sec. 353.051. EXEMPT PROPERTY TO BE SET ASIDE

4 Sec. 353.052. DELIVERY OF EXEMPT PROPERTY

5 Sec. 353.053. ALLOWANCE IN LIEU OF EXEMPT PROPERTY

6 Sec. 353.054. PAYMENT OF ALLOWANCE IN LIEU OF EXEMPT

7 PROPERTY

8 Sec. 353.055. METHOD OF PAYING ALLOWANCE IN LIEU OF

9 EXEMPT PROPERTY

10 Sec. 353.056. SALE OF PROPERTY TO RAISE FUNDS FOR

11 ALLOWANCE IN LIEU OF EXEMPT PROPERTY

12 [Sections 353.057-353.100 reserved for expansion]

13 SUBCHAPTER C. FAMILY ALLOWANCE

14 Sec. 353.101. FAMILY ALLOWANCE

15 Sec. 353.102. AMOUNT AND METHOD OF PAYMENT OF FAMILY

16 ALLOWANCE

17 Sec. 353.103. ORDER FIXING FAMILY ALLOWANCE

18 Sec. 353.104. PREFERENCE OF FAMILY ALLOWANCE

19 Sec. 353.105. PAYMENT OF FAMILY ALLOWANCE

20 Sec. 353.106. SURVIVING SPOUSE OR MINOR CHILDREN MAY

21 TAKE PERSONAL PROPERTY FOR FAMILY

22 ALLOWANCE

23 Sec. 353.107. SALE OF ESTATE PROPERTY TO RAISE FUNDS

24 FOR FAMILY ALLOWANCE

25 [Sections 353.108-353.150 reserved for expansion]

1 SUBCHAPTER D. LIENS ON AND DISPOSITION OF EXEMPT PROPERTY AND  
2 PROPERTY TAKEN AS ALLOWANCE

3 Sec. 353.151. LIENS

4 Sec. 353.152. DISTRIBUTION OF EXEMPT PROPERTY OF  
5 SOLVENT ESTATE

6 Sec. 353.153. TITLE TO PROPERTY OF INSOLVENT ESTATE

7 Sec. 353.154. CERTAIN PROPERTY NOT CONSIDERED IN  
8 DETERMINING SOLVENCY

9 Sec. 353.155. EXEMPT PROPERTY LIABLE FOR CERTAIN DEBTS

10 CHAPTER 353. EXEMPT PROPERTY AND FAMILY ALLOWANCE

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 353.001. TREATMENT OF CERTAIN CHILDREN. For purposes  
13 of distributing exempt property and making a family allowance, a  
14 child is a child of his or her mother and a child of his or her  
15 father, as provided by Sections 201.051, 201.052, and 201.053.  
16 (Tex. Prob. Code, Sec. 42(c) (part).)

17 [Sections 353.002-353.050 reserved for expansion]

18 SUBCHAPTER B. EXEMPT PROPERTY; ALLOWANCE IN LIEU OF EXEMPT  
19 PROPERTY

20 Sec. 353.051. EXEMPT PROPERTY TO BE SET ASIDE. (a) Unless  
21 an application and verified affidavit are filed as provided by  
22 Subsection (b), immediately after the inventory, appraisement, and  
23 list of claims of an estate are approved, the court by order shall  
24 set aside:

25 (1) the homestead for the use and benefit of the  
26 decedent's surviving spouse and minor children; and

27 (2) all other estate property that is exempt from

1 execution or forced sale by the constitution and laws of this state  
2 for the use and benefit of the decedent's:

3 (A) surviving spouse and minor children; and

4 (B) unmarried children remaining with the  
5 decedent's family.

6 (b) Before the inventory, appraisement, and list of claims  
7 of an estate are approved:

8 (1) the decedent's surviving spouse or any other  
9 person authorized to act on behalf of the decedent's minor children  
10 may apply to the court to have exempt property, including the  
11 homestead, set aside by filing an application and a verified  
12 affidavit listing all property that the applicant claims is exempt;  
13 and

14 (2) any of the decedent's unmarried children remaining  
15 with the decedent's family may apply to the court to have all exempt  
16 property, other than the homestead, set aside by filing an  
17 application and a verified affidavit listing all property, other  
18 than the homestead, that the applicant claims is exempt.

19 (c) At a hearing on an application filed under Subsection  
20 (b), the applicant has the burden of proof by a preponderance of the  
21 evidence. The court shall set aside property of the decedent's  
22 estate that the court finds is exempt. (Tex. Prob. Code, Sec. 271.)

23 Sec. 353.052. DELIVERY OF EXEMPT PROPERTY. (a) The  
24 executor or administrator of an estate shall deliver, without  
25 delay, exempt property that has been set aside for the decedent's  
26 surviving spouse and children in accordance with this section.

27 (b) If there is a surviving spouse and there are no children

1 of the decedent, or if all the children of the decedent are also the  
2 children of the surviving spouse, the executor or administrator  
3 shall deliver all exempt property to the surviving spouse.

4 (c) If there is a surviving spouse and there are children of  
5 the decedent who are not also children of the surviving spouse, the  
6 executor or administrator shall deliver the share of those children  
7 in exempt property, other than the homestead, to:

- 8 (1) the children, if the children are of legal age; or  
9 (2) the children's guardian, if the children are  
10 minors.

11 (d) If there is no surviving spouse and there are children  
12 of the decedent, the executor or administrator shall deliver exempt  
13 property, other than the homestead, to:

- 14 (1) the children, if the children are of legal age; or  
15 (2) the children's guardian, if the children are  
16 minors.

17 (e) In all cases, the executor or administrator shall  
18 deliver the homestead to:

- 19 (1) the decedent's surviving spouse, if there is a  
20 surviving spouse; or  
21 (2) the guardian of the decedent's minor children, if  
22 there is not a surviving spouse. (Tex. Prob. Code, Sec. 272.)

23 Sec. 353.053. ALLOWANCE IN LIEU OF EXEMPT PROPERTY. (a) If  
24 all or any of the specific articles exempt from execution or forced  
25 sale by the constitution and laws of this state are not among the  
26 decedent's effects, the court shall make, in lieu of the articles  
27 not among the effects, a reasonable allowance to be paid to the



1 decedent's surviving spouse and children as provided by Section  
2 353.054.

3 (b) The allowance in lieu of a homestead may not exceed  
4 \$15,000, and the allowance in lieu of other exempt property may not  
5 exceed \$5,000, excluding the family allowance for the support of  
6 the surviving spouse and minor children provided by Subchapter C.  
7 (Tex. Prob. Code, Sec. 273.)

8 Sec. 353.054. PAYMENT OF ALLOWANCE IN LIEU OF EXEMPT  
9 PROPERTY. (a) The executor or administrator of an estate shall pay  
10 an allowance in lieu of exempt property in accordance with this  
11 section.

12 (b) If there is a surviving spouse and there are no children  
13 of the decedent, or if all the children of the decedent are also the  
14 children of the surviving spouse, the executor or administrator  
15 shall pay the entire allowance to the surviving spouse.

16 (c) If there is a surviving spouse and there are children of  
17 the decedent who are not also children of the surviving spouse, the  
18 executor or administrator shall pay the surviving spouse one-half  
19 of the entire allowance plus the shares of the decedent's children  
20 of whom the surviving spouse is the parent. The remaining shares  
21 must be paid to:

22 (1) the decedent's children of whom the surviving  
23 spouse is not a parent; or

24 (2) the guardian of the children described by  
25 Subdivision (1), if those children are minors.

26 (d) If there is no surviving spouse and there are children  
27 of the decedent, the executor or administrator shall divide the

1 entire allowance equally among the children and pay the children's  
2 shares to the children, if the children are of legal age, or, if any  
3 of the children are minors, pay the minor children's shares to the  
4 guardian of the minor children. (Tex. Prob. Code, Sec. 275.)

5       Sec. 353.055. METHOD OF PAYING ALLOWANCE IN LIEU OF EXEMPT  
6 PROPERTY. (a) An allowance in lieu of any exempt property shall be  
7 paid in the manner selected by the decedent's surviving spouse or  
8 children of legal age, or by the guardian of the decedent's minor  
9 children, as follows:

10           (1) in money out of estate funds that come into the  
11 executor's or administrator's possession;

12           (2) in any of the decedent's property or a part of the  
13 property chosen by those individuals at the appraisalment; or

14           (3) part in money described by Subdivision (1) and  
15 part in property described by Subdivision (2).

16       (b) Property specifically devised to another may be taken as  
17 provided by Subsection (a) only if other available property is  
18 insufficient to pay the allowance. (Tex. Prob. Code, Sec. 274  
19 (part).)

20       Sec. 353.056. SALE OF PROPERTY TO RAISE FUNDS FOR ALLOWANCE  
21 IN LIEU OF EXEMPT PROPERTY. (a) On the written application of the  
22 decedent's surviving spouse and children, the court shall order the  
23 sale of estate property for cash in an amount that will be  
24 sufficient to raise the amount of the allowance provided under  
25 Section 353.053 or a portion of that amount, as necessary, if:

26           (1) the decedent had no property that the surviving  
27 spouse or children are willing to take for the allowance or the

1 decedent had insufficient property; and

2 (2) there are not sufficient estate funds in the  
3 executor's or administrator's possession to pay the amount of the  
4 allowance or a portion of that amount, as applicable.

5 (b) Property specifically devised to another may be sold to  
6 raise cash as provided by Subsection (a) only if other available  
7 property is insufficient to pay the allowance. (Tex. Prob. Code,  
8 Secs. 274 (part), 276.)

9 [Sections 353.057-353.100 reserved for expansion]

10 SUBCHAPTER C. FAMILY ALLOWANCE

11 Sec. 353.101. FAMILY ALLOWANCE. (a) Unless an application  
12 and verified affidavit are filed as provided by Subsection (b),  
13 immediately after the inventory, appraisement, and list of claims  
14 of an estate are approved, the court shall fix a family allowance  
15 for the support of the decedent's surviving spouse and minor  
16 children.

17 (b) Before the inventory, appraisement, and list of claims  
18 of an estate are approved, the decedent's surviving spouse or any  
19 other person authorized to act on behalf of the decedent's minor  
20 children may apply to the court to have the court fix the family  
21 allowance by filing an application and a verified affidavit  
22 describing:

23 (1) the amount necessary for the maintenance of the  
24 surviving spouse and the decedent's minor children for one year  
25 after the date of the decedent's death; and

26 (2) the surviving spouse's separate property and any  
27 property that the decedent's minor children have in their own

1 right.

2 (c) At a hearing on an application filed under Subsection  
3 (b), the applicant has the burden of proof by a preponderance of the  
4 evidence. The court shall fix a family allowance for the support of  
5 the decedent's surviving spouse and minor children.

6 (d) A family allowance may not be made for:

7 (1) the decedent's surviving spouse, if the surviving  
8 spouse has separate property adequate for the surviving spouse's  
9 maintenance; or

10 (2) the decedent's minor children, if the minor  
11 children have property in their own right adequate for the  
12 children's maintenance. (Tex. Prob. Code, Secs. 286, 288.)

13 Sec. 353.102. AMOUNT AND METHOD OF PAYMENT OF FAMILY  
14 ALLOWANCE. (a) The amount of the family allowance must be  
15 sufficient for the maintenance of the decedent's surviving spouse  
16 and minor children for one year from the date of the decedent's  
17 death.

18 (b) The allowance must be fixed with regard to the facts or  
19 circumstances then existing and the facts and circumstances  
20 anticipated to exist during the first year after the decedent's  
21 death.

22 (c) The allowance may be paid in a lump sum or in  
23 installments, as ordered by the court. (Tex. Prob. Code, Sec. 287.)

24 Sec. 353.103. ORDER FIXING FAMILY ALLOWANCE. When a family  
25 allowance has been fixed, the court shall enter an order that:

26 (1) states the amount of the allowance;

27 (2) provides how the allowance shall be payable; and

1           (3) directs the executor or administrator to pay the  
2 allowance in accordance with law. (Tex. Prob. Code, Sec. 289.)

3           Sec. 353.104. PREFERENCE OF FAMILY ALLOWANCE. The family  
4 allowance made for the support of the decedent's surviving spouse  
5 and minor children shall be paid in preference to all other debts of  
6 or charges against the estate, other than Class 1 claims. (Tex.  
7 Prob. Code, Sec. 290.)

8           Sec. 353.105. PAYMENT OF FAMILY ALLOWANCE. (a) The  
9 executor or administrator of an estate shall apportion and pay the  
10 family allowance in accordance with this section.

11           (b) If there is a surviving spouse and there are no minor  
12 children of the decedent, the executor or administrator shall pay  
13 the entire family allowance to the surviving spouse.

14           (c) If there is a surviving spouse and all of the minor  
15 children of the decedent are also the children of the surviving  
16 spouse, the executor or administrator shall pay the entire family  
17 allowance to the surviving spouse for use by the surviving spouse  
18 and the decedent's minor children.

19           (d) If there is a surviving spouse and some or all of the  
20 minor children of the decedent are not also children of the  
21 surviving spouse, the executor or administrator shall pay the  
22 portion of the entire family allowance necessary for the support of  
23 those minor children to the guardian of those children.

24           (e) If there is no surviving spouse and there are minor  
25 children of the decedent, the executor or administrator shall pay  
26 the family allowance for the minor children to the guardian of those  
27 children. (Tex. Prob. Code, Sec. 291.)

1           Sec. 353.106. SURVIVING SPOUSE OR MINOR CHILDREN MAY TAKE  
2 PERSONAL PROPERTY FOR FAMILY ALLOWANCE. (a) A decedent's  
3 surviving spouse or the guardian of the decedent's minor children,  
4 as applicable, is entitled to take, at the property's appraised  
5 value as shown by the appraisal, any of the estate's personal  
6 property in full or partial payment of the family allowance.

7           (b) Property specifically devised to another may be taken as  
8 provided by Subsection (a) only if other available property is  
9 insufficient to pay the allowance. (Tex. Prob. Code, Sec. 292  
10 (part).)

11          Sec. 353.107. SALE OF ESTATE PROPERTY TO RAISE FUNDS FOR  
12 FAMILY ALLOWANCE. (a) The court shall, as soon as the inventory,  
13 appraisal, and list of claims are returned and approved, order  
14 the sale of estate property for cash in an amount that will be  
15 sufficient to raise the amount of the family allowance, or a portion  
16 of that amount, as necessary, if:

17           (1) the decedent had no personal property that the  
18 surviving spouse or the guardian of the decedent's minor children  
19 is willing to take for the family allowance or the decedent had  
20 insufficient personal property; and

21           (2) there are not sufficient estate funds in the  
22 executor's or administrator's possession to pay the amount of the  
23 family allowance or a portion of that amount, as applicable.

24           (b) Property specifically devised to another may be sold to  
25 raise cash as provided by Subsection (a) only if other available  
26 property is insufficient to pay the family allowance. (Tex. Prob.  
27 Code, Secs. 292 (part), 293.)

1 [Sections 353.108-353.150 reserved for expansion]

2 SUBCHAPTER D. LIENS ON AND DISPOSITION OF EXEMPT PROPERTY AND  
3 PROPERTY TAKEN AS ALLOWANCE

4 Sec. 353.151. LIENS. (a) This section applies to all  
5 estates, whether solvent or insolvent.

6 (b) If property on which there is a valid subsisting lien or  
7 encumbrance is set aside as exempt for the surviving spouse or  
8 children or is appropriated to make an allowance in lieu of exempt  
9 property or for the support of the surviving spouse or children, the  
10 debts secured by the lien shall, if necessary, be either paid or  
11 continued against the property. (Tex. Prob. Code, Sec. 277.)

12 Sec. 353.152. DISTRIBUTION OF EXEMPT PROPERTY OF SOLVENT  
13 ESTATE. If on final settlement of an estate it appears that the  
14 estate is solvent, the exempt property, other than the homestead or  
15 any allowance made in lieu of the homestead, is subject to partition  
16 and distribution among the heirs of the decedent and the  
17 distributees in the same manner as other estate property. (Tex.  
18 Prob. Code, Sec. 278.)

19 Sec. 353.153. TITLE TO PROPERTY OF INSOLVENT ESTATE. If on  
20 final settlement an estate proves to be insolvent, the decedent's  
21 surviving spouse and children have absolute title to all property  
22 and allowances set aside or paid to them under this title. The  
23 property and allowances may not be taken for any of the estate debts  
24 except as provided by Section 353.155. (Tex. Prob. Code, Sec. 279.)

25 Sec. 353.154. CERTAIN PROPERTY NOT CONSIDERED IN  
26 DETERMINING SOLVENCY. In determining whether an estate is solvent  
27 or insolvent, the exempt property set aside for the decedent's

1 surviving spouse or children, any allowance made in lieu of that  
2 exempt property, and the family allowance under Subchapter C may  
3 not be estimated or considered as estate assets. (Tex. Prob. Code,  
4 Sec. 280.)

5 Sec. 353.155. EXEMPT PROPERTY LIABLE FOR CERTAIN DEBTS.  
6 The exempt property, other than the homestead or any allowance made  
7 in lieu of the homestead:

- 8 (1) is liable for the payment of Class 1 claims; and  
9 (2) is not liable for any estate debts other than the  
10 claims described by Subdivision (1). (Tex. Prob. Code, Sec. 281.)

11 CHAPTER 354. SUMMARY PROCEEDINGS FOR, OR WITHDRAWAL FROM  
12 ADMINISTRATION OF, CERTAIN ESTATES

13 SUBCHAPTER A. SUMMARY PROCEEDINGS FOR CERTAIN SMALL ESTATES

14 Sec. 354.001. SUMMARY PROCEEDINGS FOR CERTAIN SMALL  
15 ESTATES

16 [Sections 354.002-354.050 reserved for expansion]

17 SUBCHAPTER B. WITHDRAWAL FROM ADMINISTRATION OF CERTAIN ESTATES

18 Sec. 354.051. REQUIRED REPORT ON CONDITION OF ESTATE

19 Sec. 354.052. BOND REQUIRED TO WITHDRAW ESTATE FROM  
20 ADMINISTRATION

21 Sec. 354.053. ORDER FOR DELIVERY OF ESTATE

22 Sec. 354.054. ORDER OF DISCHARGE

23 Sec. 354.055. LIEN ON PROPERTY OF ESTATE WITHDRAWN  
24 FROM ADMINISTRATION

25 Sec. 354.056. PARTITION OF ESTATE WITHDRAWN FROM  
26 ADMINISTRATION

27 Sec. 354.057. CREDITORS ENTITLED TO SUE ON BOND



1 Sec. 354.058. CREDITORS MAY SUE DISTRIBUTEES

2 CHAPTER 354. SUMMARY PROCEEDINGS FOR, OR WITHDRAWAL FROM

3 ADMINISTRATION OF, CERTAIN ESTATES

4 SUBCHAPTER A. SUMMARY PROCEEDINGS FOR CERTAIN SMALL ESTATES

5 Sec. 354.001. SUMMARY PROCEEDINGS FOR CERTAIN SMALL  
6 ESTATES. (a) If, after a personal representative of an estate has  
7 filed the inventory, appraisement, and list of claims as required  
8 by Chapter 309, it is established that the decedent's estate,  
9 excluding any homestead, exempt property, and family allowance to  
10 the decedent's surviving spouse and minor children, does not exceed  
11 the amount sufficient to pay the claims against the estate  
12 classified as Classes 1 through 4 under Section 355.102, the  
13 representative shall:

14 (1) on order of the court, pay those claims in the  
15 order provided and to the extent permitted by the assets of the  
16 estate subject to the payment of those claims; and

17 (2) after paying the claims in accordance with  
18 Subdivision (1), present to the court the representative's account  
19 with an application for the settlement and allowance of the  
20 account.

21 (b) On presentation of the personal representative's  
22 account and application under Subsection (a), the court, with or  
23 without notice, may adjust, correct, settle, allow, or disallow the  
24 account.

25 (c) If the court settles and allows the personal  
26 representative's account under Subsection (b), the court may:

27 (1) decree final distribution;

- 1           (2) discharge the representative; and
- 2           (3) close the administration. (Tex. Prob. Code, Sec.
- 3 143.)

4           [Sections 354.002-354.050 reserved for expansion]

5       SUBCHAPTER B. WITHDRAWAL FROM ADMINISTRATION OF CERTAIN ESTATES

6           Sec. 354.051. REQUIRED REPORT ON CONDITION OF ESTATE. At

7 any time after the return of the inventory, appraisement, and list

8 of claims of an estate required by Chapter 309, anyone entitled to a

9 portion of the estate, by a written complaint filed in the court in

10 which the case is pending, may have the estate's executor or

11 administrator cited to appear and render under oath an exhibit of

12 the condition of the estate. (Tex. Prob. Code, Sec. 262.)

13          Sec. 354.052. BOND REQUIRED TO WITHDRAW ESTATE FROM

14 ADMINISTRATION. After the executor or administrator has rendered

15 the exhibit of the condition of the estate if required under Section

16 354.051, one or more persons entitled to the estate, or other

17 persons for them, may execute and deliver a bond to the court. The

18 bond must be:

19           (1) conditioned that the persons executing the bond

20 shall:

21                   (A) pay all unpaid debts against the estate that

22 have been or are:

23                           (i) allowed by the executor or

24 administrator and approved by the court; or

25                           (ii) established by suit against the

26 estate; and

27                   (B) pay to the executor or administrator any

1 balance that the court in its judgment on the exhibit finds to be  
2 due the executor or administrator;

3 (2) payable to the judge and the judge's successors in  
4 office in an amount equal to at least twice the gross appraised  
5 value of the estate as shown by the inventory, appraisement, and  
6 list of claims returned under Chapter 309; and

7 (3) approved by the court. (Tex. Prob. Code, Sec.  
8 263.)

9 Sec. 354.053. ORDER FOR DELIVERY OF ESTATE. On the giving  
10 and approval of the bond under Section 354.052, the court shall  
11 enter an order requiring the executor or administrator to promptly  
12 deliver to each person entitled to any portion of the estate that  
13 portion to which the person is entitled. (Tex. Prob. Code, Sec.  
14 264.)

15 Sec. 354.054. ORDER OF DISCHARGE. After an estate has been  
16 withdrawn from administration under Section 354.053, the court  
17 shall enter an order:

18 (1) discharging the executor or administrator; and

19 (2) declaring the administration closed. (Tex. Prob.  
20 Code, Sec. 265.)

21 Sec. 354.055. LIEN ON PROPERTY OF ESTATE WITHDRAWN FROM  
22 ADMINISTRATION. A lien exists on all of the estate withdrawn from  
23 administration under Section 354.053 and in the possession of the  
24 distributees and those claiming under the distributees with notice  
25 of that lien, to secure the ultimate payment of:

26 (1) the bond under Section 354.052; and

27 (2) debts and claims secured by the bond. (Tex. Prob.

1 Code, Sec. 266.)

2           Sec. 354.056. PARTITION OF ESTATE WITHDRAWN FROM  
3 ADMINISTRATION. On written application to the court, any person  
4 entitled to any portion of an estate withdrawn from administration  
5 under Section 354.053 may cause a partition and distribution of the  
6 estate to be made among those persons entitled to the estate in  
7 accordance with the provisions of this title that relate to the  
8 partition and distribution of an estate. (Tex. Prob. Code, Sec.  
9 267.)

10           Sec. 354.057. CREDITORS ENTITLED TO SUE ON BOND. A creditor  
11 of an estate withdrawn from administration under Section 354.053  
12 whose debt or claim against the estate is unpaid and not barred by  
13 limitation is entitled to:

14                   (1) commence a suit in the person's own name on the  
15 bond under Section 354.052; and

16                   (2) obtain a judgment on the bond for the debt or claim  
17 the creditor establishes against the estate. (Tex. Prob. Code,  
18 Sec. 268.)

19           Sec. 354.058. CREDITORS MAY SUE DISTRIBUTEES. (a) A  
20 creditor of an estate withdrawn from administration under Section  
21 354.053 whose debt or claim against the estate is unpaid and not  
22 barred by limitation may sue:

23                   (1) any distributee who has received any of the  
24 estate; or

25                   (2) all the distributees jointly.

26           (b) A distributee is not liable for more than the  
27 distributee's just proportion according to the amount of the estate

1 the distributee received in the distribution. (Tex. Prob. Code,  
2 Sec. 269.)

3 CHAPTER 355. PRESENTMENT AND PAYMENT OF CLAIMS

4 SUBCHAPTER A. PRESENTMENT OF CLAIMS AGAINST ESTATES IN GENERAL

5 Sec. 355.001. PRESENTMENT OF CLAIM TO PERSONAL

6 REPRESENTATIVE

7 Sec. 355.002. PRESENTMENT OF CLAIM TO CLERK

8 Sec. 355.003. INCLUSION OF ATTORNEY'S FEES IN CLAIM

9 Sec. 355.004. AFFIDAVIT AUTHENTICATING CLAIM FOR MONEY

10 IN GENERAL

11 Sec. 355.005. AFFIDAVIT AUTHENTICATING CLAIM OF

12 CORPORATION OR OTHER ENTITY

13 Sec. 355.006. LOST OR DESTROYED EVIDENCE CONCERNING

14 CLAIM

15 Sec. 355.007. WAIVER OF CERTAIN DEFECTS OF FORM OR

16 CLAIMS OF INSUFFICIENCY

17 Sec. 355.008. EFFECT ON STATUTES OF LIMITATION OF

18 PRESENTMENT OF OR SUIT ON CLAIM

19 [Sections 355.009-355.050 reserved for expansion]

20 SUBCHAPTER B. ACTION ON CLAIMS

21 Sec. 355.051. ALLOWANCE OR REJECTION OF CLAIM

22 Sec. 355.052. FAILURE TO TIMELY ALLOW OR REJECT CLAIM

23 Sec. 355.053. CLAIM ENTERED ON CLAIM DOCKET

24 Sec. 355.054. CONTEST OF CLAIM

25 Sec. 355.055. COURT'S ACTION ON CLAIM

26 Sec. 355.056. HEARING ON CERTAIN CLAIMS

27 Sec. 355.057. COURT ORDER REGARDING ACTION ON CLAIM

- 1 Sec. 355.058. APPEAL OF COURT'S ACTION ON CLAIM  
2 Sec. 355.059. ALLOWANCE AND APPROVAL PROHIBITED  
3 WITHOUT AFFIDAVIT  
4 Sec. 355.060. UNSECURED CLAIMS BARRED UNDER CERTAIN  
5 CIRCUMSTANCES  
6 Sec. 355.061. ALLOWING BARRED CLAIM PROHIBITED: COURT  
7 DISAPPROVAL  
8 Sec. 355.062. CERTAIN ACTIONS ON CLAIMS WITH LOST OR  
9 DESTROYED EVIDENCE VOID  
10 Sec. 355.063. CLAIMS NOT ALLOWED AFTER ORDER FOR  
11 PARTITION AND DISTRIBUTION  
12 Sec. 355.064. SUIT ON REJECTED CLAIM  
13 Sec. 355.065. PRESENTMENT OF CLAIM PREREQUISITE FOR  
14 JUDGMENT  
15 Sec. 355.066. JUDGMENT IN SUIT ON REJECTED CLAIM  
16 [Sections 355.067-355.100 reserved for expansion]  
17 SUBCHAPTER C. PAYMENT OF CLAIMS, ALLOWANCES, AND EXPENSES  
18 Sec. 355.101. APPROVAL OR ESTABLISHMENT OF CLAIM  
19 REQUIRED FOR PAYMENT  
20 Sec. 355.102. CLAIMS CLASSIFICATION; PRIORITY OF  
21 PAYMENT  
22 Sec. 355.103. PRIORITY OF CERTAIN PAYMENTS  
23 Sec. 355.104. PAYMENT OF PROCEEDS FROM SALE OF  
24 PROPERTY SECURING DEBT  
25 Sec. 355.105. CLAIMANT'S PETITION FOR ALLOWANCE AND  
26 PAYMENT OF CLAIM

- 1 Sec. 355.106. ORDER FOR PAYMENT OF CLAIM OBTAINED BY  
2 PERSONAL REPRESENTATIVE
- 3 Sec. 355.107. ORDER FOR PAYMENT OF CLAIM OBTAINED BY  
4 CREDITOR
- 5 Sec. 355.108. PAYMENT WHEN ASSETS INSUFFICIENT TO PAY  
6 CLAIMS OF SAME CLASS
- 7 Sec. 355.109. ABATEMENT OF BEQUESTS
- 8 Sec. 355.110. ALLOCATION OF FUNERAL EXPENSES
- 9 Sec. 355.111. PAYMENT OF COURT COSTS RELATING TO CLAIM
- 10 Sec. 355.112. JOINT OBLIGATION FOR PAYMENT OF CERTAIN  
11 DEBTS
- 12 Sec. 355.113. LIABILITY FOR NONPAYMENT OF CLAIM
- 13 [Sections 355.114-355.150 reserved for expansion]
- 14 SUBCHAPTER D. PRESENTMENT AND PAYMENT OF SECURED CLAIMS FOR MONEY
- 15 Sec. 355.151. OPTION TO TREAT CLAIM AS MATURED SECURED  
16 CLAIM OR PREFERRED DEBT AND LIEN
- 17 Sec. 355.152. PERIOD FOR SPECIFYING TREATMENT OF  
18 SECURED CLAIM
- 19 Sec. 355.153. PAYMENT OF MATURED SECURED CLAIM
- 20 Sec. 355.154. PREFERRED DEBT AND LIEN
- 21 Sec. 355.155. PAYMENT OF MATURITIES ON PREFERRED DEBT  
22 AND LIEN
- 23 Sec. 355.156. AFFIDAVIT REQUIRED FOR FORECLOSURE
- 24 Sec. 355.157. CITATION ON APPLICATION
- 25 Sec. 355.158. HEARING ON APPLICATION
- 26 Sec. 355.159. MANNER OF FORECLOSURE ; MINIMUM PRICE

1 Sec. 355.160. UNSUCCESSFUL FORECLOSURE; SUBSEQUENT

2 APPLICATION

3 [Sections 355.161-355.200 reserved for expansion]

4 SUBCHAPTER E. CLAIMS INVOLVING PERSONAL REPRESENTATIVES

5 Sec. 355.201. CLAIM BY PERSONAL REPRESENTATIVE

6 Sec. 355.202. CLAIMS AGAINST PERSONAL REPRESENTATIVES

7 Sec. 355.203. PURCHASE OF CLAIM BY PERSONAL

8 REPRESENTATIVE PROHIBITED

9 CHAPTER 355. PRESENTMENT AND PAYMENT OF CLAIMS

10 SUBCHAPTER A. PRESENTMENT OF CLAIMS AGAINST ESTATES IN GENERAL

11 Sec. 355.001. PRESENTMENT OF CLAIM TO PERSONAL  
12 REPRESENTATIVE. A claim may be presented to a personal  
13 representative of an estate at any time before the estate is closed  
14 if suit on the claim has not been barred by the general statutes of  
15 limitation. (Tex. Prob. Code, Sec. 298(a) (part).)

16 Sec. 355.002. PRESENTMENT OF CLAIM TO CLERK. (a) A claim  
17 may also be presented by depositing the claim with the clerk with  
18 vouchers and the necessary exhibits and affidavit attached to the  
19 claim. On receiving a claim deposited under this subsection, the  
20 clerk shall advise the personal representative or the  
21 representative's attorney of the deposit of the claim by a letter  
22 mailed to the representative's last known address.

23 (b) A claim deposited under Subsection (a) is presumed to be  
24 rejected if the personal representative fails to act on the claim on  
25 or before the 30th day after the date the claim is deposited.

26 (c) Failure of the clerk to give the notice required under  
27 Subsection (a) does not affect the validity of the presentment or



1 the presumption of rejection because the personal representative  
2 does not act on the claim within the 30-day period prescribed by  
3 Subsection (b).

4 (d) The clerk shall enter a claim deposited under Subsection  
5 (a) on the claim docket. (Tex. Prob. Code, Sec. 308.)

6 Sec. 355.003. INCLUSION OF ATTORNEY'S FEES IN CLAIM. If the  
7 instrument evidencing or supporting a claim provides for attorney's  
8 fees, the claimant may include as a part of the claim the portion of  
9 attorney's fees the claimant has paid or contracted to pay to an  
10 attorney to prepare, present, and collect the claim. (Tex. Prob.  
11 Code, Sec. 307.)

12 Sec. 355.004. AFFIDAVIT AUTHENTICATING CLAIM FOR MONEY IN  
13 GENERAL. (a) Except as provided by Section 355.005, a claim for  
14 money against an estate must be supported by an affidavit that  
15 states:

- 16 (1) that the claim is just;
- 17 (2) that all legal offsets, payments, and credits  
18 known to the affiant have been allowed; and
- 19 (3) if the claim is not founded on a written instrument  
20 or account, the facts on which the claim is founded.

21 (b) A photostatic copy of an exhibit or voucher necessary to  
22 prove a claim may be offered with and attached to the claim instead  
23 of attaching the original. (Tex. Prob. Code, Sec. 301 (part).)

24 Sec. 355.005. AFFIDAVIT AUTHENTICATING CLAIM OF  
25 CORPORATION OR OTHER ENTITY. (a) An authorized officer or  
26 representative of a corporation or other entity shall make the  
27 affidavit required to authenticate a claim of the corporation or

1 entity.

2 (b) In an affidavit made by an officer of a corporation, or  
3 by an executor, administrator, trustee, assignee, agent,  
4 representative, or attorney, it is sufficient to state that the  
5 affiant has made diligent inquiry and examination and believes the  
6 claim is just and that all legal offsets, payments, and credits made  
7 known to the affiant have been allowed. (Tex. Prob. Code, Sec.  
8 304.)

9 Sec. 355.006. LOST OR DESTROYED EVIDENCE CONCERNING CLAIM.  
10 If evidence of a claim is lost or destroyed, the claimant or an  
11 authorized representative or agent of the claimant may make an  
12 affidavit to the fact of the loss or destruction. The affidavit must  
13 state:

- 14 (1) the amount, date, and nature of the claim;  
15 (2) the due date of the claim;  
16 (3) that the claim is just;  
17 (4) that all legal offsets, payments, and credits  
18 known to the affiant have been allowed; and  
19 (5) that the claimant is still the owner of the claim.  
20 (Tex. Prob. Code, Sec. 303 (part).)

21 Sec. 355.007. WAIVER OF CERTAIN DEFECTS OF FORM OR CLAIMS OF  
22 INSUFFICIENCY. A defect of form or a claim of insufficiency of a  
23 presented exhibit or voucher is considered waived by the personal  
24 representative unless a written objection to the defect or  
25 insufficiency is made not later than the 30th day after the date the  
26 claim is presented and is filed with the county clerk. (Tex. Prob.  
27 Code, Sec. 302.)

1           Sec. 355.008. EFFECT ON STATUTES OF LIMITATION OF  
2 PRESENTMENT OF OR SUIT ON CLAIM. The general statutes of limitation  
3 are tolled on the date:

4           (1) a claim for money is filed or deposited with the  
5 clerk; or

6           (2) suit is brought against the personal  
7 representative of an estate with respect to a claim of the estate  
8 that is not required to be presented to the representative. (Tex.  
9 Prob. Code, Sec. 299.)

10           [Sections 355.009–355.050 reserved for expansion]

11                           SUBCHAPTER B. ACTION ON CLAIMS

12           Sec. 355.051. ALLOWANCE OR REJECTION OF CLAIM. A personal  
13 representative of an estate shall, not later than the 30th day after  
14 the date an authenticated claim against the estate is presented to  
15 the representative, or deposited with the clerk as provided under  
16 Section 355.002, endorse on the claim, attach to the claim, or file  
17 with the clerk a memorandum signed by the representative stating:

18           (1) the date the claim was presented or deposited; and

19           (2) whether the representative allows or rejects the  
20 claim, or if the representative allows or rejects a part of the  
21 claim, the portion the representative allows or rejects. (Tex.  
22 Prob. Code, Sec. 309.)

23           Sec. 355.052. FAILURE TO TIMELY ALLOW OR REJECT CLAIM. The  
24 failure of a personal representative to timely allow or reject a  
25 claim under Section 355.051 constitutes a rejection of the claim.  
26 If the claim is established by suit after that rejection:

27           (1) the costs shall be taxed against the

1 representative, individually; or

2 (2) the representative may be removed on the written  
3 complaint of any person interested in the claim after personal  
4 service of citation, hearing, and proof, as in other cases of  
5 removal. (Tex. Prob. Code, Sec. 310.)

6 Sec. 355.053. CLAIM ENTERED ON CLAIM DOCKET. After a claim  
7 against an estate has been presented to the personal representative  
8 and allowed or rejected, wholly or partly, by the representative,  
9 the claim must be filed with the county clerk of the proper county.  
10 The clerk shall enter the claim on the claim docket. (Tex. Prob.  
11 Code, Sec. 311.)

12 Sec. 355.054. CONTEST OF CLAIM. (a) A person interested in  
13 an estate may, at any time before the court has acted on a claim,  
14 appear and object in writing to the approval of the claim or any  
15 part of the claim.

16 (b) If a person objects under Subsection (a):

17 (1) the parties are entitled to process for witnesses;  
18 and

19 (2) the court shall hear evidence and render judgment  
20 as in ordinary suits. (Tex. Prob. Code, Sec. 312(a).)

21 Sec. 355.055. COURT'S ACTION ON CLAIM. The court shall:

22 (1) act on each claim that has been allowed and entered  
23 on the claim docket for a period of 10 days either approving the  
24 claim wholly or partly or disapproving the claim; and

25 (2) concurrently classify the claim. (Tex. Prob.  
26 Code, Sec. 312(b).)

27 Sec. 355.056. HEARING ON CERTAIN CLAIMS. (a) If a claim is

1 properly authenticated and allowed but the court is not satisfied  
2 that the claim is just, the court shall:

3 (1) examine the claimant and the personal  
4 representative under oath; and

5 (2) hear other evidence necessary to determine the  
6 issue.

7 (b) If after conducting the examination and hearing the  
8 evidence under Subsection (a) the court is not convinced that the  
9 claim is just, the court shall disapprove the claim. (Tex. Prob.  
10 Code, Sec. 312(c).)

11 Sec. 355.057. COURT ORDER REGARDING ACTION ON CLAIM. (a)  
12 The court acting on a claim shall state the exact action taken on  
13 the claim, whether the claim is approved or disapproved, or  
14 approved in part and disapproved in part, and the classification of  
15 the claim by endorsing on or attaching to the claim a written  
16 memorandum that is dated and officially signed.

17 (b) An order under Subsection (a) has the effect of a final  
18 judgment. (Tex. Prob. Code, Sec. 312(d).)

19 Sec. 355.058. APPEAL OF COURT'S ACTION ON CLAIM. A claimant  
20 or any person interested in an estate who is dissatisfied with the  
21 court's action on a claim may appeal the action to the court of  
22 appeals in the manner other judgments of the county court in probate  
23 matters are appealed. (Tex. Prob. Code, Sec. 312(e).)

24 Sec. 355.059. ALLOWANCE AND APPROVAL PROHIBITED WITHOUT  
25 AFFIDAVIT. A personal representative of an estate may not allow,  
26 and the court may not approve, a claim for money against the estate  
27 unless the claim is supported by an affidavit that meets the

1 applicable requirements of Sections 355.004(a) and 355.005. (Tex.  
2 Prob. Code, Sec. 301 (part).)

3       Sec. 355.060. UNSECURED CLAIMS BARRED UNDER CERTAIN  
4 CIRCUMSTANCES. If a personal representative gives a notice  
5 permitted by Section 308.054 to an unsecured creditor for money and  
6 the creditor's claim is not presented within four months after the  
7 date of receipt of the notice, the claim is barred. (Tex. Prob.  
8 Code, Sec. 298(a) (part).)

9       Sec. 355.061. ALLOWING BARRED CLAIM PROHIBITED: COURT  
10 DISAPPROVAL. (a) A personal representative may not allow a claim  
11 for money against a decedent or the decedent's estate if a suit on  
12 the claim is barred:

13             (1) under Section 355.060, 355.064, or 355.201(b); or

14             (2) by an applicable general statute of limitation.

15       (b) A claim for money that is allowed by the personal  
16 representative shall be disapproved if the court is satisfied that  
17 the claim is barred, including because the limitation has run.  
18 (Tex. Prob. Code, Sec. 298(b).)

19       Sec. 355.062. CERTAIN ACTIONS ON CLAIMS WITH LOST OR  
20 DESTROYED EVIDENCE VOID. (a) Before a claim the evidence for which  
21 is lost or destroyed is approved, the claim must be proved by  
22 disinterested testimony taken in open court or by oral or written  
23 deposition.

24       (b) The allowance or approval of a claim the evidence for  
25 which is lost or destroyed is void if the claim is:

26             (1) allowed or approved without the affidavit under  
27 Section 355.006; or

1           (2) approved without satisfactory proof. (Tex. Prob.  
2 Code, Sec. 303 (part).)

3           Sec. 355.063. CLAIMS NOT ALLOWED AFTER ORDER FOR PARTITION  
4 AND DISTRIBUTION. After an order for final partition and  
5 distribution of an estate has been made:

6           (1) a claim for money against the estate may not be  
7 allowed by a personal representative;

8           (2) a suit may not be commenced against the  
9 representative on a claim for money against the estate; and

10           (3) the owner of any claim that is not barred by the  
11 laws of limitation has a right of action on the claim against the  
12 heirs, devisees, or creditors of the estate, limited to the value of  
13 the property received by those heirs, devisees, or creditors in  
14 distributions from the estate. (Tex. Prob. Code, Sec. 318.)

15           Sec. 355.064. SUIT ON REJECTED CLAIM. (a) A claim or part  
16 of a claim that has been rejected by the personal representative is  
17 barred unless not later than the 90th day after the date of  
18 rejection the claimant commences suit on the claim in the court of  
19 original probate jurisdiction in which the estate is pending.

20           (b) In a suit commenced on the rejected claim, the  
21 memorandum endorsed on or attached to the claim, or any other  
22 memorandum of rejection filed with respect to the claim, is taken to  
23 be true without further proof unless denied under oath. (Tex. Prob.  
24 Code, Sec. 313 (part).)

25           Sec. 355.065. PRESENTMENT OF CLAIM PREREQUISITE FOR  
26 JUDGMENT. A judgment may not be rendered in favor of a claimant on a  
27 claim for money that has not been:

1           (1) legally presented to the personal representative  
2 of an estate; and

3           (2) wholly or partly rejected by the representative or  
4 disapproved by the court. (Tex. Prob. Code, Sec. 314.)

5           Sec. 355.066. JUDGMENT IN SUIT ON REJECTED CLAIM. No  
6 execution may issue on a rejected claim or part of a claim that is  
7 established by suit. The judgment in the suit shall be:

8           (1) filed in the court in which the estate is pending;

9           (2) entered on the claim docket;

10          (3) classified by the court; and

11          (4) handled as if originally allowed and approved in  
12 due course of administration. (Tex. Prob. Code, Sec. 313 (part).)

13           [Sections 355.067-355.100 reserved for expansion]

14           SUBCHAPTER C. PAYMENT OF CLAIMS, ALLOWANCES, AND EXPENSES

15           Sec. 355.101. APPROVAL OR ESTABLISHMENT OF CLAIM REQUIRED  
16 FOR PAYMENT. A claim or any part of a claim for money against an  
17 estate may not be paid until the claim or part of the claim has been  
18 approved by the court or established by the judgment of a court of  
19 competent jurisdiction. (Tex. Prob. Code, Sec. 319.)

20           Sec. 355.102. CLAIMS CLASSIFICATION; PRIORITY OF PAYMENT.

21 (a) Claims against an estate shall be classified and have priority  
22 of payment as provided by this section.

23           (b) Class 1 claims are composed of funeral expenses and  
24 expenses of the decedent's last illness for a reasonable amount  
25 approved by the court, not to exceed a total of \$15,000. Any excess  
26 shall be classified and paid as other unsecured claims.

27           (c) Class 2 claims are composed of expenses of



1 administration, expenses incurred in preserving, safekeeping, and  
2 managing the estate, including fees and expenses awarded under  
3 Section 352.052, and unpaid expenses of administration awarded in a  
4 guardianship of the decedent.

5 (d) Class 3 claims are composed of each secured claim for  
6 money under Section 355.151(a)(1), including a tax lien, to the  
7 extent the claim can be paid out of the proceeds of the property  
8 subject to the mortgage or other lien. If more than one mortgage,  
9 lien, or security interest exists on the same property, the claims  
10 shall be paid in order of priority of the mortgage, lien, or  
11 security interest securing the debt.

12 (e) Class 4 claims are composed of claims for the principal  
13 amount of and accrued interest on delinquent child support and  
14 child support arrearages that have been confirmed and reduced to  
15 money judgment, as determined under Subchapter F, Chapter 157,  
16 Family Code, and claims for unpaid child support obligations under  
17 Section 154.015, Family Code.

18 (f) Class 5 claims are composed of claims for taxes,  
19 penalties, and interest due under Title 2, Tax Code, Chapter 2153,  
20 Occupations Code, Section 81.111, Natural Resources Code, the  
21 Municipal Sales and Use Tax Act (Chapter 321, Tax Code), Section  
22 451.404, Transportation Code, or Subchapter I, Chapter 452,  
23 Transportation Code.

24 (g) Class 6 claims are composed of claims for the cost of  
25 confinement established by the institutional division of the Texas  
26 Department of Criminal Justice under Section 501.017, Government  
27 Code.

1           (h) Class 7 claims are composed of claims for repayment of  
2 medical assistance payments made by the state under Chapter 32,  
3 Human Resources Code, to or for the benefit of the decedent.

4           (i) Class 8 claims are composed of any other claims not  
5 described by Subsections (b)-(h). (Tex. Prob. Code, Sec. 322.)

6           Sec. 355.103. PRIORITY OF CERTAIN PAYMENTS. When a  
7 personal representative has estate funds in the representative's  
8 possession, the representative shall pay in the following order:

9           (1) funeral expenses and expenses of the decedent's  
10 last illness, in an amount not to exceed \$15,000;

11           (2) allowances made to the decedent's surviving spouse  
12 and children, or to either the surviving spouse or children;

13           (3) expenses of administration and expenses incurred  
14 in preserving, safekeeping, and managing the estate; and

15           (4) other claims against the estate in the order of the  
16 claims' classifications. (Tex. Prob. Code, Sec. 320(a).)

17           Sec. 355.104. PAYMENT OF PROCEEDS FROM SALE OF PROPERTY  
18 SECURING DEBT. (a) If a personal representative has the proceeds  
19 of a sale made to satisfy a mortgage, lien, or security interest,  
20 and the proceeds or any part of the proceeds are not required for  
21 the payment of any debts against the estate that have a preference  
22 over the mortgage, lien, or security interest, the representative  
23 shall pay the proceeds to any holder of a mortgage, lien, or  
24 security interest. If there is more than one mortgage, lien, or  
25 security interest against the property, the representative shall  
26 pay the proceeds to the holders of the mortgages, liens, or security  
27 interests in the order of priority of the holders' mortgages,

1 liens, or security interests.

2 (b) A holder of a mortgage, lien, or security interest, on  
3 proof of a personal representative's failure to pay proceeds under  
4 this section, may obtain an order from the court directing the  
5 payment to be made. (Tex. Prob. Code, Sec. 320(b).)

6 Sec. 355.105. CLAIMANT'S PETITION FOR ALLOWANCE AND PAYMENT  
7 OF CLAIM. A claimant whose claim has not been paid may:

8 (1) petition the court for determination of the claim  
9 at any time before the claim is barred by an applicable statute of  
10 limitations; and

11 (2) procure on due proof an order for the claim's  
12 allowance and payment from the estate. (Tex. Prob. Code, Sec.  
13 320(c).)

14 Sec. 355.106. ORDER FOR PAYMENT OF CLAIM OBTAINED BY  
15 PERSONAL REPRESENTATIVE. After the sixth month after the date  
16 letters testamentary or of administration are granted, the court  
17 may order a personal representative to pay any claim that is allowed  
18 and approved on application by the representative stating that the  
19 representative has no actual knowledge of any outstanding  
20 enforceable claim against the estate other than the claims already  
21 approved and classified by the court. (Tex. Prob. Code, Sec.  
22 320(d).)

23 Sec. 355.107. ORDER FOR PAYMENT OF CLAIM OBTAINED BY  
24 CREDITOR. (a) At any time after the first anniversary of the date  
25 letters testamentary are granted for an estate, a creditor of the  
26 estate whose claim or part of a claim has been approved by the court  
27 or established by suit may obtain an order directing that payment of

1 the claim or part of the claim be made on written application and  
2 proof, except as provided by Subsection (b), showing that the  
3 estate has sufficient available funds.

4 (b) If the estate does not have available funds to pay a  
5 claim or part of a claim described by Subsection (a) and waiting for  
6 the estate to receive funds from other sources would unreasonably  
7 delay the payment, the court shall order the sale of estate property  
8 sufficient to make the payment.

9 (c) The personal representative of the estate must first be  
10 cited on a written application under Subsection (a) to appear and  
11 show cause why the order should not be made. (Tex. Prob. Code, Sec.  
12 326.)

13 Sec. 355.108. PAYMENT WHEN ASSETS INSUFFICIENT TO PAY  
14 CLAIMS OF SAME CLASS. (a) If there are insufficient assets to pay  
15 all claims of the same class, other than secured claims for money,  
16 the claims in that class shall be paid pro rata, as directed by the  
17 court, and in the order directed.

18 (b) A personal representative may not be allowed to pay a  
19 claim under Subsection (a) other than with the pro rata amount of  
20 the estate funds that have come into the representative's  
21 possession, regardless of whether the estate is solvent or  
22 insolvent. (Tex. Prob. Code, Sec. 321.)

23 Sec. 355.109. ABATEMENT OF BEQUESTS. (a) Except as  
24 provided by Subsections (b), (c), and (d), a decedent's property is  
25 liable for debts and expenses of administration other than estate  
26 taxes, and bequests abate in the following order:

27 (1) property not disposed of by will, but passing by

1 intestacy;

2 (2) personal property of the residuary estate;

3 (3) real property of the residuary estate;

4 (4) general bequests of personal property;

5 (5) general devises of real property;

6 (6) specific bequests of personal property; and

7 (7) specific devises of real property.

8 (b) This section does not affect the requirements for  
9 payment of a claim of a secured creditor who elects to have the  
10 claim continued as a preferred debt and lien against specific  
11 property under Subchapter D.

12 (c) A decedent's intent expressed in a will controls over  
13 the abatement of bequests provided by this section.

14 (d) This section does not apply to the payment of estate  
15 taxes under Subchapter A, Chapter 124. (Tex. Prob. Code, Sec.  
16 322B.)

17 Sec. 355.110. ALLOCATION OF FUNERAL EXPENSES. A personal  
18 representative paying a claim for funeral expenses and for items  
19 incident to the funeral, such as a tombstone, grave marker, crypt,  
20 or burial plot:

21 (1) shall charge all of the claim to the decedent's  
22 estate; and

23 (2) may not charge any part of the claim to the  
24 community share of a surviving spouse. (Tex. Prob. Code, Sec.  
25 320A.)

26 Sec. 355.111. PAYMENT OF COURT COSTS RELATING TO CLAIM. All  
27 costs incurred in the probate court with respect to a claim shall be

1 taxed as follows:

2 (1) if the claim is allowed and approved, the estate  
3 shall pay the costs;

4 (2) if the claim is allowed but disapproved, the  
5 claimant shall pay the costs;

6 (3) if the claim is rejected but established by suit,  
7 the estate shall pay the costs;

8 (4) if the claim is rejected and not established by  
9 suit, the claimant shall pay the costs, except as provided by  
10 Section 355.052; and

11 (5) if the claim is rejected in part and the claimant  
12 fails, in a suit to establish the claim, to recover a judgment for a  
13 greater amount than was allowed or approved for the claim, the  
14 claimant shall pay all costs in the suit. (Tex. Prob. Code, Sec.  
15 315.)

16 Sec. 355.112. JOINT OBLIGATION FOR PAYMENT OF CERTAIN  
17 DEBTS. On the death of a person jointly bound with one or more other  
18 persons for the payment of a debt or for any other purpose, the  
19 decedent's estate shall be charged by virtue of the obligation in  
20 the same manner as if the obligors had been bound severally as well  
21 as jointly. (Tex. Prob. Code, Sec. 323.)

22 Sec. 355.113. LIABILITY FOR NONPAYMENT OF CLAIM. (a) A  
23 person or claimant, except the state treasury, entitled to payment  
24 from an estate of money the court orders to be paid is authorized to  
25 have execution issued against the estate property for the amount  
26 due, with interest and costs, if:

27 (1) the personal representative fails to pay the money

1 on demand;

2 (2) estate funds are available to make the payment;

3 and

4 (3) the person or claimant makes an affidavit of the  
5 demand for payment and the representative's failure to pay.

6 (b) The court may cite the personal representative and the  
7 sureties on the representative's bond to show cause why the  
8 representative and sureties should not be held liable under  
9 Subsection (a) for the debt, interest, costs, and damages:

10 (1) on return of the execution not satisfied; or

11 (2) on the affidavit of demand and failure to pay under  
12 Subsection (a).

13 (c) On the return of citation served under Subsection (b),  
14 the court shall render judgment against the cited personal  
15 representative and sureties, in favor of the claim holder, if good  
16 cause why the representative and sureties should not be held liable  
17 is not shown. The judgment must be for:

18 (1) the amount previously ordered to be paid or  
19 established by suit that remains unpaid, together with interest and  
20 costs; and

21 (2) damages on the amount neglected to be paid at the  
22 rate of five percent per month for each month, or fraction of a  
23 month, that the payment was neglected to be paid after demand was  
24 made.

25 (d) Damages ordered under Subsection (c)(2) may be  
26 collected in any court of competent jurisdiction. (Tex. Prob.  
27 Code, Sec. 328.)

[Sections 355.114-355.150 reserved for expansion]

SUBCHAPTER D. PRESENTMENT AND PAYMENT OF SECURED CLAIMS FOR MONEY

Sec. 355.151. OPTION TO TREAT CLAIM AS MATURED SECURED CLAIM OR PREFERRED DEBT AND LIEN. (a) If a secured claim for money against an estate is presented, the claimant shall specify in the claim, in addition to all other matters required to be specified in the claim, whether the claimant desires to have the claim:

(1) allowed and approved as a matured secured claim to be paid in due course of administration, in which case the claim shall be paid in that manner if allowed and approved; or

(2) allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract that secured the lien, in which case the claim shall be so allowed and approved if it is a valid lien.

(b) Notwithstanding Subsection (a)(2), the personal representative may pay a claim that the claimant desired to have allowed, approved, and fixed as a preferred debt and lien as described by Subsection (a)(2) before maturity if that payment is in the best interest of the estate. (Tex. Prob. Code, Sec. 306(a).)

Sec. 355.152. PERIOD FOR SPECIFYING TREATMENT OF SECURED CLAIM. (a) A secured creditor may present the creditor's claim for money and shall specify within the later of six months after the date letters testamentary or of administration are granted, or four months after the date notice required to be given under Section 308.053 is received, whether the claim is to be allowed and approved under Section 355.151(a)(1) or (2).



1           (b) A secured claim for money that is not presented within  
2 the period prescribed by Subsection (a) or that is presented  
3 without specifying how the claim is to be paid under Section 355.151  
4 shall be treated as a claim to be paid in accordance with Section  
5 355.151(a)(2). (Tex. Prob. Code, Sec. 306(b).)

6           Sec. 355.153. PAYMENT OF MATURED SECURED CLAIM. (a) A  
7 claim allowed and approved as a matured secured claim under Section  
8 355.151(a)(1) shall be paid in due course of administration, and  
9 the secured creditor is not entitled to exercise any other remedy in  
10 a manner that prevents the preferential payment of claims and  
11 allowances described by Sections 355.103(1), (2), and (3).

12           (b) If a claim is allowed and approved as a matured secured  
13 claim under Section 355.151(a)(1) for a debt that would otherwise  
14 pass with the property securing the debt to one or more devisees in  
15 accordance with Section 255.301, the personal representative  
16 shall:

17                   (1) collect from the devisees the amount of the debt;  
18 and

19                   (2) pay that amount to the claimant in satisfaction of  
20 the claim.

21           (c) Each devisee's share of the debt under Subsection (b) is  
22 an amount equal to a fraction representing the devisee's ownership  
23 interest in the property securing the debt, multiplied by the  
24 amount of the debt.

25           (d) If the personal representative is unable to collect from  
26 the devisees an amount sufficient to pay the debt under Subsection  
27 (b), the representative shall, subject to Chapter 356, sell the

1 property securing the debt. The representative shall:

2 (1) use the sale proceeds to pay the debt and any  
3 expenses associated with the sale; and

4 (2) distribute the remaining sale proceeds to each  
5 devisee in an amount equal to a fraction representing the devisee's  
6 ownership interest in the property, multiplied by the amount of the  
7 remaining sale proceeds.

8 (e) If the sale proceeds under Subsection (d) are  
9 insufficient to pay the debt and any expenses associated with the  
10 sale, the difference between the sale proceeds and the sum of the  
11 amount of the debt and the expenses associated with the sale shall  
12 be paid in the manner prescribed by Subsection (a). (Tex. Prob.  
13 Code, Secs. 306(c), (c-1).)

14 Sec. 355.154. PREFERRED DEBT AND LIEN. When a claim for a  
15 debt is allowed and approved under Section 355.151(a)(2):

16 (1) a further claim for the debt may not be made  
17 against other estate assets;

18 (2) the debt thereafter remains a preferred lien  
19 against the property securing the debt; and

20 (3) the property remains security for the debt in any  
21 distribution or sale of the property before final maturity and  
22 payment of the debt. (Tex. Prob. Code, Sec. 306(d).)

23 Sec. 355.155. PAYMENT OF MATURITIES ON PREFERRED DEBT AND  
24 LIEN. (a) If property securing a debt for which a claim is allowed,  
25 approved, and fixed under Section 355.151(a)(2) is not sold or  
26 distributed within six months from the date letters testamentary or  
27 of administration are granted, the personal representative of the

1 estate shall:

2 (1) promptly pay all maturities that have accrued on  
3 the debt according to the terms of the debt; and

4 (2) perform all the terms of any contract securing the  
5 debt.

6 (b) If the personal representative defaults in payment or  
7 performance under Subsection (a), on application of the claim  
8 holder, the court shall:

9 (1) require the sale of the property subject to the  
10 unmatured part of the debt and apply the proceeds of the sale to the  
11 liquidation of the maturities;

12 (2) require the sale of the property free of the lien  
13 and apply the proceeds to the payment of the whole debt; or

14 (3) authorize foreclosure by the claim holder as  
15 provided by this subchapter. (Tex. Prob. Code, Sec. 306(e).)

16 Sec. 355.156. AFFIDAVIT REQUIRED FOR FORECLOSURE. An  
17 application by a claim holder under Section 355.155(b)(3) to  
18 foreclose the claim holder's mortgage, lien, or security interest  
19 on property securing a claim allowed, approved, and fixed under  
20 Section 355.151(a)(2) must be supported by the claim holder's  
21 affidavit that:

22 (1) describes the property or part of the property to  
23 be sold by foreclosure;

24 (2) describes the amounts of the claim holder's  
25 outstanding debt;

26 (3) describes the maturities that have accrued on the  
27 debt according to the terms of the debt;

1           (4) describes any other debts secured by a mortgage,  
2 lien, or security interest against the property that are known by  
3 the claim holder;

4           (5) contains a statement that the claim holder has no  
5 knowledge of the existence of any debt secured by the property other  
6 than those described by the application; and

7           (6) requests permission for the claim holder to  
8 foreclose the claim holder's mortgage, lien, or security interest.  
9 (Tex. Prob. Code, Sec. 306(f).)

10          Sec. 355.157. CITATION ON APPLICATION. (a) The clerk shall  
11 issue citation on the filing of an application by:

12           (1) personal service to:

13                   (A) the personal representative; and

14                   (B) any person described by the application as  
15 having other debts secured by a mortgage, lien, or security  
16 interest against the property; and

17           (2) posting to any other person interested in the  
18 estate.

19           (b) A citation issued under Subsection (a) must require the  
20 person cited to appear and show cause why foreclosure should or  
21 should not be permitted. (Tex. Prob. Code, Sec. 306(g).)

22          Sec. 355.158. HEARING ON APPLICATION. (a) The clerk shall  
23 immediately notify the judge when an application is filed. The  
24 judge shall schedule in writing a date for a hearing on the  
25 application.

26           (b) The judge may, by entry on the docket or otherwise,  
27 continue a hearing on an application for a reasonable time to allow

1 an interested person to obtain an appraisal or other evidence  
2 concerning the fair market value of the property that is the subject  
3 of the application. If the interested person requests an  
4 unreasonable time for a continuance, the interested person must  
5 show good cause for the continuance.

6 (c) If the court finds at the hearing that there is a default  
7 in payment of maturities that have accrued on a debt described by  
8 Section 355.155(a) or performance under the contract securing the  
9 debt, the court shall:

10 (1) require the sale of the property subject to the  
11 unmatured part of the debt and apply the proceeds of the sale to the  
12 liquidation of the maturities;

13 (2) require the sale of the property free of the lien  
14 and apply the proceeds to the payment of the whole debt; or

15 (3) authorize foreclosure by the claim holder as  
16 provided by Section 355.156.

17 (d) A person interested in the estate may appeal an order  
18 issued under Subsection (c)(3). (Tex. Prob. Code, Secs. 306(h),  
19 (i)(1), (j).)

20 Sec. 355.159. MANNER OF FORECLOSURE; MINIMUM PRICE. (a)  
21 When the court grants a claim holder the right of foreclosure at a  
22 hearing under Section 355.158, the court shall authorize the claim  
23 holder to foreclose the claim holder's mortgage, lien, or security  
24 interest:

25 (1) in accordance with the provisions of the document  
26 creating the mortgage, lien, or security interest; or

27 (2) in any other manner allowed by law.

1 (b) Based on the evidence presented at the hearing, the  
2 court may set a minimum price for the property to be sold by  
3 foreclosure that does not exceed the fair market value of the  
4 property. If the court sets a minimum price, the property may not  
5 be sold at the foreclosure sale for a lower price. (Tex. Prob.  
6 Code, Sec. 306(i)(2).)

7 Sec. 355.160. UNSUCCESSFUL FORECLOSURE; SUBSEQUENT  
8 APPLICATION. If property that is the subject of a foreclosure sale  
9 authorized and conducted under this subchapter is not sold because  
10 no bid at the sale met the minimum price set by the court, the claim  
11 holder may file a subsequent application for foreclosure under  
12 Section 355.155(b)(3). The court may eliminate or modify the  
13 minimum price requirement and grant permission for another  
14 foreclosure sale. (Tex. Prob. Code, Sec. 306(k).)

15 [Sections 355.161-355.200 reserved for expansion]

16 SUBCHAPTER E. CLAIMS INVOLVING PERSONAL REPRESENTATIVES

17 Sec. 355.201. CLAIM BY PERSONAL REPRESENTATIVE. (a) The  
18 provisions of this chapter regarding the presentment of claims  
19 against a decedent's estate may not be construed to apply to any  
20 claim of a personal representative against the decedent.

21 (b) A personal representative holding a claim against the  
22 decedent shall file the claim in the court granting the letters  
23 testamentary or of administration, verified by affidavit as  
24 required in other cases, within six months after the date the  
25 representative qualifies, or the claim is barred.

26 (c) A claim by a personal representative that has been filed  
27 with the court within the required period shall be entered on the

1 claim docket and acted on by the court in the same manner as in other  
2 cases.

3 (d) A personal representative may appeal a judgment of the  
4 court acting on a claim under this section as in other cases.

5 (e) The previous provisions regarding the presentment of  
6 claims may not be construed to apply to a claim:

7 (1) of any heir or devisee who claims in that capacity;

8 (2) that accrues against the estate after the granting  
9 of letters testamentary or of administration and for which the  
10 personal representative has contracted; or

11 (3) for delinquent ad valorem taxes against a  
12 decedent's estate that is being administered in probate in:

13 (A) a county other than the county in which the  
14 taxes were imposed; or

15 (B) the same county in which the taxes were  
16 imposed, if the probate proceedings have been pending for more than  
17 four years. (Tex. Prob. Code, Sec. 317.)

18 Sec. 355.202. CLAIMS AGAINST PERSONAL REPRESENTATIVES. (a)  
19 The naming of an executor in a will does not extinguish a just claim  
20 that the decedent had against the person named as executor.

21 (b) If a personal representative is indebted to the  
22 decedent, the representative shall account for the debt in the same  
23 manner as if the debt were cash in the representative's possession.

24 (c) Notwithstanding Subsection (b), a personal  
25 representative is required to account for the debt only from the  
26 date the debt becomes due if the debt was not due at the time the  
27 representative received letters testamentary or of administration.

1 (Tex. Prob. Code, Sec. 316.)

2           Sec. 355.203. PURCHASE OF CLAIM BY PERSONAL REPRESENTATIVE  
3 PROHIBITED. (a) It is unlawful, and cause for removal, for a  
4 personal representative, whether acting under appointment by will  
5 or court orders, to purchase a claim against the estate the  
6 representative represents for the representative's own use or any  
7 other purpose.

8           (b) On written complaint by a person interested in the  
9 estate and on satisfactory proof of a violation of Subsection (a),  
10 the court after citation and hearing:

11                   (1) shall enter an order canceling the claim described  
12 by Subsection (a); and

13                   (2) may remove the personal representative who is  
14 found to have violated Subsection (a).

15           (c) No part of a claim canceled under Subsection (b) may be  
16 paid out of the estate. (Tex. Prob. Code, Sec. 324.)

17                   CHAPTER 356. SALE OF ESTATE PROPERTY

18                           SUBCHAPTER A. GENERAL PROVISIONS

19           Sec. 356.001. COURT ORDER AUTHORIZING SALE

20           Sec. 356.002. SALE AUTHORIZED BY WILL

21                   [Sections 356.003-356.050 reserved for expansion]

22                   SUBCHAPTER B. CERTAIN ESTATE PROPERTY REQUIRED TO BE SOLD

23           Sec. 356.051. SALE OF CERTAIN PERSONAL PROPERTY

24                           REQUIRED

25                   [Sections 356.052-356.100 reserved for expansion]

26                   SUBCHAPTER C. SALE OF PERSONAL PROPERTY

27           Sec. 356.101. ORDER FOR SALE



- 1 Sec. 356.102. REQUIREMENTS FOR APPLICATION AND ORDER
- 2 Sec. 356.103. SALE AT PUBLIC AUCTION
- 3 Sec. 356.104. SALE ON CREDIT
- 4 Sec. 356.105. REPORT; EVIDENCE OF TITLE
- 5 [Sections 356.106-356.150 reserved for expansion]
- 6 SUBCHAPTER D. SALE OF LIVESTOCK
- 7 Sec. 356.151. AUTHORITY FOR SALE
- 8 Sec. 356.152. CONTENTS OF APPLICATION; HEARING
- 9 Sec. 356.153. GRANT OF APPLICATION
- 10 Sec. 356.154. REPORT; PASSAGE OF TITLE
- 11 Sec. 356.155. COMMISSION MERCHANT FEES
- 12 [Sections 356.156-356.200 reserved for expansion]
- 13 SUBCHAPTER E. SALE OF MORTGAGED PROPERTY
- 14 Sec. 356.201. APPLICATION FOR SALE OF MORTGAGED
- 15 PROPERTY
- 16 Sec. 356.202. CITATION
- 17 Sec. 356.203. ORDER
- 18 [Sections 356.204-356.250 reserved for expansion]
- 19 SUBCHAPTER F. SALE OF REAL PROPERTY: APPLICATION AND ORDER FOR
- 20 SALE
- 21 Sec. 356.251. APPLICATION FOR ORDER OF SALE
- 22 Sec. 356.252. CONTENTS OF APPLICATION
- 23 Sec. 356.253. CITATION
- 24 Sec. 356.254. OPPOSITION TO SALE
- 25 Sec. 356.255. HEARING ON APPLICATION AND ANY
- 26 OPPOSITION
- 27 Sec. 356.256. ORDER

1 Sec. 356.257. SALE FOR PAYMENT OF DEBTS  
2 [Sections 356.258-356.300 reserved for expansion]  
3 SUBCHAPTER G. SALE OF REAL ESTATE: TERMS OF SALE  
4 Sec. 356.301. PERMISSIBLE TERMS  
5 Sec. 356.302. SALE ON CREDIT  
6 [Sections 356.303-356.350 reserved for expansion]  
7 SUBCHAPTER H. RECONVEYANCE OF REAL ESTATE FOLLOWING FORECLOSURE  
8 Sec. 356.351. APPLICABILITY OF SUBCHAPTER  
9 Sec. 356.352. APPLICATION AND ORDER FOR RECONVEYANCE  
10 Sec. 356.353. EXCHANGE FOR BONDS  
11 [Sections 356.354-356.400 reserved for expansion]  
12 SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC SALE  
13 Sec. 356.401. REQUIRED NOTICE  
14 Sec. 356.402. METHOD OF SALE  
15 Sec. 356.403. TIME AND PLACE OF SALE  
16 Sec. 356.404. CONTINUANCE OF SALE  
17 Sec. 356.405. FAILURE OF BIDDER TO COMPLY  
18 [Sections 356.406-356.450 reserved for expansion]  
19 SUBCHAPTER J. SALE OF REAL ESTATE: PRIVATE SALE  
20 Sec. 356.451. MANNER OF SALE  
21 [Sections 356.452-356.500 reserved for expansion]  
22 SUBCHAPTER K. SALE OF EASEMENT OR RIGHT-OF-WAY  
23 Sec. 356.501. AUTHORIZATION  
24 Sec. 356.502. PROCEDURE  
25 [Sections 356.503-356.550 reserved for expansion]

1 SUBCHAPTER L. CONFIRMATION OF SALE OF REAL PROPERTY AND

2 TRANSFER OF TITLE

3 Sec. 356.551. REPORT

4 Sec. 356.552. ACTION OF COURT ON REPORT OF SALE

5 Sec. 356.553. CONFIRMATION OF SALE WHEN BOND NOT  
6 REQUIRED

7 Sec. 356.554. SUFFICIENCY OF BOND

8 Sec. 356.555. INCREASED OR ADDITIONAL BOND NOT  
9 REQUIRED

10 Sec. 356.556. CONFIRMATION OR DISAPPROVAL ORDER

11 Sec. 356.557. DEED

12 Sec. 356.558. DELIVERY OF DEED

13 Sec. 356.559. DAMAGES; REMOVAL

14 [Sections 356.560-356.600 reserved for expansion]

15 SUBCHAPTER M. PROCEDURE ON FAILURE TO APPLY FOR SALE

16 Sec. 356.601. FAILURE TO APPLY FOR SALE

17 Sec. 356.602. COURT ORDER

18 [Sections 356.603-356.650 reserved for expansion]

19 SUBCHAPTER N. PURCHASE OF PROPERTY BY PERSONAL REPRESENTATIVE

20 Sec. 356.651. GENERAL PROHIBITION ON PURCHASE

21 Sec. 356.652. EXCEPTION: AUTHORIZATION IN WILL

22 Sec. 356.653. EXCEPTION: EXECUTORY CONTRACT

23 Sec. 356.654. EXCEPTION: BEST INTEREST OF ESTATE

24 Sec. 356.655. PURCHASE IN VIOLATION OF SUBCHAPTER  
25 CHAPTER 356. SALE OF ESTATE PROPERTY

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 356.001. COURT ORDER AUTHORIZING SALE. (a) Except as

1 provided by this chapter, estate property may not be sold without a  
2 court order authorizing the sale.

3 (b) Except as otherwise specially provided by this chapter,  
4 the court may order estate property to be sold for cash or on  
5 credit, at public auction or privately, as the court considers most  
6 advantageous to the estate. (Tex. Prob. Code, Sec. 331.)

7 Sec. 356.002. SALE AUTHORIZED BY WILL. (a) Subject to  
8 Subsection (b), if a will authorizes the executor to sell the  
9 testator's property:

10 (1) a court order is not required to authorize the  
11 executor to sell the property; and

12 (2) the executor may sell the property:

13 (A) at public auction or privately as the  
14 executor considers to be in the best interest of the estate; and

15 (B) for cash or on credit terms determined by the  
16 executor.

17 (b) Any particular directions in the testator's will  
18 regarding the sale of estate property shall be followed unless the  
19 directions have been annulled or suspended by court order. (Tex.  
20 Prob. Code, Sec. 332.)

21 [Sections 356.003-356.050 reserved for expansion]

22 SUBCHAPTER B. CERTAIN ESTATE PROPERTY REQUIRED TO BE SOLD

23 Sec. 356.051. SALE OF CERTAIN PERSONAL PROPERTY REQUIRED.

24 (a) After approval of the inventory, appraisement, and list of  
25 claims, the personal representative of an estate promptly shall  
26 apply for a court order to sell, at public auction or privately, for  
27 cash or on credit for a term not to exceed six months, all estate

1 property that is liable to perish, waste, or deteriorate in value,  
2 or that will be an expense or disadvantage to the estate if kept.

3 (b) The following may not be included in a sale under  
4 Subsection (a):

- 5 (1) property exempt from forced sale;
- 6 (2) property that is the subject of a specific legacy;
- 7 and
- 8 (3) personal property necessary to carry on a farm,  
9 ranch, factory, or other business that is thought best to operate.

10 (c) In determining whether to order the sale of an asset  
11 under Subsection (a), the court shall consider:

- 12 (1) the personal representative's duty to take care of  
13 and manage the estate in the manner a person of ordinary prudence,  
14 discretion, and intelligence would manage the person's own affairs;
- 15 and
- 16 (2) whether the asset constitutes an asset that a  
17 trustee is authorized to invest under Subchapter F, Chapter 113,  
18 Property Code, or Chapter 117, Property Code. (Tex. Prob. Code,  
19 Sec. 333.)

20 [Sections 356.052-356.100 reserved for expansion]

21 SUBCHAPTER C. SALE OF PERSONAL PROPERTY

22 Sec. 356.101. ORDER FOR SALE. (a) Except as provided by  
23 Subsection (b), on the application of the personal representative  
24 of an estate or any interested person, the court may order the sale  
25 of any estate personal property not required to be sold by Section  
26 356.051, including livestock or growing or harvested crops, if the  
27 court finds that the sale of the property is in the estate's best

1 interest to pay, from the proceeds of the sale:

- 2 (1) expenses of administration;
- 3 (2) the decedent's funeral expenses;
- 4 (3) expenses of the decedent's last illness;
- 5 (4) allowances; or
- 6 (5) claims against the estate.

7 (b) The court may not order under this section the sale of  
8 exempt property or property that is the subject of a specific  
9 legacy. (Tex. Prob. Code, Sec. 334 (part).)

10 Sec. 356.102. REQUIREMENTS FOR APPLICATION AND ORDER. To  
11 the extent possible, an application and order for the sale of  
12 personal property under Section 356.101 must conform to the  
13 requirements under Subchapter F for an application and order for  
14 the sale of real estate. (Tex. Prob. Code, Sec. 334 (part).)

15 Sec. 356.103. SALE AT PUBLIC AUCTION. Unless the court  
16 directs otherwise, before estate personal property is sold at  
17 public auction, notice must be:

- 18 (1) issued by the personal representative of the  
19 estate; and
- 20 (2) posted in the manner notice is posted for original  
21 proceedings in probate. (Tex. Prob. Code, Sec. 336.)

22 Sec. 356.104. SALE ON CREDIT. (a) Estate personal property  
23 may not be sold on credit at public auction for a term of more than  
24 six months from the date of sale.

25 (b) Estate personal property purchased on credit at public  
26 auction may not be delivered to the purchaser until the purchaser  
27 gives a note for the amount due, with good and solvent personal

1 security. The requirement that security be provided may be waived  
2 if the property will not be delivered until the note, with interest,  
3 has been paid. (Tex. Prob. Code, Sec. 337.)

4 Sec. 356.105. REPORT; EVIDENCE OF TITLE. (a) A sale of  
5 estate personal property shall be reported to the court. The laws  
6 regulating the confirmation or disapproval of a sale of real estate  
7 apply to the sale, except that a conveyance is not required.

8 (b) The court's order confirming the sale of estate personal  
9 property:

10 (1) vests the right and title of the intestate's estate  
11 in the purchaser who has complied with the terms of the sale; and

12 (2) is prima facie evidence that all requirements of  
13 the law in making the sale have been met.

14 (c) The personal representative of an estate, on request,  
15 may issue a bill of sale without warranty to the purchaser of estate  
16 personal property as evidence of title. The purchaser shall pay for  
17 the issuance of the bill of sale. (Tex. Prob. Code, Sec. 339.)

18 [Sections 356.106-356.150 reserved for expansion]

19 SUBCHAPTER D. SALE OF LIVESTOCK

20 Sec. 356.151. AUTHORITY FOR SALE. (a) A personal  
21 representative of an estate who has possession of livestock and who  
22 considers selling the livestock to be necessary or to the estate's  
23 advantage may, in addition to any other method provided by law for  
24 the sale of personal property, obtain authority from the court in  
25 which the estate is pending to sell the livestock through:

26 (1) a bonded livestock commission merchant; or

27 (2) a bonded livestock auction commission merchant.

1           (b) The court may authorize the sale of livestock in the  
2 manner described by Subsection (a) on a written and sworn  
3 application by the personal representative or any person interested  
4 in the estate. (Tex. Prob. Code, Sec. 335 (part).)

5           Sec. 356.152. CONTENTS OF APPLICATION; HEARING. (a) An  
6 application under Section 356.151 must:

- 7           (1) describe the livestock sought to be sold; and  
8           (2) state why granting the application is necessary or  
9 to the estate's advantage.

10          (b) The court:

- 11           (1) shall promptly consider the application; and  
12           (2) may hear evidence for or against the application,  
13 with or without notice, as the facts warrant. (Tex. Prob. Code,  
14 Sec. 335 (part).)

15          Sec. 356.153. GRANT OF APPLICATION. If the court grants an  
16 application for the sale of livestock, the court shall:

- 17           (1) enter an order to that effect; and  
18           (2) authorize delivery of the livestock to a  
19 commission merchant described by Section 356.151 for sale in the  
20 regular course of business. (Tex. Prob. Code, Sec. 335 (part).)

21          Sec. 356.154. REPORT; PASSAGE OF TITLE. The personal  
22 representative of the estate shall promptly report to the court a  
23 sale of livestock authorized under this subchapter, supported by a  
24 verified copy of the commission merchant's account of the sale. A  
25 court order of confirmation is not required to pass title to the  
26 purchaser of the livestock. (Tex. Prob. Code, Sec. 335 (part).)

27          Sec. 356.155. COMMISSION MERCHANT FEES. A commission



1 merchant shall be paid the merchant's usual and customary charges,  
2 not to exceed five percent of the sale price, for the sale of  
3 livestock authorized under this subchapter. (Tex. Prob. Code, Sec.  
4 335 (part).)

5 [Sections 356.156-356.200 reserved for expansion]

6 SUBCHAPTER E. SALE OF MORTGAGED PROPERTY

7 Sec. 356.201. APPLICATION FOR SALE OF MORTGAGED PROPERTY.

8 A creditor holding a claim that is secured by a valid mortgage or  
9 other lien and that has been allowed and approved or established by  
10 suit may, by filing a written application, obtain from the court in  
11 which the estate is pending an order requiring that the property  
12 securing the lien, or as much of the property as is necessary to  
13 satisfy the claim, be sold. (Tex. Prob. Code, Sec. 338 (part).)

14 Sec. 356.202. CITATION. On the filing of an application  
15 under Section 356.201, the clerk shall issue a citation requiring  
16 the personal representative of the estate to appear and show cause  
17 why the application should not be granted. (Tex. Prob. Code, Sec.  
18 338 (part).)

19 Sec. 356.203. ORDER. The court may order the lien securing  
20 the claim of a creditor who files an application under Section  
21 356.201 to be discharged out of general estate assets or refinanced  
22 if the discharge or refinance of the lien appears to the court to be  
23 advisable. Otherwise, the court shall grant the application and  
24 order that the property securing the lien be sold at public or  
25 private sale, as considered best, as in an ordinary sale of real  
26 estate. (Tex. Prob. Code, Sec. 338 (part).)

27 [Sections 356.204-356.250 reserved for expansion]

1 SUBCHAPTER F. SALE OF REAL PROPERTY: APPLICATION AND ORDER FOR

2 SALE

3 Sec. 356.251. APPLICATION FOR ORDER OF SALE. An  
4 application may be made to the court for an order to sell estate  
5 property if the sale appears necessary or advisable to:

6 (1) pay:

7 (A) expenses of administration;

8 (B) the decedent's funeral expenses;

9 (C) expenses of the decedent's last illness;

10 (D) allowances; and

11 (E) claims against the estate; or

12 (2) dispose of an interest in estate real property if  
13 selling the interest is considered in the estate's best interest.

14 (Tex. Prob. Code, Sec. 341.)

15 Sec. 356.252. CONTENTS OF APPLICATION. An application for  
16 the sale of real estate must:

17 (1) be in writing;

18 (2) describe:

19 (A) the real estate sought to be sold; or

20 (B) the interest in or part of the real estate  
21 sought to be sold; and

22 (3) be accompanied by an exhibit, verified by an  
23 affidavit, showing:

24 (A) the estate's condition fully and in detail;

25 (B) the charges and claims that have been  
26 approved or established by suit or that have been rejected and may  
27 yet be established;

1 (C) the amount of each claim described by  
2 Paragraph (B);

3 (D) the estate property remaining on hand that is  
4 liable for the payment of the claims described by Paragraph (B); and

5 (E) any other facts showing the necessity for or  
6 advisability of the sale. (Tex. Prob. Code, Sec. 342.)

7 Sec. 356.253. CITATION. On the filing of an application and  
8 exhibit described by Section 356.252, the clerk shall issue a  
9 citation to all persons interested in the estate. The citation  
10 must:

11 (1) describe the real estate or the interest in or part  
12 of the real estate sought to be sold;

13 (2) inform the interested persons of the right under  
14 Section 356.254 to file an opposition to the sale during the period  
15 prescribed by the court in the citation; and

16 (3) be served by posting. (Tex. Prob. Code, Sec. 344.)

17 Sec. 356.254. OPPOSITION TO SALE. During the period  
18 prescribed in a citation issued under Section 356.253, any person  
19 interested in the estate may file:

20 (1) a written opposition to the sale; or

21 (2) an application for the sale of other estate  
22 property. (Tex. Prob. Code, Sec. 345.)

23 Sec. 356.255. HEARING ON APPLICATION AND ANY OPPOSITION.

24 (a) The clerk of the court in which an application for an order of  
25 sale is filed shall immediately call to the judge's attention any  
26 opposition to the sale that is filed during the period prescribed in  
27 the citation issued under Section 356.253. The court shall hold a

1 hearing on the application if an opposition to the sale is filed  
2 during the period prescribed in the citation.

3 (b) A hearing on an application for an order of sale is not  
4 required under this section if no opposition to the application is  
5 filed during the period prescribed in the citation. The court may  
6 determine that a hearing on the application is necessary even if no  
7 opposition is filed during that period.

8 (c) If the court orders a hearing under Subsection (a) or  
9 (b), the court shall designate in writing a date and time for the  
10 hearing on the application and any opposition, together with the  
11 evidence pertaining to the application and any opposition. The  
12 clerk shall issue a notice of the date and time of the hearing to the  
13 applicant and to each person who files an opposition to the sale, if  
14 applicable.

15 (d) The judge, by entries on the docket, may continue a  
16 hearing held under this section from time to time until the judge is  
17 satisfied concerning the application. (Tex. Prob. Code, Sec. 345A.)

18 Sec. 356.256. ORDER. (a) The court shall order the sale of  
19 the estate property described in an application for an order of sale  
20 if the court is satisfied that the sale is necessary or advisable.  
21 Otherwise, the court may deny the application and, if the court  
22 considers it best, may order the sale of other estate property the  
23 sale of which would be more advantageous to the estate.

24 (b) An order for the sale of real estate under this section  
25 must specify:

26 (1) the property to be sold, including a description  
27 that identifies that property;

1           (2) whether the property is to be sold at public  
2 auction or private sale and, if at public auction, the time and  
3 place of the sale;

4           (3) the necessity or advisability of, and the purpose  
5 of, the sale;

6           (4) except in a case in which a personal  
7 representative was not required to give a general bond, that the  
8 court, after examining the general bond given by the  
9 representative, finds that:

10                   (A) the bond is sufficient as required by law; or

11                   (B) the bond is insufficient;

12           (5) if the court finds that the general bond is  
13 insufficient under Subdivision (4)(B), the amount of the necessary  
14 or increased bond, as applicable;

15           (6) that the sale is to be made and the report returned  
16 in accordance with law; and

17           (7) the terms of the sale. (Tex. Prob. Code, Sec.  
18 346.)

19           Sec. 356.257. SALE FOR PAYMENT OF DEBTS. Estate real  
20 property selected to be sold for the payment of expenses or claims  
21 must be that property the sale of which the court considers most  
22 advantageous to the estate. (Tex. Prob. Code, Sec. 340.)

23           [Sections 356.258-356.300 reserved for expansion]

24           SUBCHAPTER G. SALE OF REAL ESTATE: TERMS OF SALE

25           Sec. 356.301. PERMISSIBLE TERMS. Real estate of an estate  
26 may be sold for cash, part cash and part credit, or the equity in  
27 land securing an indebtedness may be sold subject to the

1 indebtedness, or with an assumption of the indebtedness, at public  
2 or private sale, as appears to the court to be in the estate's best  
3 interest. (Tex. Prob. Code, Sec. 348(a) (part).)

4       Sec. 356.302. SALE ON CREDIT. (a) The cash payment for  
5 real estate of an estate sold partly on credit may not be less than  
6 one-fifth of the purchase price. The purchaser shall execute a note  
7 for the deferred payments, payable in monthly, quarterly,  
8 semiannual, or annual installments, in amounts that appear to the  
9 court to be in the estate's best interest. The note must bear  
10 interest from the date at a rate of not less than four percent per  
11 year, payable as provided in the note.

12       (b) A note executed by a purchaser under Subsection (a) must  
13 be secured by a vendor's lien retained in the deed and in the note on  
14 the property sold, and be further secured by a deed of trust on the  
15 property sold, with the usual provisions for foreclosure and sale  
16 on failure to make the payments provided in the deed and the note.

17       (c) At the election of the holder of a note executed by a  
18 purchaser under Subsection (a), default in the payment of  
19 principal, interest, or any part of the principal or interest, when  
20 due matures the entire debt. (Tex. Prob. Code, Sec. 348(a) (part).)

21       [Sections 356.303-356.350 reserved for expansion]

22       SUBCHAPTER H. RECONVEYANCE OF REAL ESTATE FOLLOWING FORECLOSURE

23       Sec. 356.351. APPLICABILITY OF SUBCHAPTER. This subchapter  
24 applies only to real estate owned by an estate as a result of the  
25 foreclosure of a vendor's lien or mortgage belonging to the estate:

- 26               (1) by a judicial sale;
- 27               (2) by a foreclosure suit;

1           (3) through a sale under a deed of trust; or  
2           (4) by acceptance of a deed in cancellation of a lien  
3 or mortgage owned by the estate. (Tex. Prob. Code, Sec. 348(b)  
4 (part).)

5           Sec. 356.352. APPLICATION AND ORDER FOR RECONVEYANCE. On  
6 proper application and proof, the court may dispense with the  
7 requirements for a credit sale prescribed by Section 356.302 and  
8 order the reconveyance of foreclosed real estate to the former  
9 mortgage debtor or former owner if it appears to the court that:

10           (1) an application to redeem the real estate has been  
11 made by the former owner to a corporation or agency created by an  
12 Act of the United States Congress or of this state in connection  
13 with legislation for the relief of owners of mortgaged or  
14 encumbered homes, farms, ranches, or other real estate; and

15           (2) owning bonds of one of those federal or state  
16 corporations or agencies instead of the real estate would be in the  
17 estate's best interest. (Tex. Prob. Code, Sec. 348(b) (part).)

18           Sec. 356.353. EXCHANGE FOR BONDS. (a) If a court orders  
19 the reconveyance of foreclosed real estate as provided by Section  
20 356.352, vendor's lien notes shall be reserved for the total amount  
21 of the indebtedness due or for the total amount of bonds that the  
22 corporation or agency to which the application to redeem the real  
23 estate was submitted as described by Section 356.352(1) is allowed  
24 to advance under the corporation's or agency's rules or  
25 regulations.

26           (b) On obtaining the order for reconveyance, it shall be  
27 proper for the personal representative of the estate to indorse and

1 assign the reserved vendor's lien notes over to any one of the  
2 corporations or agencies described by Section 356.352(1) in  
3 exchange for bonds of that corporation or agency. (Tex. Prob. Code,  
4 Sec. 348(b) (part).)

5 [Sections 356.354-356.400 reserved for expansion]

6 SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC SALE

7 Sec. 356.401. REQUIRED NOTICE. (a) Except as otherwise  
8 provided by Section 356.403(c), the personal representative of an  
9 estate shall advertise a public sale of real estate of the estate by  
10 a notice published in the county in which the estate is pending, as  
11 provided by this title for publication of notices or citations. The  
12 notice must:

- 13 (1) include a reference to the order of sale;  
14 (2) include the time, place, and required terms of  
15 sale; and  
16 (3) briefly describe the real estate to be sold.

17 (b) The notice required by Subsection (a) is not required to  
18 contain field notes, but if the real estate to be sold is rural  
19 property, the notice must include:

- 20 (1) the name of the original survey of the real estate;  
21 (2) the number of acres comprising the real estate;  
22 (3) the location of the real estate in the county; and  
23 (4) any name by which the real estate is generally  
24 known. (Tex. Prob. Code, Sec. 349(a).)

25 Sec. 356.402. METHOD OF SALE. A public sale of real estate  
26 of an estate shall be made at public auction to the highest bidder.  
27 (Tex. Prob. Code, Sec. 349(b).)



1           Sec. 356.403. TIME AND PLACE OF SALE. (a) Except as  
2 provided by Subsection (c), a public sale of real estate of an  
3 estate shall be made at:

4                   (1) the courthouse door in the county in which the  
5 proceedings are pending; or

6                   (2) another place in that county at which sales of real  
7 estate are specifically authorized to be made.

8           (b) The sale must occur between 10 a.m. and 4 p.m. on the  
9 first Tuesday of the month after publication of notice has been  
10 completed.

11           (c) If the court considers it advisable, the court may order  
12 the sale to be made in the county in which the real estate is  
13 located, in which event notice shall be published both in that  
14 county and in the county in which the proceedings are pending.  
15 (Tex. Prob. Code, Sec. 349(c).)

16           Sec. 356.404. CONTINUANCE OF SALE. (a) A public sale of  
17 real estate of an estate that is not completed on the day advertised  
18 may be continued from day to day by an oral public announcement of  
19 the continuance made at the conclusion of the sale each day.

20           (b) A continued sale must occur within the hours prescribed  
21 by Section 356.403(b).

22           (c) The continuance of a sale under this section shall be  
23 shown in the report of the sale made to the court. (Tex. Prob. Code,  
24 Sec. 349(d).)

25           Sec. 356.405. FAILURE OF BIDDER TO COMPLY. (a) If a person  
26 bids off real estate of the estate offered for sale at public  
27 auction and fails to comply with the terms of the sale, the property

1 shall be readvertised and sold without any further order.

2 (b) The person defaulting on a bid as described by  
3 Subsection (a) is liable for payment to the personal representative  
4 of the estate, for the estate's benefit, of:

5 (1) 10 percent of the amount of the bid; and

6 (2) the amount of any deficiency in price on the second  
7 sale.

8 (c) The personal representative may recover the amounts  
9 under Subsection (b) by suit in any court in the county in which the  
10 sale was made that has jurisdiction of the amount claimed. (Tex.  
11 Prob. Code, Sec. 349(e).)

12 [Sections 356.406-356.450 reserved for expansion]

13 SUBCHAPTER J. SALE OF REAL ESTATE: PRIVATE SALE

14 Sec. 356.451. MANNER OF SALE. A private sale of real estate  
15 of the estate shall be made in the manner the court directs in the  
16 order of sale. Unless the court directs otherwise, additional  
17 advertising, notice, or citation concerning the sale is not  
18 required. (Tex. Prob. Code, Sec. 350.)

19 [Sections 356.452-356.500 reserved for expansion]

20 SUBCHAPTER K. SALE OF EASEMENT OR RIGHT-OF-WAY

21 Sec. 356.501. AUTHORIZATION. Easements and rights-of-way  
22 on, under, and over the land of an estate that is being administered  
23 under court order may be sold and conveyed regardless of whether the  
24 sale proceeds are required to pay charges or claims against the  
25 estate or for other lawful purposes. (Tex. Prob. Code, Sec. 351  
26 (part).)

27 Sec. 356.502. PROCEDURE. The procedure for the sale of an

1 easement or right-of-way authorized under Section 356.501 is the  
2 same as the procedure provided by law for a sale of estate real  
3 property at private sale. (Tex. Prob. Code, Sec. 351 (part).)

4 [Sections 356.503-356.550 reserved for expansion]

5 SUBCHAPTER L. CONFIRMATION OF SALE OF REAL PROPERTY AND  
6 TRANSFER OF TITLE

7 Sec. 356.551. REPORT. A sale of estate real property shall  
8 be reported to the court ordering the sale not later than the 30th  
9 day after the date the sale is made. The report must:

- 10 (1) be sworn to, in writing, and filed with the clerk;  
11 (2) include:  
12 (A) the date of the order of sale;  
13 (B) a description of the property sold;  
14 (C) the time and place of sale;  
15 (D) the purchaser's name;  
16 (E) the amount for which each parcel of property  
17 or interest in property was sold;  
18 (F) the terms of the sale;  
19 (G) whether the sale was made at public auction  
20 or privately; and  
21 (H) whether the purchaser is ready to comply with  
22 the order of sale; and  
23 (3) be noted on the probate docket. (Tex. Prob. Code,  
24 Sec. 353.)

25 Sec. 356.552. ACTION OF COURT ON REPORT OF SALE. After the  
26 expiration of five days from the date a report of sale is filed  
27 under Section 356.551, the court shall:

- 1           (1) inquire into the manner in which the sale was made;  
2           (2) hear evidence in support of or against the report;  
3 and  
4           (3) determine the sufficiency or insufficiency of the  
5 personal representative's general bond, if any has been required  
6 and given. (Tex. Prob. Code, Sec. 355 (part).)

7           Sec. 356.553. CONFIRMATION OF SALE WHEN BOND NOT REQUIRED.  
8 If the personal representative of an estate is not required by this  
9 title to give a general bond, the court may confirm the sale of  
10 estate real property in the manner provided by Section 356.556(a)  
11 if the court finds that the sale is satisfactory and made in  
12 accordance with law. (Tex. Prob. Code, Sec. 354 (part).)

13           Sec. 356.554. SUFFICIENCY OF BOND. (a) If the personal  
14 representative of an estate is required by this title to give a  
15 general bond, before the court confirms any sale of real estate, the  
16 court shall determine whether the bond is sufficient to protect the  
17 estate after the sale proceeds are received.

18           (b) If the court finds that the general bond is sufficient,  
19 the court may confirm the sale as provided by Section 356.556(a).

20           (c) If the court finds that the general bond is  
21 insufficient, the court may not confirm the sale until the general  
22 bond is increased to the amount required by the court, or an  
23 additional bond is given, and approved by the court.

24           (d) An increase in the amount of the general bond, or the  
25 additional bond, as applicable under Subsection (c), must be equal  
26 to the sum of:

- 27           (1) the amount for which the real estate is sold; and

1           (2) any additional amount the court finds necessary  
2 and sets for the estate's protection. (Tex. Prob. Code, Sec. 354  
3 (part).)

4           Sec. 356.555. INCREASED OR ADDITIONAL BOND NOT REQUIRED.  
5 Notwithstanding Sections 356.554(c) and (d), if the real estate  
6 sold is encumbered by a lien to secure a claim against the estate  
7 and is sold to the owner or holder of the secured claim in full  
8 payment, liquidation, and satisfaction of the claim, an increased  
9 general bond or additional bond may not be required except for the  
10 amount of any cash paid to the personal representative of the estate  
11 in excess of the amount necessary to pay, liquidate, and satisfy the  
12 claim in full. (Tex. Prob. Code, Sec. 354 (part).)

13           Sec. 356.556. CONFIRMATION OR DISAPPROVAL ORDER. (a) If  
14 the court is satisfied that a sale reported under Section 356.551  
15 was for a fair price, properly made, and in conformity with law, and  
16 the court has approved any increased or additional bond that the  
17 court found necessary to protect the estate, the court shall enter  
18 an order:

- 19           (1) confirming the sale;  
20           (2) showing conformity with this chapter;  
21           (3) detailing the terms of the sale; and  
22           (4) authorizing the personal representative to convey  
23 the property on the purchaser's compliance with the terms of the  
24 sale.

25           (b) If the court is not satisfied that the sale was for a  
26 fair price, properly made, and in conformity with law, the court  
27 shall enter an order setting aside the sale and ordering a new sale

1 to be made, if necessary.

2 (c) The court's action in confirming or disapproving a  
3 report of a sale has the effect of a final judgment. Any person  
4 interested in the estate or in the sale is entitled to have an order  
5 entered under this section reviewed as in other final judgments in  
6 probate proceedings. (Tex. Prob. Code, Sec. 355 (part).)

7 Sec. 356.557. DEED. Real estate of an estate that is sold  
8 shall be conveyed by a proper deed that refers to and identifies the  
9 court order confirming the sale. The deed:

10 (1) vests in the purchaser all right and title of the  
11 estate to, and all interest of the estate in, the property; and

12 (2) is prima facie evidence that the sale has met all  
13 applicable requirements of the law. (Tex. Prob. Code, Sec. 356.)

14 Sec. 356.558. DELIVERY OF DEED. (a) After the court has  
15 confirmed a sale and the purchaser has complied with the terms of  
16 the sale, the personal representative of the estate shall promptly  
17 execute and deliver to the purchaser a proper deed conveying the  
18 property.

19 (b) If the sale is made partly on credit:

20 (1) the vendor's lien securing one or more purchase  
21 money notes must be expressly retained in the deed and may not be  
22 waived; and

23 (2) before actual delivery of the deed to the  
24 purchaser, the purchaser shall execute and deliver to the personal  
25 representative of the estate one or more vendor's lien notes, with  
26 or without personal sureties as ordered by the court, and a deed of  
27 trust or mortgage on the property as additional security for the

1 payment of the notes.

2 (c) On completion of the transaction, the personal  
3 representative of the estate shall promptly file or cause to be  
4 filed and recorded the deed of trust or mortgage in the appropriate  
5 records in the county in which the land is located. (Tex. Prob.  
6 Code, Sec. 357.)

7 Sec. 356.559. DAMAGES; REMOVAL. (a) If the personal  
8 representative of an estate neglects to comply with Section  
9 356.558, including to file the deed of trust securing a lien in the  
10 proper county, the representative and the sureties on the  
11 representative's bond shall, after complaint and citation, be held  
12 liable for the use of the estate and for all damages resulting from  
13 the representative's neglect, and the court may remove the  
14 representative.

15 (b) Damages under this section may be recovered in any court  
16 of competent jurisdiction. (Tex. Prob. Code, Sec. 358.)

17 [Sections 356.560-356.600 reserved for expansion]

18 SUBCHAPTER M. PROCEDURE ON FAILURE TO APPLY FOR SALE

19 Sec. 356.601. FAILURE TO APPLY FOR SALE. If the personal  
20 representative of an estate neglects to apply for an order to sell  
21 sufficient estate property to pay charges and claims against the  
22 estate that have been allowed and approved or established by suit,  
23 any interested person, on written application, may have the  
24 representative cited to appear and make a full exhibit of the  
25 estate's condition and show cause why a sale of the property should  
26 not be ordered. (Tex. Prob. Code, Sec. 347 (part).)

27 Sec. 356.602. COURT ORDER. On hearing an application under

1 Section 356.601, if the court is satisfied that a sale of estate  
2 property is necessary or advisable to satisfy the charges and  
3 claims described by Section 356.601, the court shall enter an order  
4 of sale as provided by Section 356.256. (Tex. Prob. Code, Sec. 347  
5 (part).)

6 [Sections 356.603-356.650 reserved for expansion]

7 SUBCHAPTER N. PURCHASE OF PROPERTY BY PERSONAL REPRESENTATIVE

8 Sec. 356.651. GENERAL PROHIBITION ON PURCHASE. Except as  
9 otherwise provided by this subchapter, the personal representative  
10 of an estate may not purchase, directly or indirectly, any estate  
11 property sold by the representative or any co-representative of the  
12 estate. (Tex. Prob. Code, Sec. 352(a).)

13 Sec. 356.652. EXCEPTION: AUTHORIZATION IN WILL. A personal  
14 representative of an estate may purchase estate property if the  
15 representative was appointed in a will that:

- 16 (1) has been admitted to probate; and  
17 (2) expressly authorizes the sale. (Tex. Prob. Code,  
18 Sec. 352(b).)

19 Sec. 356.653. EXCEPTION: EXECUTORY CONTRACT. A personal  
20 representative of a decedent's estate may purchase estate property  
21 in compliance with the terms of a written executory contract signed  
22 by the decedent, including:

- 23 (1) a contract for deed;  
24 (2) an earnest money contract;  
25 (3) a buy/sell agreement; and  
26 (4) a stock purchase or redemption agreement. (Tex.  
27 Prob. Code, Sec. 352(c).)



1           Sec. 356.654. EXCEPTION: BEST INTEREST OF ESTATE. (a)  
2 Subject to Subsection (b), the personal representative of an  
3 estate, including an independent administrator, may purchase  
4 estate property on the court's determination that the sale is in the  
5 estate's best interest.

6           (b) Before purchasing estate property as authorized by  
7 Subsection (a), the personal representative shall give notice of  
8 the purchase by certified mail, return receipt requested, unless  
9 the court requires another form of notice, to:

10                   (1) each distributee of the estate; and

11                   (2) each creditor whose claim remains unsettled after  
12 being presented within six months of the date letters testamentary  
13 or of administration are originally granted.

14           (c) The court may require additional notice or allow for the  
15 waiver of the notice required for a sale made under this section.  
16 (Tex. Prob. Code, Sec. 352(d).)

17           Sec. 356.655. PURCHASE IN VIOLATION OF SUBCHAPTER. (a) If  
18 a personal representative of an estate purchases estate property in  
19 violation of this subchapter, any person interested in the estate  
20 may file a written complaint with the court in which the proceedings  
21 are pending.

22           (b) On service of citation on the personal representative on  
23 a complaint filed under Subsection (a) and after hearing and proof,  
24 the court shall:

25                   (1) declare the sale void;

26                   (2) set aside the sale; and

27                   (3) order the reconveyance of the property to the

1 estate.

2 (c) The court shall adjudge against the personal  
3 representative all costs of the sale, protest, and suit found  
4 necessary. (Tex. Prob. Code, Sec. 352(e).)

5 CHAPTER 357. RENTING ESTATE PROPERTY

6 SUBCHAPTER A. RENTAL AND RETURN OF ESTATE PROPERTY

7 Sec. 357.001. RENTING ESTATE PROPERTY WITHOUT COURT

8 ORDER

9 Sec. 357.002. RENTING ESTATE PROPERTY WITH COURT ORDER

10 Sec. 357.003. ESTATE PROPERTY RENTED ON CREDIT

11 Sec. 357.004. CONDITION OF RETURNED ESTATE PROPERTY

12 Sec. 357.005. COMPLAINT FOR FAILURE TO RENT

13 [Sections 357.006-357.050 reserved for expansion]

14 SUBCHAPTER B. REPORT ON RENTED ESTATE PROPERTY

15 Sec. 357.051. REPORTS CONCERNING RENTALS

16 Sec. 357.052. COURT ACTION ON REPORT

17 CHAPTER 357. RENTING ESTATE PROPERTY

18 SUBCHAPTER A. RENTAL AND RETURN OF ESTATE PROPERTY

19 Sec. 357.001. RENTING ESTATE PROPERTY WITHOUT COURT ORDER.

20 (a) The personal representative of an estate, without a court  
21 order, may rent any of the estate property for one year or less, at  
22 public auction or privately, as is considered to be in the best  
23 interest of the estate.

24 (b) On the sworn complaint of any person interested in the  
25 estate, the court shall require a personal representative who,  
26 without a court order, rents estate property to account to the  
27 estate for the reasonable value of the rent of the property, to be

1 ascertained by the court on satisfactory evidence. (Tex. Prob.  
2 Code, Secs. 359, 360.)

3 Sec. 357.002. RENTING ESTATE PROPERTY WITH COURT ORDER.

4 (a) The personal representative of an estate may, if the  
5 representative prefers, and shall, if the proposed rental period is  
6 more than one year, file a written application with the court  
7 setting forth the property the representative seeks to rent.

8 (b) If the court finds that granting an application filed  
9 under Subsection (a) is in the interest of the estate, the court  
10 shall issue an order that:

11 (1) describes the property to be rented; and

12 (2) states whether the property will be rented at  
13 public auction or privately, whether for cash or on credit, and if  
14 on credit, the extent of the credit and the period for which the  
15 property may be rented.

16 (c) If, under Subsection (b), the court orders property to  
17 be rented at public auction, the court shall prescribe whether  
18 notice of the auction shall be published or posted. (Tex. Prob.  
19 Code, Sec. 361.)

20 Sec. 357.003. ESTATE PROPERTY RENTED ON CREDIT. Possession  
21 of estate property rented on credit may not be delivered until the  
22 renter executes and delivers to the personal representative a note  
23 with good personal security for the amount of the rent. If the  
24 property is delivered without the representative receiving the  
25 required security, the representative and the sureties on the  
26 representative's bond are liable for the full amount of the rent.  
27 When a rental is payable in installments, in advance of the period

1 to which the installments relate, this section does not apply.  
2 (Tex. Prob. Code, Sec. 363.)

3       Sec. 357.004.   CONDITION OF RETURNED ESTATE PROPERTY.   (a)  
4 Estate property that is rented, with or without a court order, must  
5 be returned to the estate's possession in as good a condition,  
6 except for reasonable wear and tear, as when the property was  
7 rented.

8       (b) The personal representative of an estate shall:

9           (1) ensure that rented estate property is returned in  
10 the condition required by Subsection (a);

11           (2) report to the court any damage to, or loss or  
12 destruction of, the property; and

13           (3) ask the court for the authority to take any  
14 necessary action.

15       (c) A personal representative who fails to act as required  
16 by this section and the sureties on the representative's bond are  
17 liable to the estate for any loss or damage suffered as a result of  
18 the representative's failure. (Tex. Prob. Code, Sec. 364.)

19       Sec. 357.005.   COMPLAINT FOR FAILURE TO RENT.   (a) Any  
20 person interested in an estate may:

21           (1) file a written and sworn complaint in the court in  
22 which the estate is pending; and

23           (2) have the personal representative cited to appear  
24 and show cause why the representative did not rent any estate  
25 property.

26       (b) The court, on hearing the complaint, shall issue an  
27 order that appears to be in the best interest of the estate. (Tex.

1 Prob. Code, Sec. 362.)

2 [Sections 357.006-357.050 reserved for expansion]

3 SUBCHAPTER B. REPORT ON RENTED ESTATE PROPERTY

4 Sec. 357.051. REPORTS CONCERNING RENTALS. (a) A personal  
5 representative of an estate who rents estate property with an  
6 appraised value of \$3,000 or more shall, not later than the 30th day  
7 after the date the property is rented, file with the court a sworn  
8 and written report stating:

9 (1) the property rented and the property's appraised  
10 value;

11 (2) the date the property was rented and whether the  
12 rental occurred at public auction or privately;

13 (3) the name of each person renting the property;

14 (4) the rental amount; and

15 (5) whether the rental was for cash or on credit and,  
16 if on credit, the length of time, the terms, and the security  
17 received for the credit.

18 (b) A personal representative of an estate who rents estate  
19 property with an appraised value of less than \$3,000 may report the  
20 rental in the next annual or final account that must be filed as  
21 required by law. (Tex. Prob. Code, Sec. 365.)

22 Sec. 357.052. COURT ACTION ON REPORT. (a) At any time  
23 after the fifth day after the date the report of renting is filed,  
24 the court shall:

25 (1) examine the report; and

26 (2) by order approve and confirm the report if found  
27 just and reasonable.

1 (b) If the court disapproves the report, the estate is not  
2 bound and the court may order another offering for rent of the  
3 property that is the subject of the report, in the same manner and  
4 subject to the provisions of this chapter.

5 (c) If the court approves the report and it later appears  
6 that, by reason of any fault of the personal representative, the  
7 property was not rented for the property's reasonable value, the  
8 court shall have the representative and the sureties on the  
9 representative's bond appear and show cause why the reasonable  
10 value of the rent of the property should not be adjudged against the  
11 representative. (Tex. Prob. Code, Sec. 366.)

12 CHAPTER 358. MATTERS RELATING TO MINERAL PROPERTIES

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 358.001. DEFINITIONS

15 [Sections 358.002-358.050 reserved for expansion]

16 SUBCHAPTER B. MINERAL LEASES AFTER PUBLIC NOTICE

17 Sec. 358.051. AUTHORIZATION FOR LEASING OF MINERALS

18 Sec. 358.052. LEASE APPLICATION

19 Sec. 358.053. SCHEDULING OF HEARING ON APPLICATION;

20 CONTINUANCE

21 Sec. 358.054. NOTICE OF HEARING ON APPLICATION

22 Sec. 358.055. REQUIREMENTS REGARDING ORDER AND NOTICE

23 MANDATORY

24 Sec. 358.056. HEARING ON APPLICATION; ORDER

25 Sec. 358.057. MAKING OF LEASE ON GRANTING OF

26 APPLICATION

27 Sec. 358.058. BOND REQUIREMENTS

1 Sec. 358.059. TERM OF LEASE BINDING

2 Sec. 358.060. AMENDMENT OF LEASE REGARDING EFFECT OF  
3 SHUT-IN GAS WELL

4 [Sections 358.061-358.100 reserved for expansion]

5 SUBCHAPTER C. MINERAL LEASES AT PRIVATE SALE

6 Sec. 358.101. AUTHORIZATION FOR LEASING OF MINERALS AT  
7 PRIVATE SALE

8 Sec. 358.102. ACTION OF COURT IF PUBLIC ADVERTISING  
9 NOT REQUIRED

10 [Sections 358.103-358.150 reserved for expansion]

11 SUBCHAPTER D. POOLING OR UNITIZATION OF ROYALTIES OR MINERALS

12 Sec. 358.151. AUTHORIZATION FOR POOLING OR UNITIZATION

13 Sec. 358.152. POOLING OR UNITIZATION APPLICATION

14 Sec. 358.153. NOTICE NOT REQUIRED

15 Sec. 358.154. HEARING ON APPLICATION

16 Sec. 358.155. ACTION OF COURT AND CONTENTS OF ORDER

17 [Sections 358.156-358.200 reserved for expansion]

18 SUBCHAPTER E. SPECIAL ANCILLARY INSTRUMENTS THAT MAY BE EXECUTED  
19 WITHOUT COURT ORDER

20 Sec. 358.201. AUTHORIZATION FOR EXECUTION OF  
21 AGREEMENTS

22 [Sections 358.202-358.250 reserved for expansion]

23 SUBCHAPTER F. PROCEDURE IF PERSONAL REPRESENTATIVE OF ESTATE  
24 NEGLECTS TO APPLY FOR AUTHORITY

25 Sec. 358.251. APPLICATION TO SHOW CAUSE

26 Sec. 358.252. HEARING ON APPLICATION

27 Sec. 358.253. ORDER

1 Sec. 358.254. PROCEDURE TO BE FOLLOWED AFTER ENTRY OF

2 ORDER

3 CHAPTER 358. MATTERS RELATING TO MINERAL PROPERTIES

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 358.001. DEFINITIONS. In this chapter:

6 (1) "Gas" includes all liquid hydrocarbons in the  
7 gaseous phase in the reservoir.

8 (2) "Land" and "interest in land" include minerals or  
9 an interest in minerals in place.

10 (3) "Mineral development" includes exploration for,  
11 whether by geophysical or other means, drilling for, mining for,  
12 development of, operations in connection with, production of, and  
13 saving of oil, other liquid hydrocarbons, gas, gaseous elements,  
14 sulphur, metals, and all other minerals, whether solid or  
15 otherwise.

16 (4) "Property" includes land, minerals in place,  
17 whether solid, liquid, or gaseous, and an interest of any kind in  
18 that property, including a royalty interest, owned by an estate.  
19 (Tex. Prob. Code, Sec. 367(a); New.)

20 [Sections 358.002-358.050 reserved for expansion]

21 SUBCHAPTER B. MINERAL LEASES AFTER PUBLIC NOTICE

22 Sec. 358.051. AUTHORIZATION FOR LEASING OF MINERALS. (a)  
23 The court in which probate proceedings on a decedent's estate are  
24 pending may authorize the personal representative of the estate,  
25 appointed and qualified under the laws of this state and acting  
26 solely under court orders, to make, execute, and deliver a lease,  
27 with or without a unitization clause or pooling provision,



1 providing for the exploration for and development and production of  
2 oil, other liquid hydrocarbons, gas, metals and other solid  
3 minerals, and other minerals, or any of those minerals in place,  
4 belonging to the estate.

5 (b) A lease described by Subsection (a) must be made and  
6 entered into under and in conformity with this subchapter. (Tex.  
7 Prob. Code, Secs. 367(b), (c) (part).)

8 Sec. 358.052. LEASE APPLICATION. (a) The personal  
9 representative of an estate shall file with the county clerk of the  
10 county in which the probate proceeding is pending a written  
11 application, addressed to the court or the judge of the court, for  
12 authority to lease estate property for mineral exploration and  
13 development, with or without a pooling provision or unitization  
14 clause.

15 (b) The lease application must:

16 (1) describe the property fully by reference to the  
17 amount of acreage, the survey name or number, or the abstract  
18 number, or by another method adequately identifying the property  
19 and the property's location in the county in which the property is  
20 situated;

21 (2) specify the interest thought to be owned by the  
22 estate, if less than the whole, but requesting authority to include  
23 all of the interest owned by the estate, if that is the intention;  
24 and

25 (3) set out the reasons the estate property described  
26 in the application should be leased.

27 (c) The lease application is not required to set out or

1 suggest:

2 (1) the name of any proposed lessee; or

3 (2) the terms, provisions, or form of any desired  
4 lease. (Tex. Prob. Code, Sec. 367(c) (part).)

5 Sec. 358.053. SCHEDULING OF HEARING ON APPLICATION;  
6 CONTINUANCE. (a) Immediately after the filing of a lease  
7 application under Section 358.052, the county clerk shall call the  
8 filing of the application to the court's attention, and the judge  
9 shall promptly make and enter a brief order designating the time and  
10 place for hearing the application.

11 (b) If the hearing is not held at the time originally  
12 designated by the court or by a timely continuance order entered,  
13 the hearing shall be continued automatically without further notice  
14 to the same time on the following day, other than Sundays and  
15 holidays on which the county courthouse is officially closed, and  
16 from day to day until the lease application is finally acted on and  
17 disposed of by court order. Notice of an automatic continuance is  
18 not required. (Tex. Prob. Code, Sec. 367(c) (part).)

19 Sec. 358.054. NOTICE OF HEARING ON APPLICATION. (a) At  
20 least 10 days before the date set for the hearing on a lease  
21 application filed under Section 358.052, excluding the date of  
22 notice and the date set for the hearing, the personal  
23 representative shall give notice of the hearing by:

24 (1) publishing the notice in one issue of a newspaper  
25 of general circulation in the county in which the proceeding is  
26 pending; or

27 (2) if there is no newspaper described by Subdivision

1 (1), posting the notice or having the notice posted.

2 (b) If notice is published, the date of notice is the date  
3 printed on the newspaper.

4 (c) The notice must:

5 (1) be dated;

6 (2) be directed to all persons interested in the  
7 estate;

8 (3) state the date on which the lease application was  
9 filed;

10 (4) describe briefly the property sought to be leased,  
11 specifying the fractional interest sought to be leased if less than  
12 the entire interest in the tract or tracts identified; and

13 (5) state the time and place designated by the judge  
14 for the hearing. (Tex. Prob. Code, Sec. 367(c) (part).)

15 Sec. 358.055. REQUIREMENTS REGARDING ORDER AND NOTICE  
16 MANDATORY. An order of the judge or court authorizing any act to be  
17 performed under a lease application filed under Section 358.052 is  
18 void in the absence of:

19 (1) a written order originally designating a time and  
20 place for hearing;

21 (2) a notice issued by the personal representative of  
22 the estate in compliance with the order described by Subdivision  
23 (1); and

24 (3) proof of the publication or posting of the notice  
25 as required under Section 358.054. (Tex. Prob. Code, Sec. 367(c)  
26 (part).)

27 Sec. 358.056. HEARING ON APPLICATION; ORDER. (a) At the

1 time and place designated for the hearing under Section 358.053(a),  
2 or at the time to which the hearing is continued as provided by  
3 Section 358.053(b), the judge shall:

4 (1) hear a lease application filed under Section  
5 358.052; and

6 (2) require proof as to the necessity or advisability  
7 of leasing for mineral development the property described in the  
8 application and the notice.

9 (b) The judge shall enter an order authorizing one or more  
10 leases affecting and covering the property or portions of property  
11 described in the application, with or without pooling provisions or  
12 unitization clauses, and with or without cash consideration if  
13 considered by the court to be in the best interest of the estate, if  
14 the judge is satisfied that:

15 (1) the application is in proper form;

16 (2) notice has been given in the manner and for the  
17 time required by law;

18 (3) proof of necessity or advisability of leasing is  
19 sufficient; and

20 (4) the application should be granted.

21 (c) The order must contain:

22 (1) the name of the lessee;

23 (2) any actual cash consideration to be paid by the  
24 lessee;

25 (3) a finding that the requirements of Subsection (b)  
26 have been satisfied; and

27 (4) one of the following findings:

1 (A) a finding that the personal representative is  
2 exempted by law from giving bond; or

3 (B) if the representative is not exempted by law  
4 from giving bond, a finding as to whether the representative's  
5 general bond on file is sufficient to protect the personal property  
6 on hand, including any cash bonus to be paid.

7 (d) If the court finds the general bond insufficient to meet  
8 the requirements of Subsection (c)(4)(B), the order must show the  
9 amount of increased or additional bond required to cover the  
10 deficiency.

11 (e) A complete exhibit copy, either written or printed, of  
12 each authorized lease must be set out in the order or attached to  
13 the order and incorporated by reference and made part of the order.  
14 The exhibit copy must show:

15 (1) the name of the lessee;

16 (2) the date of the lease;

17 (3) an adequate description of the property being  
18 leased;

19 (4) any delay rental to be paid to defer commencement  
20 of operations; and

21 (5) all other authorized terms and provisions.

22 (f) If the date of a lease does not appear in the exhibit  
23 copy of the lease or in the order, the date of the order is  
24 considered for all purposes to be the date of the lease.

25 (g) If the name or address of the depository bank for  
26 receiving rental is not shown in the exhibit copy of a lease, the  
27 estate's personal representative may insert that information, or

1 cause that information to be inserted, in the lease at the time of  
2 the lease's execution or at any other time agreeable to the lessee  
3 or the lessee's successors or assignees. (Tex. Prob. Code, Sec.  
4 367(c) (part).)

5 Sec. 358.057. MAKING OF LEASE ON GRANTING OF APPLICATION.

6 (a) If the court grants an application as provided by Section  
7 358.056, the personal representative of the estate may make the  
8 lease or leases, as evidenced by the exhibit copies described by  
9 Section 358.056, in accordance with the order.

10 (b) The lease or leases must be made not later than the 30th  
11 day after the date of the order unless an extension is granted by  
12 the court on sworn application showing good cause.

13 (c) It is not necessary for the judge to make an order  
14 confirming the lease or leases. (Tex. Prob. Code, Sec. 367(c)  
15 (part).)

16 Sec. 358.058. BOND REQUIREMENTS. (a) Unless the personal  
17 representative of the estate is not required to give a general bond,  
18 a lease for which a cash consideration is required, although  
19 ordered, executed, and delivered, is not valid:

20 (1) unless the order authorizing the lease makes  
21 findings with respect to the general bond; and

22 (2) if the general bond has been found insufficient,  
23 unless and until:

24 (A) the bond has been increased or an additional  
25 bond given, as required by the order, with the sureties required by  
26 law; and

27 (B) the increased bond or additional bond has

1 been approved by the judge and filed with the clerk of the court in  
2 which the proceedings are pending.

3 (b) If two or more leases of different land are authorized  
4 by the same order, the general bond must be increased, or additional  
5 bonds given, to cover all of the leases. (Tex. Prob. Code, Sec.  
6 367(c) (part).)

7 Sec. 358.059. TERM OF LEASE BINDING. (a) A lease executed  
8 and delivered in compliance with this subchapter is valid and  
9 binding on the property or interest in property owned by the estate  
10 and covered by the lease for the full term provided by the lease,  
11 subject only to the lease's terms and conditions, even if the  
12 primary term extends beyond the date the estate is closed in  
13 accordance with law.

14 (b) The authorized primary term of the lease may not exceed  
15 five years, subject to the lease terms and provisions extending the  
16 lease beyond the primary term by:

17 (1) paying production;

18 (2) bona fide drilling or reworking operations,  
19 whether in or on the same well or wells or an additional well or  
20 wells, without a cessation of operations of more than 60  
21 consecutive days before production has been restored or obtained;  
22 or

23 (3) a shut-in gas well. (Tex. Prob. Code, Sec. 367(c)  
24 (part).)

25 Sec. 358.060. AMENDMENT OF LEASE REGARDING EFFECT OF  
26 SHUT-IN GAS WELL. (a) An oil, gas, and mineral lease executed by a  
27 personal representative under the former Texas Probate Code or this

1 code may be amended by an instrument that provides that a shut-in  
2 gas well on the land covered by the lease or on land pooled with all  
3 or part of the land covered by the lease continues the lease in  
4 effect after the lease's five-year primary term.

5 (b) The personal representative, with the approval of the  
6 court, shall execute the instrument according to the terms and  
7 conditions prescribed by the instrument. (Tex. Prob. Code, Sec.  
8 367(c) (part).)

9 [Sections 358.061-358.100 reserved for expansion]

10 SUBCHAPTER C. MINERAL LEASES AT PRIVATE SALE

11 Sec. 358.101. AUTHORIZATION FOR LEASING OF MINERALS AT  
12 PRIVATE SALE. (a) Notwithstanding the mandatory requirements of  
13 Subchapter B for setting a time and place for hearing of a lease  
14 application filed under Section 358.052 and the issuance, service,  
15 and return of notice, the court may authorize the making of oil,  
16 gas, and mineral leases at private sale without public notice or  
17 advertising if, in the court's opinion, facts are set out in the  
18 application required by Subchapter B sufficient to show that it  
19 would be more advantageous to the estate that a lease be made  
20 privately and without compliance with those mandatory  
21 requirements.

22 (b) Leases authorized by this section may include pooling  
23 provisions or unitization clauses as in other cases. (Tex. Prob.  
24 Code, Sec. 368(a).)

25 Sec. 358.102. ACTION OF COURT IF PUBLIC ADVERTISING NOT  
26 REQUIRED. (a) At any time after the fifth day and before the 11th  
27 day after the filing date of an application to lease at private sale



1 and without an order setting the hearing time and place, the court  
2 shall:

- 3           (1) hear the application;  
4           (2) inquire into the manner in which the proposed  
5 lease has been or will be made; and  
6           (3) hear evidence for or against the application.

7           (b) If satisfied that the lease has been or will be made for  
8 a fair and sufficient consideration and on fair terms and has been  
9 or will be properly made in conformity with law, the court shall  
10 enter an order authorizing the execution of the lease without the  
11 necessity of advertising, notice, or citation. The order must  
12 comply in all other respects with the requirements essential to the  
13 validity of mineral leases as set out in Subchapter B, as if  
14 advertising or notice were required.

15           (c) The issuance of an order confirming a lease or leases  
16 made at private sale is not required, but such a lease is not valid  
17 until any increased or additional bond required by the court has  
18 been approved by the court and filed with the court clerk. (Tex.  
19 Prob. Code, Sec. 368(b).)

20           [Sections 358.103-358.150 reserved for expansion]

21           SUBCHAPTER D. POOLING OR UNITIZATION OF ROYALTIES OR MINERALS

22           Sec. 358.151. AUTHORIZATION FOR POOLING OR UNITIZATION.

23           (a) If an existing lease or leases on property owned by an estate  
24 being administered do not adequately provide for pooling or  
25 unitization, the court in which the proceedings are pending may, in  
26 the manner provided by this subchapter, authorize the commitment of  
27 royalty or mineral interests in oil, liquid hydrocarbons, gas,

1 gaseous elements, and other minerals, or any one or more of them,  
2 owned by the estate, to agreements that provide for the operation of  
3 areas as a pool or unit for the exploration for, development of, and  
4 production of all of those minerals, if the court finds that:

5 (1) the pool or unit to which the agreement relates  
6 will be operated in a manner that protects correlative rights or  
7 prevents the physical or economic waste of oil, liquid  
8 hydrocarbons, gas, gaseous elements, or other minerals subject to  
9 the agreement; and

10 (2) it is in the best interest of the estate to execute  
11 the agreement.

12 (b) An agreement authorized under Subsection (a) may, among  
13 other things, provide that:

14 (1) operations incident to the drilling of or  
15 production from a well on any portion of a pool or unit shall be  
16 considered for all purposes to be the conduct of operations on or  
17 production from each separately owned tract in the pool or unit;

18 (2) any lease covering any part of the area committed  
19 to a pool or unit continues in effect in its entirety as long as:

20 (A) oil, gas, or other minerals subject to the  
21 agreement are produced in paying quantities from any part of the  
22 pooled or unitized area;

23 (B) operations are conducted as provided in the  
24 lease on any part of the pooled or unitized area; or

25 (C) there is a shut-in gas well on any part of the  
26 pooled or unitized area, if the presence of the shut-in gas well is  
27 a ground for continuation of the lease under the terms of the lease;

1           (3) the production allocated by the agreement to each  
2 tract included in a pool or unit shall, when produced, be considered  
3 for all purposes to have been produced from the tract by a well  
4 drilled on the tract;

5           (4) the royalties provided for on production from any  
6 tract or portion of a tract within the pool or unit shall be paid  
7 only on that portion of the production allocated to the tract in  
8 accordance with the agreement;

9           (5) the dry gas, before or after extraction of  
10 hydrocarbons, may be returned to a formation underlying any land or  
11 leases committed to the agreement, and that royalties are not  
12 required to be paid on the gas returned; and

13           (6) gas obtained from other sources or other land may  
14 be injected into a formation underlying any land or leases  
15 committed to the agreement, and that royalties are not required to  
16 be paid on the gas injected when the gas is produced from the unit.  
17 (Tex. Prob. Code, Secs. 369(a), (b) (part).)

18           Sec. 358.152. POOLING OR UNITIZATION APPLICATION. (a) The  
19 personal representative of an estate shall file with the county  
20 clerk of the county in which the probate proceeding is pending a  
21 written application for authority to:

22           (1) enter into pooling or unitization agreements  
23 supplementing, amending, or otherwise relating to any existing  
24 lease or leases covering property owned by the estate; or

25           (2) commit royalties or other interests in minerals,  
26 whether or not subject to a lease, to a pooling or unitization  
27 agreement.

1 (b) The pooling or unitization application must also:

2 (1) sufficiently describe the property as required in  
3 an original lease application;

4 (2) describe briefly any lease or leases to which the  
5 interest of the estate is subject; and

6 (3) set out the reasons the proposed agreement  
7 concerning the property should be entered into.

8 (c) A copy of the proposed agreement must be attached to the  
9 application and made a part of the application by reference.

10 (d) The agreement may not be recorded in the minutes.

11 (e) Immediately after the pooling or unitization  
12 application is filed, the clerk shall call the application to the  
13 judge's attention. (Tex. Prob. Code, Sec. 369(b) (part).)

14 Sec. 358.153. NOTICE NOT REQUIRED. Notice by advertising,  
15 citation, or otherwise of the filing of a pooling or unitization  
16 application under Section 358.152 is not required. (Tex. Prob.  
17 Code, Sec. 369(b) (part).)

18 Sec. 358.154. HEARING ON APPLICATION. (a) The judge may  
19 hold a hearing on a pooling or unitization application filed under  
20 Section 358.152 at any time agreeable to the parties to the proposed  
21 agreement.

22 (b) The judge shall hear evidence and determine to the  
23 judge's satisfaction whether it is in the best interest of the  
24 estate that the proposed agreement be authorized.

25 (c) The hearing may be continued from day to day and from  
26 time to time as the court finds necessary. (Tex. Prob. Code, Sec.  
27 369(b) (part).)



1 As to any mineral lease or pooling or unitization agreement,  
2 executed on behalf of an estate before January 1, 1956, or on or  
3 after that date under the provisions of the former Texas Probate  
4 Code or this code, or executed by a former owner of land, minerals,  
5 or royalty affected by the lease or agreement, the personal  
6 representative of the estate being administered may, without  
7 further court order and without consideration, execute:

8 (1) division orders;

9 (2) transfer orders;

10 (3) instruments of correction;

11 (4) instruments designating depository banks for the  
12 receipt of delay rentals or shut-in gas well royalty to accrue or  
13 become payable under the terms of the lease; and

14 (5) similar instruments relating to the lease or  
15 agreement and the property covered by the lease or agreement. (Tex.  
16 Prob. Code, Sec. 370.)

17 [Sections 358.202-358.250 reserved for expansion]

18 SUBCHAPTER F. PROCEDURE IF PERSONAL REPRESENTATIVE OF ESTATE

19 NEGLECTS TO APPLY FOR AUTHORITY

20 Sec. 358.251. APPLICATION TO SHOW CAUSE. If the personal  
21 representative of an estate neglects to apply for authority to  
22 subject estate property to a lease for mineral development,  
23 pooling, or unitization, or to commit royalty or another interest  
24 in minerals to pooling or unitization, any person interested in the  
25 estate may, on written application filed with the county clerk,  
26 have the representative cited to show cause why it is not in the  
27 best interest of the estate to make such a lease or enter into such

1 an agreement. (Tex. Prob. Code, Sec. 371 (part).)

2       Sec. 358.252. HEARING ON APPLICATION. (a) The county clerk  
3 shall immediately call the filing of an application under Section  
4 358.251 to the attention of the judge of the court in which the  
5 probate proceedings are pending.

6       (b) The judge shall set a time and place for a hearing on the  
7 application, and the personal representative of the estate shall be  
8 cited to appear and show cause why the execution of a lease or  
9 agreement described by Section 358.251 should not be ordered.  
10 (Tex. Prob. Code, Sec. 371 (part).)

11       Sec. 358.253. ORDER. On a hearing conducted under Section  
12 358.252, if satisfied from the evidence that it would be in the best  
13 interest of the estate, the court shall enter an order requiring the  
14 personal representative promptly to file an application to subject  
15 the estate property to a lease for mineral development, with or  
16 without pooling or unitization provisions, or to commit royalty or  
17 other minerals to pooling or unitization, as appropriate. (Tex.  
18 Prob. Code, Sec. 371 (part).)

19       Sec. 358.254. PROCEDURE TO BE FOLLOWED AFTER ENTRY OF  
20 ORDER. After entry of an order under Section 358.253, the procedure  
21 prescribed with respect to an original lease application, or with  
22 respect to an original application for authority to commit royalty  
23 or minerals to pooling or unitization, whichever is appropriate,  
24 shall be followed. (Tex. Prob. Code, Sec. 371 (part).)

25       CHAPTER 359. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS

26               SUBCHAPTER A. ANNUAL ACCOUNT AND OTHER EXHIBITS

27       Sec. 359.001. ACCOUNT OF ESTATE REQUIRED

1 Sec. 359.002. ANNUAL ACCOUNT REQUIRED UNTIL ESTATE

2 CLOSED

3 Sec. 359.003. SUPPORTING VOUCHERS AND OTHER DOCUMENTS

4 ATTACHED TO ACCOUNT

5 Sec. 359.004. METHOD OF PROOF FOR SECURITIES AND OTHER

6 ASSETS

7 Sec. 359.005. VERIFICATION OF ACCOUNT

8 Sec. 359.006. ADDITIONAL ACCOUNTS

9 [Sections 359.007-359.050 reserved for expansion]

10 SUBCHAPTER B. ACTION ON ANNUAL ACCOUNT

11 Sec. 359.051. FILING AND CONSIDERATION OF ANNUAL

12 ACCOUNT

13 Sec. 359.052. CORRECTION OF ANNUAL ACCOUNT

14 Sec. 359.053. ORDER FOR PAYMENT OF CLAIMS IN FULL

15 Sec. 359.054. ORDER FOR PRO RATA PAYMENT OF CLAIMS

16 [Sections 359.055-359.100 reserved for expansion]

17 SUBCHAPTER C. PENALTIES

18 Sec. 359.101. PENALTY FOR FAILURE TO FILE ANNUAL

19 ACCOUNT

20 Sec. 359.102. PENALTY FOR FAILURE TO FILE EXHIBIT OR

21 REPORT

22 CHAPTER 359. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS

23 SUBCHAPTER A. ANNUAL ACCOUNT AND OTHER EXHIBITS

24 Sec. 359.001. ACCOUNT OF ESTATE REQUIRED. (a) On the

25 expiration of 12 months from the date a personal representative

26 qualifies and receives letters testamentary or of administration to

27 administer a decedent's estate under court order, the



1 representative shall file with the court an account consisting of a  
2 written exhibit made under oath that lists all claims against the  
3 estate presented to the representative during the period covered by  
4 the account. The exhibit must specify:

- 5 (1) the claims allowed by the representative;
- 6 (2) the claims paid by the representative;
- 7 (3) the claims rejected by the representative and the  
8 date the claims were rejected; and
- 9 (4) the claims for which a lawsuit has been filed and  
10 the status of that lawsuit.

11 (b) The account must:

12 (1) show all property that has come to the personal  
13 representative's knowledge or into the representative's possession  
14 that was not previously listed or inventoried as estate property;

15 (2) show any changes in estate property that have not  
16 been previously reported;

17 (3) provide a complete account of receipts and  
18 disbursements for the period covered by the account, including the  
19 source and nature of the receipts and disbursements, with separate  
20 listings for principal and income receipts;

21 (4) provide a complete, accurate, and detailed  
22 description of:

23 (A) the property being administered;

24 (B) the condition of the property and the use  
25 being made of the property; and

26 (C) if rented, the terms on which and the price  
27 for which the property was rented;

1           (5) show the cash balance on hand and the name and  
2 location of the depository where the balance is kept;

3           (6) show any other cash held in a savings account or  
4 other manner that was deposited subject to court order and the name  
5 and location of the depository for that cash;

6           (7) provide a detailed description of the personal  
7 property of the estate that shows how and where the property is held  
8 for safekeeping;

9           (8) provide a statement that during the period covered  
10 by the account all tax returns due have been filed and all taxes due  
11 and owing have been paid, including:

12                   (A) a complete account of the amount of the  
13 taxes;

14                   (B) the date the taxes were paid; and

15                   (C) the governmental entity to which the taxes  
16 were paid;

17           (9) if on the filing of the account a tax return due to  
18 be filed or any taxes due to be paid are delinquent, provide the  
19 reasons for, and include a description of, the delinquency; and

20           (10) provide a statement that the representative has  
21 paid all the required bond premiums for the accounting period.

22           (c) For bonds, notes, and other securities, the description  
23 required by Subsection (b)(7) must include:

24                   (1) the names of the obligor and obligee or, if payable  
25 to bearer, a statement that the bond, note, or other security is  
26 payable to bearer;

27                   (2) the date of issue and maturity;

- 1           (3) the interest rate;
- 2           (4) the serial number or other identifying numbers;
- 3           (5) the manner in which the property is secured; and
- 4           (6) other information necessary to fully identify the
- 5 bond, note, or other security. (Tex. Prob. Code, Sec. 399(a).)

6           Sec. 359.002. ANNUAL ACCOUNT REQUIRED UNTIL ESTATE CLOSED.

7           (a) Each personal representative of the estate of a decedent shall

8 continue to file an annual account conforming to the essential

9 requirements of Section 359.001 regarding changes in the estate

10 assets occurring since the date the most recent previous account

11 was filed.

12           (b) The annual account must be filed in a manner that allows

13 the court or an interested person to ascertain the true condition of

14 the estate, with respect to money, securities, and other property,

15 by adding to the balances forwarded from the most recent previous

16 account the amounts received during the period covered by the

17 account and subtracting the disbursements made during that period.

18           (c) The description of property sufficiently described in

19 an inventory or previous account may be made in the annual account

20 by reference to that description. (Tex. Prob. Code, Sec. 399(b).)

21           Sec. 359.003. SUPPORTING VOUCHERS AND OTHER DOCUMENTS

22 ATTACHED TO ACCOUNT. (a) The personal representative of an estate

23 shall attach to each annual account:

24           (1) a voucher for each item of credit claimed in the

25 account or, to support the item in the absence of the voucher, other

26 evidence satisfactory to the court;

27           (2) an official letter from the bank or other

1 depository where the estate money on hand is deposited that shows  
2 the amounts in general or special deposits; and

3 (3) proof of the existence and possession of:

4 (A) securities owned by the estate or shown by  
5 the account; and

6 (B) other assets held by a depository subject to  
7 court order.

8 (b) An original voucher submitted to the court may on  
9 application be returned to the personal representative after  
10 approval of the account.

11 (c) The court may require:

12 (1) additional evidence of the existence and custody  
13 of the securities and other personal property as the court  
14 considers proper; and

15 (2) the personal representative at any time to exhibit  
16 the securities and other personal property to the court or another  
17 person designated by the court at the place where the securities and  
18 other personal property are held for safekeeping. (Tex. Prob.  
19 Code, Sec. 399(c) (part).)

20 Sec. 359.004. METHOD OF PROOF FOR SECURITIES AND OTHER  
21 ASSETS. (a) The proof required by Section 359.003(a)(3) must be by:

22 (1) an official letter from the bank or other  
23 depository where the securities or other assets are held for  
24 safekeeping, and if the depository is the personal representative,  
25 the official letter must be signed by a representative of the  
26 depository other than the one verifying the account;

27 (2) a certificate of an authorized representative of a

1 corporation that is surety on the personal representative's bonds;

2 (3) a certificate of the clerk or a deputy clerk of a  
3 court of record in this state; or

4 (4) an affidavit of any other reputable person  
5 designated by the court on request of the personal representative  
6 or other interested party.

7 (b) The certificate or affidavit described by Subsection  
8 (a) must:

9 (1) state that the affiant has examined the assets  
10 that the personal representative exhibited to the affiant as assets  
11 of the estate;

12 (2) describe the assets by reference to the account or  
13 in another manner that sufficiently identifies the assets  
14 exhibited; and

15 (3) state the time and the place the assets were  
16 exhibited.

17 (c) Instead of attaching a certificate or an affidavit, the  
18 personal representative may exhibit the securities to the judge,  
19 who shall endorse on the account, or include in the judge's order  
20 with respect to the account, a statement that the securities shown  
21 in the account as on hand were exhibited to the judge and that the  
22 securities were the same as those shown in the account, or note any  
23 variance.

24 (d) If the securities are exhibited at a location other than  
25 where the securities are deposited for safekeeping, that exhibit is  
26 at the personal representative's own expense and risk. (Tex. Prob.  
27 Code, Sec. 399(c) (part).)

1           Sec. 359.005. VERIFICATION OF ACCOUNT. The personal  
2 representative shall attach to the annual account the  
3 representative's affidavit that the account contains a correct and  
4 complete statement of the matters to which it relates. (Tex. Prob.  
5 Code, Sec. 399(d).)

6           Sec. 359.006. ADDITIONAL ACCOUNTS. (a) At any time after  
7 the expiration of 15 months from the date original letters  
8 testamentary or of administration are granted to an executor or  
9 administrator, an interested person may file a written complaint in  
10 the court in which the estate is pending to have the representative  
11 cited to appear and make a written exhibit under oath that sets  
12 forth fully, in connection with previous exhibits, the condition of  
13 the estate.

14           (b) If it appears to the court, from the exhibit or other  
15 evidence, that the executor or administrator has estate funds in  
16 the representative's possession that are subject to distribution  
17 among the creditors of the estate, the court shall order the funds  
18 to be paid out to the creditors in accordance with this title.

19           (c) A personal representative may voluntarily present to  
20 the court the exhibit described by Subsection (a). If the  
21 representative has any estate funds in the representative's  
22 possession that are subject to distribution among the creditors of  
23 the estate, the court shall issue an order similar to the order  
24 entered under Subsection (b). (Tex. Prob. Code, Sec. 402.)

25           [Sections 359.007-359.050 reserved for expansion]

26                           SUBCHAPTER B. ACTION ON ANNUAL ACCOUNT

27           Sec. 359.051. FILING AND CONSIDERATION OF ANNUAL ACCOUNT.

1 (a) The personal representative of an estate shall file an annual  
2 account with the county clerk. The county clerk shall promptly note  
3 the filing on the judge's docket.

4 (b) At any time after the account has remained on file for 10  
5 days following the date the account is filed, the judge shall  
6 consider the account and may continue the hearing on the account  
7 until fully advised on all account items.

8 (c) The court may not approve the account unless possession  
9 of cash, listed securities, or other assets held in safekeeping or  
10 on deposit under court order has been proven as required by law.  
11 (Tex. Prob. Code, Secs. 401(a), (b), (c), (d).)

12 Sec. 359.052. CORRECTION OF ANNUAL ACCOUNT. (a) If the  
13 court finds an annual account is incorrect, the account must be  
14 corrected.

15 (b) The court by order shall approve an annual account that  
16 is corrected to the satisfaction of the court and shall act with  
17 respect to unpaid claims in accordance with Sections 359.053 and  
18 359.054. (Tex. Prob. Code, Sec. 401(e) (part).)

19 Sec. 359.053. ORDER FOR PAYMENT OF CLAIMS IN FULL. After  
20 approval of an annual account as provided by Section 359.052, if it  
21 appears to the court from the exhibit or other evidence that the  
22 estate is wholly solvent and that the personal representative has  
23 in the representative's possession sufficient funds to pay every  
24 character of claims against the estate, the court shall order  
25 immediate payment of all claims allowed and approved or established  
26 by judgment. (Tex. Prob. Code, Sec. 401(e) (part).)

27 Sec. 359.054. ORDER FOR PRO RATA PAYMENT OF CLAIMS. After

1 approval of an annual account as provided by Section 359.052, if it  
2 appears to the court from the account or other evidence that the  
3 funds on hand are not sufficient to pay every character of claims  
4 against the estate or if the estate is insolvent and the personal  
5 representative has any funds on hand, the court shall order the  
6 funds to be applied:

7 (1) first to the payment of any unpaid claims having a  
8 preference in the order of their priority; and

9 (2) then to the pro rata payment of the other claims  
10 allowed and approved or established by final judgment, considering:

11 (A) claims that were presented before the first  
12 anniversary of the date administration was granted; and

13 (B) claims that are in litigation or on which a  
14 lawsuit may be filed. (Tex. Prob. Code, Sec. 401(e) (part).)

15 [Sections 359.055-359.100 reserved for expansion]

16 SUBCHAPTER C. PENALTIES

17 Sec. 359.101. PENALTY FOR FAILURE TO FILE ANNUAL ACCOUNT.

18 (a) If the personal representative of an estate does not file an  
19 annual account required by Section 359.001 or 359.002, any person  
20 interested in the estate on written complaint, or the court on the  
21 court's own motion, may have the representative cited to file the  
22 account and show cause for the failure.

23 (b) If the personal representative does not file the account  
24 after being cited or does not show good cause for the failure, the  
25 court on hearing may:

26 (1) revoke the representative's letters testamentary  
27 or of administration; and



1           (2) fine the representative in an amount not to exceed  
2 \$500.

3           (c) The personal representative and the representative's  
4 sureties are liable for any fine imposed and for all damages and  
5 costs sustained by the representative's failure. The fine,  
6 damages, and costs may be recovered in any court of competent  
7 jurisdiction. (Tex. Prob. Code, Sec. 400.)

8           Sec. 359.102. PENALTY FOR FAILURE TO FILE EXHIBIT OR  
9 REPORT. (a) If a personal representative does not file an exhibit  
10 or report required by this title, any person interested in the  
11 estate on written complaint filed with the court clerk may have the  
12 representative cited to appear and show cause why the  
13 representative should not file the exhibit or report.

14           (b) On hearing, the court may:

15                 (1) order the personal representative to file the  
16 exhibit or report; and

17                 (2) unless good cause is shown for the failure, revoke  
18 the representative's letters testamentary or of administration and  
19 fine the representative in an amount not to exceed \$1,000. (Tex.  
20 Prob. Code, Sec. 403.)

21           CHAPTER 360. PARTITION AND DISTRIBUTION OF ESTATE

22           SUBCHAPTER A. APPLICATION FOR PARTITION AND DISTRIBUTION

23           Sec. 360.001. GENERAL APPLICATION

24           Sec. 360.002. APPLICATION FOR PARTIAL DISTRIBUTION

25                 [Sections 360.003-360.050 reserved for expansion]

26           SUBCHAPTER B. CITATION

27           Sec. 360.051. CITATION OF INTERESTED PERSONS

- 1 Sec. 360.052. CITATION OF EXECUTOR OR ADMINISTRATOR  
2 [Sections 360.053-360.100 reserved for expansion]  
3 SUBCHAPTER C. PROCEEDINGS; EXPENSES  
4 Sec. 360.101. HEARING ON APPLICATION  
5 Sec. 360.102. COURT DECREE  
6 Sec. 360.103. EXPENSES OF PARTITION  
7 [Sections 360.104-360.150 reserved for expansion]  
8 SUBCHAPTER D. PARTITION AND DISTRIBUTION IF ESTATE PROPERTY IS  
9 CAPABLE OF DIVISION  
10 Sec. 360.151. APPOINTMENT OF COMMISSIONERS  
11 Sec. 360.152. WRIT OF PARTITION  
12 Sec. 360.153. PARTITION BY COMMISSIONERS  
13 Sec. 360.154. COMMISSIONERS' REPORT  
14 Sec. 360.155. COURT ACTION ON COMMISSIONERS' REPORT  
15 Sec. 360.156. DELIVERY OF PROPERTY  
16 Sec. 360.157. COMMISSIONERS' FEES  
17 [Sections 360.158-360.200 reserved for expansion]  
18 SUBCHAPTER E. PARTITION AND DISTRIBUTION IF ESTATE PROPERTY IS  
19 INCAPABLE OF DIVISION  
20 Sec. 360.201. COURT FINDING  
21 Sec. 360.202. SALE OF ESTATE PROPERTY  
22 Sec. 360.203. APPLICABILITY OF PROVISIONS RELATING TO  
23 SALE OF REAL ESTATE  
24 [Sections 360.204-360.250 reserved for expansion]  
25 SUBCHAPTER F. CERTAIN TYPES OF ESTATE PROPERTY  
26 Sec. 360.251. ESTATE CONSISTING ONLY OF MONEY OR DEBTS

1 Sec. 360.252. ESTATE PROPERTY LOCATED IN ANOTHER

2 COUNTY

3 Sec. 360.253. COMMUNITY PROPERTY

4 Sec. 360.254. JOINTLY OWNED PROPERTY

5 [Sections 360.255-360.300 reserved for expansion]

6 SUBCHAPTER G. ENFORCEMENT

7 Sec. 360.301. LIABILITY FOR FAILURE TO DELIVER ESTATE

8 PROPERTY

9 CHAPTER 360. PARTITION AND DISTRIBUTION OF ESTATE

10 SUBCHAPTER A. APPLICATION FOR PARTITION AND DISTRIBUTION

11 Sec. 360.001. GENERAL APPLICATION. (a) At any time after  
12 the first anniversary of the date original letters testamentary or  
13 of administration are granted, an executor, administrator, heir, or  
14 devisee of a decedent's estate, by written application filed in the  
15 court in which the estate is pending, may request the partition and  
16 distribution of the estate.

17 (b) An application under Subsection (a) must state:

18 (1) the decedent's name;

19 (2) the name and residence of each person entitled to a  
20 share of the estate and whether the person is an adult or a minor;

21 (3) if the applicant does not know a fact required by  
22 Subdivision (2); and

23 (4) the reasons why the estate should be partitioned  
24 and distributed. (Tex. Prob. Code, Secs. 373(a), (b).)

25 Sec. 360.002. APPLICATION FOR PARTIAL DISTRIBUTION. (a)

26 At any time after original letters testamentary or of  
27 administration are granted and the inventory, appraisement, and

1 list of claims are filed and approved, an executor, administrator,  
2 heir, or devisee of a decedent's estate, by written application  
3 filed in the court in which the estate is pending, may request a  
4 distribution of any portion of the estate.

5 (b) All interested parties, including known creditors, must  
6 be personally cited as in other distributions.

7 (c) Except as provided by Subsection (d), the court, on  
8 proper citation and hearing, may distribute any portion of the  
9 estate the court considers advisable.

10 (d) If a distribution is to be made to one or more heirs or  
11 devisees, but not to all heirs or devisees, the court shall require  
12 a refunding bond in an amount determined by the court to be filed  
13 with the court, unless a written waiver of the bond requirement is  
14 filed with the court by all interested parties. On approving the  
15 bond, if required, the court shall order the distribution of the  
16 relevant portion of the estate.

17 (e) This section applies to corpus as well as income,  
18 notwithstanding any other provision of this title. (Tex. Prob.  
19 Code, Sec. 373(c).)

20 [Sections 360.003-360.050 reserved for expansion]

21 SUBCHAPTER B. CITATION

22 Sec. 360.051. CITATION OF INTERESTED PERSONS. (a) On the  
23 filing of the application, the clerk shall issue a citation that:

24 (1) states:

25 (A) the decedent's name; and

26 (B) the date the court will hear the application;

27 and

1           (2) requires all persons interested in the estate to  
2 appear and show cause why the estate should not be partitioned and  
3 distributed.

4           (b) A citation under this section must be:

5           (1) personally served on each person residing in the  
6 state who is entitled to a share of the estate and whose address is  
7 known; and

8           (2) served by publication on any person entitled to a  
9 share of the estate:

10           (A) whose identity or address is not known;

11           (B) who is not a resident of this state; or

12           (C) who is a resident of this state but is absent  
13 from this state. (Tex. Prob. Code, Sec. 374.)

14           Sec. 360.052. CITATION OF EXECUTOR OR ADMINISTRATOR. When  
15 a person other than the executor or administrator applies for  
16 partition and distribution, the executor or administrator must also  
17 be cited to appear and answer the application and file in court a  
18 verified exhibit and account of the condition of the estate, as in  
19 the case of a final settlement. (Tex. Prob. Code, Sec. 375.)

20           [Sections 360.053-360.100 reserved for expansion]

21           SUBCHAPTER C. PROCEEDINGS; EXPENSES

22           Sec. 360.101. HEARING ON APPLICATION. (a) At the hearing  
23 on an application for partition and distribution, the court shall  
24 determine:

25           (1) the residue of the estate that is subject to  
26 partition and distribution;

27           (2) the persons entitled by law to partition and

1 distribution and those persons' respective shares; and

2 (3) whether an advancement has been made to any of the  
3 persons described by Subdivision (2), and if so, the nature and  
4 value of the advancement.

5 (b) For purposes of Subsection (a)(1), the residue of the  
6 estate is determined by deducting from the entire assets of the  
7 estate remaining on hand:

8 (1) the amount of all debts and expenses that:

9 (A) have been approved or established by judgment  
10 but not paid; or

11 (B) may be established by judgment in the future;  
12 and

13 (2) the probable future expenses of administration.

14 (c) If an advancement described by Subsection (a)(3) has  
15 been made, the court shall require the advancement to be placed in  
16 hotchpotch as required by the law governing intestate succession.  
17 (Tex. Prob. Code, Sec. 377.)

18 Sec. 360.102. COURT DECREE. If the court determines that  
19 the estate should be partitioned and distributed, the court shall  
20 enter a decree stating:

21 (1) the name and address, if known, of each person  
22 entitled to a share of the estate, specifying:

23 (A) which of those persons are known to be  
24 minors;

25 (B) the name of the minors' guardian or guardian  
26 ad litem; and

27 (C) the name of the attorney appointed to

1 represent those persons who are unknown or who are not residents of  
2 this state;

3 (2) the proportional part of the estate to which each  
4 person is entitled;

5 (3) a full description of all the estate to be  
6 distributed; and

7 (4) that the executor or administrator must retain  
8 possession of a sufficient amount of money or property to pay all  
9 debts, taxes, and expenses of administration and specifying the  
10 amount of money or the property to be retained. (Tex. Prob. Code,  
11 Sec. 378.)

12 Sec. 360.103. EXPENSES OF PARTITION. (a) The distributees  
13 shall pay the expense of the estate's partition pro rata.

14 (b) The portion of the estate allotted to a distributee is  
15 liable for the distributee's portion of the partition expense, and,  
16 if not paid, the court may order execution for the expense in the  
17 names of the persons entitled to payment of the expense. (Tex.  
18 Prob. Code, Sec. 387.)

19 [Sections 360.104-360.150 reserved for expansion]

20 SUBCHAPTER D. PARTITION AND DISTRIBUTION IF ESTATE PROPERTY IS  
21 CAPABLE OF DIVISION

22 Sec. 360.151. APPOINTMENT OF COMMISSIONERS. If the estate  
23 does not consist entirely of money or debts due to the estate and  
24 the court has not previously determined that the estate is  
25 incapable of partition, the court shall appoint three or more  
26 discreet and disinterested persons as commissioners to make a  
27 partition and distribution of the estate. (Tex. Prob. Code, Sec.

1 380(a).)

2           Sec. 360.152. WRIT OF PARTITION. (a) When commissioners  
3 are appointed under Section 360.151, the clerk shall issue a writ of  
4 partition directed to the commissioners, commanding the  
5 commissioners to:

6           (1) proceed promptly to make the partition and  
7 distribution in accordance with the court decree; and

8           (2) return the writ, with the commissioners'  
9 proceedings under the writ, on a date stated in the writ.

10          (b) A copy of the court decree must accompany the writ.

11          (c) The writ must be served by:

12           (1) delivering the writ and the accompanying copy of  
13 the court decree to one of the commissioners; and

14           (2) notifying the other commissioners, verbally or  
15 otherwise, of the commissioners' appointment.

16          (d) Service under Subsection (c) may be made by any person.

17 (Tex. Prob. Code, Sec. 380(b).)

18           Sec. 360.153. PARTITION BY COMMISSIONERS. (a) The  
19 commissioners shall make a fair, just, and impartial partition and  
20 distribution of the estate in the following order and manner:

21           (1) if the real estate is capable of being divided  
22 without manifest injury to all or any of the distributees, the  
23 commissioners shall partition and distribute the land or other  
24 property by allotting to each distributee:

25                   (A) a share in each parcel;

26                   (B) shares in one or more parcels; or

27                   (C) one or more parcels separately, with or



1 without the addition of a share of other parcels;

2           (2) if the real estate is not capable of a fair, just,  
3 and equal division in kind, but may be made capable of a fair, just,  
4 and equal division in kind by allotting to one or more of the  
5 distributees a proportion of the money or other personal property  
6 to supply the deficiency, the commissioners may make, as nearly as  
7 possible, an equal division of the real estate and supply the  
8 deficiency of any share from the money or other personal property;  
9 and

10           (3) the commissioners shall:

11                 (A) make a like division in kind, as nearly as  
12 possible, of the money and other personal property; and

13                 (B) determine by lot, among equal shares, to whom  
14 each share shall belong.

15           (b) The commissioners shall allot the land or other property  
16 under Subsection (a)(1) in the manner described by that subsection  
17 that is most in the interest of the distributees. (Tex. Prob. Code,  
18 Sec. 380(c).)

19           Sec. 360.154. COMMISSIONERS' REPORT. (a) After dividing  
20 all or any part of the estate, at least a majority of the  
21 commissioners shall make a written, sworn report to the court that:

22                 (1) states the property divided by the commissioners;  
23 and

24                 (2) describes in particular the property allotted to  
25 each distributee and the value of that property.

26           (b) If real estate was divided, the report must also contain  
27 a general plat of the land with:

1           (1) the division lines plainly set down; and  
2           (2) the number of acres in each share. (Tex. Prob.  
3 Code, Sec. 380(d).)

4           Sec. 360.155. COURT ACTION ON COMMISSIONERS' REPORT. (a)  
5 On the return of a commissioners' report under Section 360.154, the  
6 court shall:

7           (1) examine the report carefully; and

8           (2) hear:

9                 (A) all exceptions and objections to the report;  
10 and

11                 (B) all evidence in favor of or against the  
12 report.

13           (b) If the report is informal, the court shall have the  
14 informality corrected.

15           (c) If the division appears to have been fairly made  
16 according to law and no valid exceptions are taken to the division,  
17 the court shall approve the division and enter a decree vesting  
18 title in the distributees of the distributees' respective shares or  
19 portions of the property as set apart to the distributees by the  
20 commissioners.

21           (d) If the division does not appear to have been fairly made  
22 according to law or a valid exception is taken to the division, the  
23 court may:

24           (1) set aside the report and division; and

25           (2) order a new partition to be made. (Tex. Prob.  
26 Code, Sec. 380(e).)

27           Sec. 360.156. DELIVERY OF PROPERTY. When the



1 (d) A distributee who buys property at the sale is required  
2 to pay or secure only the amount by which the distributee's bid  
3 exceeds the amount of the distributee's share of the property.  
4 (Tex. Prob. Code, Secs. 381(b), (c).)

5 Sec. 360.203. APPLICABILITY OF PROVISIONS RELATING TO SALE  
6 OF REAL ESTATE. The provisions of this title relating to reports of  
7 sales of real estate, the giving of an increased general or  
8 additional bond on the sale of real estate, and the vesting of title  
9 to property sold by decree or by deed apply to sales made under this  
10 subchapter. (Tex. Prob. Code, Sec. 381(d).)

11 [Sections 360.204-360.250 reserved for expansion]

12 SUBCHAPTER F. CERTAIN TYPES OF ESTATE PROPERTY

13 Sec. 360.251. ESTATE CONSISTING ONLY OF MONEY OR DEBTS. If  
14 the estate to be distributed consists only of money or debts due to  
15 the estate, the court shall:

16 (1) set the amount to which each distributee is  
17 entitled; and

18 (2) order the executor or administrator to pay and  
19 deliver that amount. (Tex. Prob. Code, Sec. 379.)

20 Sec. 360.252. ESTATE PROPERTY LOCATED IN ANOTHER COUNTY.

21 (a) If any portion of the estate to be partitioned is located in  
22 another county and cannot be fairly partitioned without prejudice  
23 to the distributees' interests, the commissioners may report those  
24 facts to the court in writing.

25 (b) On the making of a report under Subsection (a), if the  
26 court is satisfied that the property cannot be fairly divided or  
27 that the sale of the property would be more advantageous to the

1 distributees, the court may order a sale of the property. The sale  
2 must be conducted in the manner provided by Subchapter E for the  
3 sale of property that is not capable of fair and equal division.

4 (c) If the court is not satisfied that the property cannot  
5 be fairly and advantageously divided, or that the sale of the  
6 property would be more advantageous to the distributees, the court  
7 may appoint three or more commissioners in each county in which the  
8 property is located. If the court appoints commissioners under  
9 this subsection, the proceedings under Subchapter D for partition  
10 by commissioners must be followed. (Tex. Prob. Code, Sec. 382.)

11 Sec. 360.253. COMMUNITY PROPERTY. (a) If a spouse dies  
12 leaving community property, the surviving spouse, at any time after  
13 letters testamentary or of administration have been granted and an  
14 inventory, appraisement, and list of claims of the estate have been  
15 returned, may apply in writing to the court that granted the letters  
16 for a partition of the community property.

17 (b) The surviving spouse shall execute and deliver a bond to  
18 the judge of the court described by Subsection (a). The bond must  
19 be:

20 (1) with a corporate surety or at least two good and  
21 sufficient personal sureties;

22 (2) payable to and approved by the judge;

23 (3) in an amount equal to the value of the surviving  
24 spouse's interest in the community property; and

25 (4) conditioned for the payment of half of all debts  
26 existing against the community property.

27 (c) The court shall proceed to partition the community

1 property into two equal moieties, one to be delivered to the  
2 surviving spouse and the other to be delivered to the executor or  
3 administrator of the deceased spouse's estate.

4 (d) If a partition is made under this section:

5 (1) a lien exists on the property delivered to the  
6 surviving spouse to secure the payment of the bond required under  
7 Subsection (b); and

8 (2) any creditor of the community estate:

9 (A) may sue in the creditor's own name on the  
10 bond; and

11 (B) is entitled:

12 (i) to have judgment on the bond for half of  
13 the debt the creditor establishes; and

14 (ii) to be paid by the executor or  
15 administrator of the deceased spouse's estate for the other half.

16 (e) The provisions of this title relating to the partition  
17 and distribution of an estate apply to a partition under this  
18 section to the extent applicable. (Tex. Prob. Code, Sec. 385.)

19 Sec. 360.254. JOINTLY OWNED PROPERTY. (a) A person who has  
20 a joint interest with a decedent's estate in any property may apply  
21 to the court that granted letters testamentary or of administration  
22 on the estate for a partition of the property.

23 (b) On application under Subsection (a), the court shall  
24 partition the property between the applicant and the decedent's  
25 estate.

26 (c) The provisions of this title relating to the partition  
27 and distribution of an estate govern a partition under this section

1 to the extent applicable. (Tex. Prob. Code, Sec. 386.)

2 [Sections 360.255-360.300 reserved for expansion]

3 SUBCHAPTER G. ENFORCEMENT

4 Sec. 360.301. LIABILITY FOR FAILURE TO DELIVER ESTATE  
5 PROPERTY. (a) If an executor or administrator neglects, when  
6 demanded, to deliver a portion of an estate ordered to be delivered  
7 to a person entitled to that portion, the person may file with the  
8 court clerk a written complaint alleging:

- 9 (1) the fact of the neglect;  
10 (2) the date of the person's demand; and  
11 (3) other relevant facts.

12 (b) On the filing of a complaint under Subsection (a), the  
13 court clerk shall issue a citation to be served personally on the  
14 executor or administrator. The citation must:

- 15 (1) apprise the executor or administrator of the  
16 complaint; and  
17 (2) cite the executor or administrator to appear  
18 before the court and answer, if the executor or administrator  
19 desires, at the time designated in the citation.

20 (c) If at the hearing the court finds that the citation was  
21 properly served and returned and that the executor or administrator  
22 is guilty of the neglect alleged, the court shall enter an order to  
23 that effect.

24 (d) An executor or administrator found guilty under  
25 Subsection (c) is liable to the complainant for damages at the rate  
26 of 10 percent of the amount or the appraised value of the portion of  
27 the estate neglectfully withheld, per month, for each month or

1 fraction of a month that the portion is or has been neglectfully  
2 withheld after the date of demand. Damages under this subsection  
3 may be recovered in any court of competent jurisdiction. (Tex.  
4 Prob. Code, Sec. 384.)

5 CHAPTER 361. DEATH, RESIGNATION, OR REMOVAL OF PERSONAL  
6 REPRESENTATIVES; APPOINTMENT OF SUCCESSORS

7 SUBCHAPTER A. RESIGNATION OF PERSONAL REPRESENTATIVE

8 Sec. 361.001. RESIGNATION APPLICATION

9 Sec. 361.002. IMMEDIATE APPOINTMENT OF SUCCESSOR;

10 DISCHARGE AND RELEASE

11 Sec. 361.003. HEARING DATE; CITATION

12 Sec. 361.004. HEARING

13 Sec. 361.005. REQUIREMENTS FOR DISCHARGE

14 [Sections 361.006-361.050 reserved for expansion]

15 SUBCHAPTER B. REMOVAL AND REINSTATEMENT OF PERSONAL REPRESENTATIVE

16 Sec. 361.051. REMOVAL WITHOUT NOTICE

17 Sec. 361.052. REMOVAL WITH NOTICE

18 Sec. 361.053. REMOVAL ORDER

19 Sec. 361.054. REMOVAL AND REINSTATEMENT OF PERSONAL

20 REPRESENTATIVE UNDER CERTAIN

21 CIRCUMSTANCES

22 [Sections 361.055-361.100 reserved for expansion]

23 SUBCHAPTER C. APPOINTMENT OF SUCCESSOR REPRESENTATIVE

24 Sec. 361.101. REQUIREMENTS FOR REVOCATION OF LETTERS

25 Sec. 361.102. APPOINTMENT BECAUSE OF DEATH,

26 RESIGNATION, OR REMOVAL



1 Sec. 361.103. APPOINTMENT BECAUSE OF EXISTENCE OF  
2 PRIOR RIGHT

3 Sec. 361.104. APPOINTMENT WHEN NAMED EXECUTOR BECOMES  
4 AN ADULT

5 Sec. 361.105. APPOINTMENT OF FORMERLY SICK OR ABSENT  
6 EXECUTOR

7 Sec. 361.106. APPOINTMENT WHEN WILL DISCOVERED AFTER  
8 GRANT OF ADMINISTRATION

9 [Sections 361.107-361.150 reserved for expansion]

10 SUBCHAPTER D. PROCEDURES AFTER DEATH, RESIGNATION, OR REMOVAL OF  
11 PERSONAL REPRESENTATIVE

12 Sec. 361.151. PAYMENT TO ESTATE WHILE OFFICE OF  
13 PERSONAL REPRESENTATIVE IS VACANT

14 Sec. 361.152. FURTHER ADMINISTRATION WITH OR WITHOUT  
15 NOTICE OR WILL ANNEXED

16 Sec. 361.153. RIGHTS, POWERS, AND DUTIES OF SUCCESSOR  
17 REPRESENTATIVE

18 Sec. 361.154. SUCCESSOR EXECUTOR ALSO SUCCEEDS TO  
19 PRIOR RIGHTS AND DUTIES

20 Sec. 361.155. SUCCESSOR REPRESENTATIVE TO RETURN  
21 INVENTORY, APPRAISEMENT, AND LIST OF  
22 CLAIMS

23 CHAPTER 361. DEATH, RESIGNATION, OR REMOVAL OF PERSONAL  
24 REPRESENTATIVES; APPOINTMENT OF SUCCESSORS

25 SUBCHAPTER A. RESIGNATION OF PERSONAL REPRESENTATIVE

26 Sec. 361.001. RESIGNATION APPLICATION. A personal  
27 representative who wishes to resign the representative's trust

1 shall file a written application with the court clerk, accompanied  
2 by a complete and verified exhibit and final account showing the  
3 true condition of the estate entrusted to the representative's  
4 care. (Tex. Prob. Code, Sec. 221(a).)

5 Sec. 361.002. IMMEDIATE APPOINTMENT OF SUCCESSOR;  
6 DISCHARGE AND RELEASE. (a) If the necessity exists, the court may  
7 immediately accept the resignation of a personal representative and  
8 appoint a successor representative.

9 (b) The court may not discharge a person whose resignation  
10 is accepted under Subsection (a), or release the person or the  
11 sureties on the person's bond, until a final order has been issued  
12 or judgment has been rendered on the final account required under  
13 Section 361.001. (Tex. Prob. Code, Sec. 221(b).)

14 Sec. 361.003. HEARING DATE; CITATION. (a) When an  
15 application to resign as personal representative is filed under  
16 Section 361.001, supported by the exhibit and final account  
17 required under that section, the court clerk shall bring the  
18 application to the judge's attention and the judge shall set a date  
19 for a hearing on the matter.

20 (b) After a hearing is set under Subsection (a), the clerk  
21 shall issue a citation to all interested persons, showing:

22 (1) that an application that complies with Section  
23 361.001 has been filed; and

24 (2) the time and place set for the hearing at which the  
25 interested persons may appear and contest the exhibit and final  
26 account supporting the application.

27 (c) Unless the court directs that the citation under

1 Subsection (b) be published, the citation must be posted. (Tex.  
2 Prob. Code, Sec. 221(c).)

3 Sec. 361.004. HEARING. (a) At the time set for the hearing  
4 under Section 361.003, unless the court continues the hearing, and  
5 if the court finds that the citation required under that section has  
6 been properly issued and served, the court shall:

7 (1) examine the exhibit and final account required by  
8 Section 361.001;

9 (2) hear all evidence for and against the exhibit and  
10 final account; and

11 (3) if necessary, restate and audit and settle the  
12 exhibit and final account.

13 (b) If the court is satisfied that the matters entrusted to  
14 the personal representative applying to resign have been handled  
15 and accounted for in accordance with the law, the court shall:

16 (1) enter an order approving the exhibit and final  
17 account; and

18 (2) require that any estate property remaining in the  
19 applicant's possession be delivered to the persons entitled by law  
20 to receive the property. (Tex. Prob. Code, Sec. 221(d).)

21 Sec. 361.005. REQUIREMENTS FOR DISCHARGE. (a) A personal  
22 representative applying to resign may not be discharged until:

23 (1) the resignation application has been heard;

24 (2) the exhibit and final account required under  
25 Section 361.001 have been examined, settled, and approved; and

26 (3) the applicant has satisfied the court that the  
27 applicant has:

1 (A) delivered any estate property remaining in  
2 the applicant's possession; or

3 (B) complied with all lawful orders of the court  
4 with relation to the applicant's trust as representative.

5 (b) When a personal representative applying to resign has  
6 fully complied with the orders of the court, the court shall enter  
7 an order:

8 (1) accepting the resignation; and

9 (2) discharging the applicant, and, if the applicant  
10 is under bond, the applicant's sureties. (Tex. Prob. Code, Secs.  
11 221(e), (f).)

12 [Sections 361.006-361.050 reserved for expansion]

13 SUBCHAPTER B. REMOVAL AND REINSTATEMENT OF PERSONAL REPRESENTATIVE

14 Sec. 361.051. REMOVAL WITHOUT NOTICE. The court, on the  
15 court's own motion or on the motion of any interested person, and  
16 without notice, may remove a personal representative appointed  
17 under this title who:

18 (1) neglects to qualify in the manner and time  
19 required by law;

20 (2) fails to return, before the 91st day after the date  
21 the representative qualifies, an inventory of the estate property  
22 and a list of claims that have come to the representative's  
23 knowledge, unless that deadline is extended by court order;

24 (3) if required, fails to give a new bond within the  
25 time prescribed;

26 (4) is absent from the state for a consecutive period  
27 of three or more months without the court's permission, or moves out

1 of state;

2 (5) cannot be served with notices or other processes  
3 because:

4 (A) the representative's whereabouts are  
5 unknown;

6 (B) the representative is eluding service; or

7 (C) the representative is a nonresident of this  
8 state who does not have a resident agent to accept service of  
9 process in any probate proceeding or other action relating to the  
10 estate; or

11 (6) subject to Section 361.054(a), has misapplied,  
12 embezzled, or removed from the state, or is about to misapply,  
13 embezzle, or remove from the state, all or part of the property  
14 entrusted to the representative's care. (Tex. Prob. Code, Sec.  
15 222(a)(1).)

16 Sec. 361.052. REMOVAL WITH NOTICE. The court may remove a  
17 personal representative on the court's own motion, or on the  
18 complaint of any interested person, after the representative has  
19 been cited by personal service to answer at a time and place fixed  
20 in the notice, if:

21 (1) sufficient grounds appear to support a belief that  
22 the representative has misapplied, embezzled, or removed from the  
23 state, or is about to misapply, embezzle, or remove from the state,  
24 all or part of the property entrusted to the representative's care;

25 (2) the representative fails to return any account  
26 required by law to be made;

27 (3) the representative fails to obey a proper order of

1 the court that has jurisdiction with respect to the performance of  
2 the representative's duties;

3 (4) the representative is proved to have been guilty  
4 of gross misconduct, or mismanagement in the performance of the  
5 representative's duties;

6 (5) the representative:

7 (A) becomes incapacitated;

8 (B) is sentenced to the penitentiary; or

9 (C) from any other cause, becomes incapable of  
10 properly performing the duties of the representative's trust; or

11 (6) the representative, as executor or administrator,  
12 fails to:

13 (A) make a final settlement by the third  
14 anniversary of the date letters testamentary or of administration  
15 are granted, unless that period is extended by the court on a  
16 showing of sufficient cause supported by oath; or

17 (B) timely file the affidavit or certificate  
18 required by Section 308.004. (Tex. Prob. Code, Sec. 222(b).)

19 Sec. 361.053. REMOVAL ORDER. An order removing a personal  
20 representative must:

21 (1) state the cause of the removal;

22 (2) require that, if the removed representative has  
23 been personally served with citation, any letters testamentary or  
24 of administration issued to the removed representative be  
25 surrendered, and that, regardless of whether the letters have been  
26 delivered, all the letters be canceled of record; and

27 (3) require the removed representative to deliver any

1 estate property in the representative's possession to the persons  
2 entitled to the property or to the person who has been appointed and  
3 has qualified as successor representative. (Tex. Prob. Code, Sec.  
4 222(c).)

5           Sec. 361.054. REMOVAL AND REINSTATEMENT OF PERSONAL  
6 REPRESENTATIVE UNDER CERTAIN CIRCUMSTANCES. (a) The court may  
7 remove a personal representative under Section 361.051(6) only on  
8 the presentation of clear and convincing evidence given under oath.

9           (b) Not later than the 10th day after the date the court  
10 signs the order of removal, a personal representative who is  
11 removed under Section 361.051(6) may file an application with the  
12 court for a hearing to determine whether the representative should  
13 be reinstated.

14           (c) On the filing of an application under Subsection (b),  
15 the court clerk shall issue to the applicant and to the successor  
16 representative of the decedent's estate a notice stating:

17                   (1) that an application for reinstatement has been  
18 filed;

19                   (2) the name of the decedent from whose estate the  
20 applicant was removed as personal representative; and

21                   (3) the name of the applicant for reinstatement.

22           (d) The notice required by Subsection (c) must cite all  
23 persons interested in the estate to appear at the time and place  
24 stated in the notice if the persons wish to contest the application.

25           (e) If, at the conclusion of a hearing under this section,  
26 the court is satisfied by a preponderance of the evidence that the  
27 personal representative applying for reinstatement did not engage

1 in the conduct that directly led to the applicant's removal, the  
2 court shall:

3 (1) set aside any order appointing a successor  
4 representative; and

5 (2) enter an order reinstating the applicant as  
6 personal representative of the estate.

7 (f) If the court sets aside the appointment of a successor  
8 representative under this section, the court may require the  
9 successor representative to prepare and file, under oath, an  
10 accounting of the estate and to detail the disposition the  
11 successor has made of the estate property. (Tex. Prob. Code, Secs.  
12 222(a)(2), 222A.)

13 [Sections 361.055-361.100 reserved for expansion]

14 SUBCHAPTER C. APPOINTMENT OF SUCCESSOR REPRESENTATIVE

15 Sec. 361.101. REQUIREMENTS FOR REVOCATION OF LETTERS.

16 Except as otherwise expressly provided by this title, the court may  
17 revoke letters testamentary or of administration and grant other  
18 letters only:

19 (1) on application; and

20 (2) after personal service of citation on the person,  
21 if living, whose letters are sought to be revoked, requiring the  
22 person to appear and show cause why the application should not be  
23 granted. (Tex. Prob. Code, Sec. 220(f).)

24 Sec. 361.102. APPOINTMENT BECAUSE OF DEATH, RESIGNATION, OR

25 REMOVAL. (a) If a person appointed as personal representative  
26 fails to qualify or, after qualifying, dies, resigns, or is  
27 removed, the court may, on application, appoint a successor



1 representative if the appointment of a successor is necessary. The  
2 appointment may be made before a final accounting is filed or before  
3 any action on a final accounting is taken. In the event of death,  
4 the legal representatives of the deceased personal representative  
5 shall account for, pay, and deliver all estate property that was  
6 entrusted to the deceased personal representative's care to the  
7 persons legally entitled to receive the property, at the time and in  
8 the manner ordered by the court.

9 (b) The court may appoint a successor representative under  
10 this section without citation or notice if the court finds that the  
11 immediate appointment of a successor representative is necessary.  
12 (Tex. Prob. Code, Sec. 220(a).)

13 Sec. 361.103. APPOINTMENT BECAUSE OF EXISTENCE OF PRIOR  
14 RIGHT. If letters testamentary or of administration have been  
15 granted to a person and another person applies for letters, the  
16 court shall revoke the initial letters and grant letters to the  
17 second applicant if the second applicant:

18 (1) is qualified;  
19 (2) has a prior right to the letters; and  
20 (3) has not waived the prior right to the letters.  
21 (Tex. Prob. Code, Sec. 220(b).)

22 Sec. 361.104. APPOINTMENT WHEN NAMED EXECUTOR BECOMES AN  
23 ADULT. (a) A person named as executor in a will who was not an  
24 adult when the will was probated is entitled to have letters  
25 testamentary or of administration that were granted to another  
26 person revoked and appropriate letters granted to the named  
27 executor on proof that the named executor has become an adult and is

1 not otherwise disqualified.

2 (b) This subsection applies only if a will names two or more  
3 persons as executor. A person named as an executor in the will who  
4 was a minor when the will was probated may, on becoming an adult,  
5 qualify and receive letters if:

6 (1) letters have been issued only to the named  
7 executors in the will who were adults when the will was probated;  
8 and

9 (2) the person is not otherwise disqualified from  
10 receiving letters. (Tex. Prob. Code, Sec. 220(c).)

11 Sec. 361.105. APPOINTMENT OF FORMERLY SICK OR ABSENT  
12 EXECUTOR. (a) This section applies only to a person named as  
13 executor in a will who was sick or absent from the state when the  
14 testator died or the will was proved and, as a result, could not:

15 (1) present the will for probate before the 31st day  
16 after the date of the testator's death; or

17 (2) accept and qualify as executor before the 21st day  
18 after the date the will is probated.

19 (b) A person to whom this section applies may accept and  
20 qualify as executor before the 61st day after the date the person  
21 returns to the state or recovers from illness if proof is presented  
22 to the court that the person was ill or absent.

23 (c) If a person accepts and qualifies as executor under  
24 Subsection (b) and letters testamentary or of administration have  
25 been issued to another person, the court shall revoke the other  
26 person's letters. (Tex. Prob. Code, Sec. 220(d).)

27 Sec. 361.106. APPOINTMENT WHEN WILL DISCOVERED AFTER GRANT

1 OF ADMINISTRATION. If, after letters of administration have been  
2 issued, it is discovered that the decedent left a lawful will, the  
3 court shall revoke the letters of administration and issue proper  
4 letters to any persons entitled to the letters. (Tex. Prob. Code,  
5 Sec. 220(e).)

6 [Sections 361.107-361.150 reserved for expansion]

7 SUBCHAPTER D. PROCEDURES AFTER DEATH, RESIGNATION, OR REMOVAL OF  
8 PERSONAL REPRESENTATIVE

9 Sec. 361.151. PAYMENT TO ESTATE WHILE OFFICE OF PERSONAL  
10 REPRESENTATIVE IS VACANT. (a) A debtor, obligor, or payor may pay  
11 or tender money or another thing of value falling due to an estate  
12 while the office of personal representative of the estate is vacant  
13 to the court clerk for the credit of the estate.

14 (b) Payment or tender under Subsection (a) discharges the  
15 debtor, obligor, or payor of the obligation for all purposes to the  
16 extent and purpose of the payment or tender.

17 (c) If the court clerk accepts payment or tender under this  
18 section, the court clerk shall issue a receipt for the payment or  
19 tender. (Tex. Prob. Code, Sec. 220(g).)

20 Sec. 361.152. FURTHER ADMINISTRATION WITH OR WITHOUT NOTICE  
21 OR WILL ANNEXED. (a) If an estate is unrepresented as a result of  
22 the death, removal, or resignation of the estate's personal  
23 representative, and on application by a qualified person interested  
24 in the estate, the court shall grant further administration of the  
25 estate if necessary, and with the will annexed if there is a will.

26 (b) An appointment under Subsection (a) shall be made on  
27 notice and after a hearing, as in the case of an original

1 appointment, except that, if the court finds that the immediate  
2 appointment of a successor representative is necessary, the court  
3 may appoint the successor on application but without citation or  
4 notice. (Tex. Prob. Code, Sec. 223.)

5       Sec. 361.153. RIGHTS, POWERS, AND DUTIES OF SUCCESSOR  
6 REPRESENTATIVE. (a) If a personal representative of an estate not  
7 administered succeeds another personal representative, the  
8 successor representative has all rights, powers, and duties of the  
9 predecessor, other than those rights and powers conferred on the  
10 predecessor by will that are different from those conferred by this  
11 title on personal representatives generally. Subject to that  
12 exception, the successor representative shall administer the  
13 estate as if the successor's administration were a continuation of  
14 the former administration.

15       (b) A successor representative shall account for all the  
16 estate property that came into the predecessor's possession, and is  
17 entitled to any order or remedy that the court has the power to give  
18 to enforce the delivery of the estate property and the liability of  
19 the predecessor's sureties for any portion of the estate property  
20 that is not delivered. The successor is not required to account for  
21 any portion of the estate property that the successor failed to  
22 recover after due diligence.

23       (c) In addition to the powers granted under Subsections (a)  
24 and (b), a successor representative may:

25               (1) make himself or herself, and may be made, a party  
26 to a suit prosecuted by or against the successor's predecessors;

27               (2) settle with the predecessor, and receive and give

1 a receipt for any portion of the estate property that remains in the  
2 predecessor's possession; or

3 (3) commence a suit on the bond or bonds of the  
4 predecessor, in the successor's own name and capacity, for all the  
5 estate property that:

6 (A) came into the predecessor's possession; and

7 (B) has not been accounted for by the  
8 predecessor. (Tex. Prob. Code, Secs. 224, 225.)

9 Sec. 361.154. SUCCESSOR EXECUTOR ALSO SUCCEEDS TO PRIOR  
10 RIGHTS AND DUTIES. An executor who accepts appointment and  
11 qualifies after letters of administration have been granted on the  
12 estate shall, in the manner prescribed by Section 361.153, succeed  
13 to the previous administrator, and shall administer the estate as  
14 if the executor's administration were a continuation of the former  
15 administration, subject to any legal directions of the testator  
16 with respect to the estate that are contained in the will. (Tex.  
17 Prob. Code, Sec. 226.)

18 Sec. 361.155. SUCCESSOR REPRESENTATIVE TO RETURN  
19 INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) An appointee who  
20 has qualified to succeed a former personal representative shall  
21 make and return to the court an inventory, appraisal, and list of  
22 claims of the estate before the 91st day after the date the personal  
23 representative qualifies, in the manner required of an original  
24 appointee, and shall also return additional inventories,  
25 appraisements, and lists of claims in the manner required of an  
26 original appointee.

27 (b) On the application of any person interested in the

1 estate, the court shall, in an order appointing a successor  
2 representative of an estate, appoint appraisers as in an original  
3 appointment. (Tex. Prob. Code, Sec. 227.)

4 CHAPTER 362. CLOSING ADMINISTRATION OF ESTATE

5 SUBCHAPTER A. SETTLING AND CLOSING ESTATE

6 Sec. 362.001. SETTLING AND CLOSING ADMINISTRATION OF  
7 ESTATE

8 Sec. 362.002. COMPELLING SETTLEMENT OF ESTATE

9 Sec. 362.003. VERIFIED ACCOUNT REQUIRED

10 Sec. 362.004. CONTENTS OF ACCOUNT

11 Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF  
12 ACCOUNT

13 Sec. 362.006. EXAMINATION OF AND HEARING ON ACCOUNT

14 Sec. 362.007. DELIVERY OF CERTAIN PROPERTY TO GUARDIAN

15 Sec. 362.008. CERTAIN DEBTS EXCLUDED FROM SETTLEMENT  
16 COMPUTATION

17 Sec. 362.009. MONEY DUE TO ESTATE PENDING FINAL  
18 DISCHARGE

19 Sec. 362.010. PAYMENT OF INHERITANCE TAXES REQUIRED

20 Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE

21 Sec. 362.012. DISCHARGE OF PERSONAL REPRESENTATIVE  
22 WHEN NO ESTATE PROPERTY REMAINS

23 Sec. 362.013. DISCHARGE OF PERSONAL REPRESENTATIVE  
24 WHEN ESTATE FULLY ADMINISTERED

25 [Sections 362.014-362.050 reserved for expansion]

26 SUBCHAPTER B. FAILURE OF PERSONAL REPRESENTATIVE TO ACT

27 Sec. 362.051. FAILURE TO PRESENT ACCOUNT

1 Sec. 362.052. LIABILITY FOR FAILURE TO DELIVER ESTATE

2 PROPERTY

3 CHAPTER 362. CLOSING ADMINISTRATION OF ESTATE

4 SUBCHAPTER A. SETTLING AND CLOSING ESTATE

5 Sec. 362.001. SETTLING AND CLOSING ADMINISTRATION OF  
6 ESTATE. The administration of an estate shall be settled and closed  
7 when:

8 (1) all the debts known to exist against the estate  
9 have been paid, or have been paid to the extent permitted by the  
10 assets in the personal representative's possession; and

11 (2) no further need for administration exists. (Tex.  
12 Prob. Code, Sec. 404.)

13 Sec. 362.002. COMPELLING SETTLEMENT OF ESTATE. A person  
14 interested in the administration of an estate for which letters  
15 testamentary or of administration have been granted may proceed,  
16 after any period of time, to compel settlement of the estate if it  
17 does not appear from the record that the administration of the  
18 estate has been closed. (Tex. Prob. Code, Sec. 92.)

19 Sec. 362.003. VERIFIED ACCOUNT REQUIRED. The personal  
20 representative of an estate shall present to the court the  
21 representative's verified account for final settlement when the  
22 administration of the estate is to be settled and closed. (Tex.  
23 Prob. Code, Sec. 405 (part).)

24 Sec. 362.004. CONTENTS OF ACCOUNT. (a) Except as provided  
25 by Subsection (b), it is sufficient for an account for final  
26 settlement to:

27 (1) refer to the inventory without describing each

1 item of property in detail; and

2 (2) refer to and adopt any proceeding had in the  
3 administration concerning a sale, renting, leasing for mineral  
4 development, or any other transaction on behalf of the estate,  
5 including an exhibit, account, or voucher previously filed and  
6 approved, without restating the particular items thereof.

7 (b) An account for final settlement must be accompanied by  
8 proper vouchers supporting each item included in the account for  
9 which the personal representative has not already accounted and,  
10 either by reference to any proceeding described by Subsection (a)  
11 or by a statement of the facts, must show:

12 (1) the estate property that has come into the  
13 representative's possession and the disposition of that property;

14 (2) the debts that have been paid;

15 (3) any debts and expenses still owing by the estate;

16 (4) any estate property still in the representative's  
17 possession;

18 (5) the persons entitled to receive that estate and,  
19 for each of those persons:

20 (A) the person's relationship to the decedent;

21 (B) the person's residence, if known; and

22 (C) whether the person is an adult or a minor and,  
23 if the person is a minor, the name of each of the minor's guardians,  
24 if any;

25 (6) any advancement or payment made by the  
26 representative from that estate to any person entitled to receive  
27 part of that estate;



1           (7) the tax returns due that have been filed and the  
2 taxes due and owing that have been paid, including:

3                   (A) a complete account of the amount of taxes;

4                   (B) the date the taxes were paid; and

5                   (C) the governmental entity to which the taxes  
6 were paid;

7           (8) if on the filing of the account a tax return due to  
8 be filed or any taxes due to be paid are delinquent, the reasons  
9 for, and include a description of, the delinquency; and

10           (9) that the representative has paid all required bond  
11 premiums. (Tex. Prob. Code, Sec. 405 (part).)

12           Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF  
13 ACCOUNT. (a) On the presentation of an account for final  
14 settlement by a temporary or permanent personal representative, the  
15 county clerk shall issue citation to the persons and in the manner  
16 provided by Subsections (c) and (d).

17           (b) Citation issued under Subsection (a) must contain:

18                   (1) a statement that an account for final settlement  
19 has been presented;

20                   (2) the time and place the court will consider the  
21 account; and

22                   (3) a statement requiring the person cited to appear  
23 and contest the account, if the person wishes to contest the  
24 account.

25           (c) The personal representative shall give notice to each  
26 heir or beneficiary of the decedent by certified mail, return  
27 receipt requested, unless the court by written order directs

1 another type of notice to be given. The notice must include a copy  
2 of the account for final settlement.

3 (d) The court by written order shall require additional  
4 notice if the court considers the additional notice necessary.

5 (e) The court may allow the waiver of notice of an account  
6 for final settlement in a proceeding concerning a decedent's  
7 estate. (Tex. Prob. Code, Sec. 407.)

8 Sec. 362.006. EXAMINATION OF AND HEARING ON ACCOUNT. (a)  
9 On the court's satisfaction that citation has been properly served  
10 on all persons interested in the estate, the court shall examine the  
11 account for final settlement and the accompanying vouchers.

12 (b) After hearing all exceptions or objections to the  
13 account for final settlement and accompanying vouchers and the  
14 evidence in support of or against the account, the court shall audit  
15 and settle the account and, if necessary, restate the account.  
16 (Tex. Prob. Code, Sec. 408(a).)

17 Sec. 362.007. DELIVERY OF CERTAIN PROPERTY TO GUARDIAN.  
18 The court may permit a resident personal representative who has  
19 possession of any of a ward's estate to deliver the estate to a  
20 qualified and acting guardian of the ward. (Tex. Prob. Code, Sec.  
21 405A.)

22 Sec. 362.008. CERTAIN DEBTS EXCLUDED FROM SETTLEMENT  
23 COMPUTATION. In the settlement of any of the accounts of the  
24 personal representative, all debts due the estate that the court is  
25 satisfied could not have been collected by due diligence and that  
26 have not been collected shall be excluded from the computation.  
27 (Tex. Prob. Code, Sec. 412.)

1           Sec. 362.009.   MONEY DUE TO ESTATE PENDING FINAL DISCHARGE.  
2 Money or another thing of value that becomes due to the estate while  
3 an account for final settlement is pending may be paid, delivered,  
4 or tendered to the personal representative until the order of final  
5 discharge of the representative is entered in the minutes of the  
6 court. The representative shall issue a receipt for the money or  
7 other thing of value to the obligor or payor. On issuance of the  
8 receipt, the obligor or payor is discharged of the obligation for  
9 all purposes. (Tex. Prob. Code, Sec. 409.)

10           Sec. 362.010.   PAYMENT OF INHERITANCE TAXES REQUIRED.   A  
11 personal representative's account for final settlement of an estate  
12 may not be approved, and the estate may not be closed, unless the  
13 account shows and the court finds that all inheritance taxes due and  
14 owing to this state with respect to all interests and properties  
15 passing through the representative's possession have been paid.  
16 (Tex. Prob. Code, Sec. 410.)

17           Sec. 362.011.   PARTITION AND DISTRIBUTION OF ESTATE.   If, on  
18 final settlement of an estate, any of the estate remains in the  
19 personal representative's possession, the court shall order that a  
20 partition and distribution be made among the persons entitled to  
21 receive that part of the estate. (Tex. Prob. Code, Sec. 408(b).)

22           Sec. 362.012.   DISCHARGE OF PERSONAL REPRESENTATIVE WHEN NO  
23 ESTATE PROPERTY REMAINS. The court shall enter an order discharging  
24 a personal representative from the representative's trust and  
25 closing the estate if, on final settlement of the estate, none of  
26 the estate remains in the representative's possession. (Tex. Prob.  
27 Code, Sec. 408(c).)

1           Sec. 362.013. DISCHARGE OF PERSONAL REPRESENTATIVE WHEN  
2 ESTATE FULLY ADMINISTERED. The court shall enter an order  
3 discharging a personal representative from the representative's  
4 trust and declaring the estate closed when:

5           (1) the representative has fully administered the  
6 estate in accordance with this title and the court's orders;

7           (2) the representative's account for final settlement  
8 has been approved; and

9           (3) the representative has delivered all of the estate  
10 remaining in the representative's possession to the person or  
11 persons entitled to receive that part of the estate. (Tex. Prob.  
12 Code, Sec. 408(d).)

13           [Sections 362.014-362.050 reserved for expansion]

14           SUBCHAPTER B. FAILURE OF PERSONAL REPRESENTATIVE TO ACT

15           Sec. 362.051. FAILURE TO PRESENT ACCOUNT. (a) The court, on  
16 the court's own motion or on the written complaint of anyone  
17 interested in a decedent's estate that has been administered, shall  
18 have the personal representative who is charged with the duty of  
19 presenting an account for final settlement cited to appear and  
20 present the account within the time specified in the citation if the  
21 representative failed or neglected to present the account at the  
22 proper time.

23           (b) On or after the fourth anniversary of the date the court  
24 clerk last issues letters testamentary or of administration for a  
25 decedent's estate, the court may close the estate without an  
26 account for final settlement and without appointing a successor  
27 personal representative if:

1           (1) the whereabouts of the personal representative and  
2 heirs of the decedent are unknown; and

3           (2) a complaint has not been filed by anyone  
4 interested in the decedent's estate. (Tex. Prob. Code, Sec. 406.)

5           Sec. 362.052. LIABILITY FOR FAILURE TO DELIVER ESTATE  
6 PROPERTY. (a) On the final settlement of an estate, if the  
7 personal representative neglects on demand to deliver a portion of  
8 the estate or any money in the representative's possession ordered  
9 to be delivered to a person entitled to that property, the person  
10 may file with the court clerk a written complaint alleging:

11           (1) the fact of the neglect;

12           (2) the date of the person's demand; and

13           (3) other relevant facts.

14           (b) On the filing of a complaint under Subsection (a), the  
15 court clerk shall issue a citation to be served personally on the  
16 personal representative. The citation must:

17           (1) apprise the representative of the complaint; and

18           (2) cite the representative to appear before the court  
19 and answer, if the representative desires, at a time designated in  
20 the citation.

21           (c) If at the hearing the court finds that the citation was  
22 properly served and returned, and that the personal representative  
23 is guilty of the neglect charged, the court shall enter an order to  
24 that effect.

25           (d) A personal representative found guilty under Subsection  
26 (c) is liable to the person who filed the complaint under Subsection  
27 (a) for damages at the rate of 10 percent of the amount of the money

1 or the appraised value of the portion of the estate neglectfully  
2 withheld, per month, for each month or fraction of a month that the  
3 money or portion of the estate is or has been neglectfully withheld  
4 after the date of demand. Damages under this subsection may be  
5 recovered in any court of competent jurisdiction. (Tex. Prob.  
6 Code, Sec. 414.)

7 [Chapters 363-400 reserved for expansion]

8 SUBTITLE I. INDEPENDENT ADMINISTRATION

9 [Chapters 401-450 reserved for expansion]

10 SUBTITLE J. ADDITIONAL MATTERS RELATING TO THE ADMINISTRATION OF  
11 CERTAIN ESTATES

12 CHAPTER 451. ORDER OF NO ADMINISTRATION

13 Sec. 451.001. APPLICATION FOR FAMILY ALLOWANCE AND  
14 ORDER OF NO ADMINISTRATION

15 Sec. 451.002. HEARING AND ORDER

16 Sec. 451.003. EFFECT OF ORDER

17 Sec. 451.004. PROCEEDING TO REVOKE ORDER

18 CHAPTER 451. ORDER OF NO ADMINISTRATION

19 Sec. 451.001. APPLICATION FOR FAMILY ALLOWANCE AND ORDER OF  
20 NO ADMINISTRATION. (a) If the value of the entire assets of an  
21 estate, excluding homestead and exempt property, does not exceed  
22 the amount to which the surviving spouse and minor children of the  
23 decedent are entitled as a family allowance, an application may be  
24 filed by or on behalf of the surviving spouse or minor children  
25 requesting a court to make a family allowance and to enter an order  
26 that no administration of the decedent's estate is necessary.

27 (b) The application may be filed:

1           (1) in any court in which venue is proper for  
2 administration; or

3           (2) if an application for the appointment of a  
4 personal representative has been filed but not yet granted, in the  
5 court in which the application is filed.

6           (c) The application must:

7                 (1) state the names of the heirs or devisees;

8                 (2) list, to the extent known, estate creditors  
9 together with the amounts of the claims; and

10            (3) describe all property belonging to the estate,  
11 together with:

12                         (A) the estimated value of the property according  
13 to the best knowledge and information of the applicant; and

14                         (B) the liens and encumbrances on the property.

15           (d) The application must also include a prayer that the  
16 court make a family allowance and that, if the family allowance  
17 exhausts the entire assets of the estate, excluding homestead and  
18 exempt property, the entire assets of the estate be set aside to the  
19 surviving spouse and minor children, as with other family  
20 allowances provided for by Subchapter C, Chapter 353. (Tex. Prob.  
21 Code, Sec. 139.)

22           Sec. 451.002. HEARING AND ORDER. (a) On the filing of an  
23 application under Section 451.001, the court may hear the  
24 application:

25                 (1) promptly without notice; or

26                 (2) at a time and with notice as required by the court.

27           (b) On the hearing of the application, if the court finds

1 that the facts contained in the application are true and that the  
2 expenses of last illness, funeral charges, and expenses of the  
3 proceeding have been paid or secured, the court shall:

4 (1) make a family allowance; and

5 (2) if the entire assets of the estate, excluding  
6 homestead and exempt property, are exhausted by the family  
7 allowance made under Subdivision (1):

8 (A) assign to the surviving spouse and minor  
9 children the entire estate in the same manner and with the same  
10 effect as provided in Subchapter C, Chapter 353, for the making of a  
11 family allowance to the surviving spouse and minor children; and

12 (B) order that there shall be no administration  
13 of the estate. (Tex. Prob. Code, Sec. 140.)

14 Sec. 451.003. EFFECT OF ORDER. (a) An order of no  
15 administration issued under Section 451.002(b) constitutes  
16 sufficient legal authority to each person who owes money, has  
17 custody of property, or acts as registrar or transfer agent of any  
18 evidence of interest, indebtedness, property, or right, belonging  
19 to the estate, and to each person purchasing from or otherwise  
20 dealing with the estate, for payment or transfer without  
21 administration to the persons described in the order as entitled to  
22 receive the estate.

23 (b) The persons described in the order are entitled to  
24 enforce by suit their right to payment or transfer described by this  
25 section. (Tex. Prob. Code, Sec. 141.)

26 Sec. 451.004. PROCEEDING TO REVOKE ORDER. (a) At any time,  
27 but not later than the first anniversary of the date of entry of an



1 order of no administration under Section 451.002(b), any interested  
2 person may file an application to revoke the order.

3 (b) An application to revoke the order must allege that:

4 (1) other estate property has been discovered,  
5 property belonging to the estate was not included in the  
6 application for no administration, or the property described in the  
7 application for no administration was incorrectly valued; and

8 (2) if that property were added, included, or  
9 correctly valued, as applicable, the total value of the property  
10 would exceed the amount necessary to justify the court in ordering  
11 no administration.

12 (c) The court shall revoke the order on proof of any of the  
13 grounds described by Subsection (b).

14 (d) If the value of any property is contested, the court may  
15 appoint two appraisers to appraise the property in accordance with  
16 the procedure prescribed for inventories and appraisements under  
17 Chapter 309. The appraisal of the appointed appraisers shall be  
18 received in evidence but is not conclusive. (Tex. Prob. Code, Sec.  
19 142.)

20 CHAPTER 452. TEMPORARY ADMINISTRATION OF ESTATES

21 SUBCHAPTER A. APPOINTMENT OF TEMPORARY ADMINISTRATOR GENERALLY

22 Sec. 452.001. DUTY TO APPOINT TEMPORARY ADMINISTRATOR

23 Sec. 452.002. APPLICATION FOR APPOINTMENT

24 Sec. 452.003. ORDER OF APPOINTMENT; REQUIREMENTS

25 Sec. 452.004. TEMPORARY ADMINISTRATOR'S BOND

26 Sec. 452.005. ISSUANCE OF LETTERS OF TEMPORARY

27 ADMINISTRATION

1 Sec. 452.006. NOTICE OF APPOINTMENT

2 Sec. 452.007. HEARING TO CONTEST APPOINTMENT

3 Sec. 452.008. PERMANENT APPOINTMENT

4 [Sections 452.009-452.050 reserved for expansion]

5 SUBCHAPTER B. TEMPORARY ADMINISTRATION PENDING CONTEST OF A WILL  
6 OR ADMINISTRATION

7 Sec. 452.051. APPOINTMENT OF TEMPORARY ADMINISTRATOR

8 Sec. 452.052. ADDITIONAL POWERS REGARDING CLAIMS

9 [Sections 452.053-452.100 reserved for expansion]

10 SUBCHAPTER C. POWERS AND DUTIES OF TEMPORARY ADMINISTRATOR

11 Sec. 452.101. LIMITED POWERS OF TEMPORARY

12 ADMINISTRATOR

13 Sec. 452.102. ADDITIONAL BOND FOR EXTENSION OF RIGHTS

14 AND POWERS

15 [Sections 452.103-452.150 reserved for expansion]

16 SUBCHAPTER D. EXPIRATION AND CLOSING OF TEMPORARY ADMINISTRATION

17 Sec. 452.151. ACCOUNTING

18 Sec. 452.152. CLOSING TEMPORARY ADMINISTRATION

19 CHAPTER 452. TEMPORARY ADMINISTRATION OF ESTATES

20 SUBCHAPTER A. APPOINTMENT OF TEMPORARY ADMINISTRATOR GENERALLY

21 Sec. 452.001. DUTY TO APPOINT TEMPORARY ADMINISTRATOR. A  
22 judge who determines that the interest of a decedent's estate  
23 requires the immediate appointment of a personal representative  
24 shall, by written order, appoint a temporary administrator with  
25 powers limited as the circumstances of the case require. (Tex.  
26 Prob. Code, Sec. 131A(a) (part).)

27 Sec. 452.002. APPLICATION FOR APPOINTMENT. (a) A person

1 may file with the court clerk a written application for the  
2 appointment of a temporary administrator of a decedent's estate  
3 under this subchapter.

4 (b) The application must:

5 (1) be verified;

6 (2) include the information required by:

7 (A) Sections 256.052, 256.053, and 256.054, if  
8 the decedent died testate; or

9 (B) Section 301.052, if the decedent died  
10 intestate; and

11 (3) include an affidavit that:

12 (A) states the name, address, and interest of the  
13 applicant;

14 (B) states the facts showing an immediate  
15 necessity for the appointment of a temporary administrator;

16 (C) lists the requested powers and duties of the  
17 temporary administrator;

18 (D) states that the applicant is entitled to  
19 letters of temporary administration and is not disqualified by law  
20 from serving as a temporary administrator; and

21 (E) describes the property that the applicant  
22 believes to be in the decedent's estate. (Tex. Prob. Code, Sec.  
23 131A(b).)

24 Sec. 452.003. ORDER OF APPOINTMENT; REQUIREMENTS. The  
25 order appointing a temporary administrator must:

26 (1) designate the appointee as "temporary  
27 administrator" of the decedent's estate;

1           (2) specify the period of the appointment, which may  
2 not exceed 180 days unless the appointment is made permanent under  
3 Section 452.008;

4           (3) define the powers given to the appointee; and

5           (4) set the amount of bond to be given by the  
6 appointee. (Tex. Prob. Code, Secs. 131A(a) (part), (c).)

7           Sec. 452.004. TEMPORARY ADMINISTRATOR'S BOND. (a) In this  
8 section, "business day" means a day other than a Saturday, Sunday,  
9 or holiday recognized by this state.

10           (b) Not later than the third business day after the date of  
11 the order appointing a temporary administrator, the appointee shall  
12 file with the county clerk a bond in the amount ordered by the  
13 court. (Tex. Prob. Code, Sec. 131A(d).)

14           Sec. 452.005. ISSUANCE OF LETTERS OF TEMPORARY  
15 ADMINISTRATION. Not later than the third day after the date an  
16 appointee qualifies as temporary administrator, the county clerk  
17 shall issue to the appointee letters of temporary administration  
18 that list the powers to be exercised by the appointee as ordered by  
19 the court. (Tex. Prob. Code, Sec. 131A(e).)

20           Sec. 452.006. NOTICE OF APPOINTMENT. (a) On the date the  
21 county clerk issues letters of temporary administration:

22           (1) the county clerk shall post on the courthouse door  
23 a notice of the appointment to all interested persons; and

24           (2) the appointee shall notify, by certified mail,  
25 return receipt requested, the decedent's known heirs of the  
26 appointment.

27           (b) A notice required under Subsection (a) must state that:

1           (1) an heir or other interested person may request a  
2 hearing to contest the appointment not later than the 15th day after  
3 the date the letters of temporary administration are issued;

4           (2) if no contest is made during the period specified  
5 by the notice, the appointment continues for the period specified  
6 in the order appointing a temporary administrator; and

7           (3) the court may make the appointment permanent.  
8 (Tex. Prob. Code, Secs. 131A(f), (g), (h).)

9           Sec. 452.007. HEARING TO CONTEST APPOINTMENT. (a) A  
10 hearing shall be held and a determination made not later than the  
11 10th day after the date an heir or other interested person requests  
12 a hearing to contest the appointment of a temporary administrator.  
13 If a request is not made on or before the 15th day after the date the  
14 letters of temporary administration are issued, the appointment of  
15 a temporary administrator continues for the period specified in the  
16 order, unless the appointment is made permanent under Section  
17 452.008.

18           (b) While a contest of the appointment of a temporary  
19 administrator is pending, the temporary appointee shall continue to  
20 act as administrator of the estate to the extent of the powers given  
21 by the appointment.

22           (c) A court that sets aside a temporary administrator's  
23 appointment may require the temporary administrator to prepare and  
24 file, under oath, a complete exhibit of the condition of the estate  
25 and detail any disposition of the estate property made by the  
26 temporary administrator. (Tex. Prob. Code, Sec. 131A(i).)

27           Sec. 452.008. PERMANENT APPOINTMENT. At the end of a

1 temporary administrator's period of appointment, the court by  
2 written order may make the appointment permanent if the permanent  
3 appointment is in the interest of the estate. (Tex. Prob. Code,  
4 Sec. 131A(j).)

5 [Sections 452.009-452.050 reserved for expansion]

6 SUBCHAPTER B. TEMPORARY ADMINISTRATION PENDING CONTEST OF A WILL  
7 OR ADMINISTRATION

8 Sec. 452.051. APPOINTMENT OF TEMPORARY ADMINISTRATOR. (a)  
9 If a contest related to probating a will or granting letters of  
10 administration is pending, the court may appoint a temporary  
11 administrator, with powers limited as the circumstances of the case  
12 require.

13 (b) The appointment may continue until the contest is  
14 terminated and an executor or administrator with full powers is  
15 appointed.

16 (c) The power of appointment under this section is in  
17 addition to the court's power of appointment under Subchapter A.  
18 (Tex. Prob. Code, Sec. 132(a).)

19 Sec. 452.052. ADDITIONAL POWERS REGARDING CLAIMS. (a) A  
20 court that grants temporary administration pending a will contest  
21 or a contest on an application for letters of administration may, at  
22 any time while the contest is pending, give the temporary  
23 administrator all the powers of a permanent administrator regarding  
24 claims against the estate.

25 (b) If the court gives the temporary administrator powers  
26 described by Subsection (a), the court and the temporary  
27 administrator shall act in the same manner as in permanent

1 administration in matters such as:

2 (1) approving or disapproving claims;

3 (2) paying claims; and

4 (3) selling property to pay claims.

5 (c) The court shall require a temporary administrator given  
6 powers described by Subsection (a) to give bond in the full amount  
7 required of a permanent administrator.

8 (d) This section is cumulative and does not affect the  
9 court's right to order a temporary administrator to perform any  
10 action described by this section in other cases if the action is  
11 necessary or expedient to preserve the estate pending the contest's  
12 final determination. (Tex. Prob. Code, Sec. 132(b).)

13 [Sections 452.053-452.100 reserved for expansion]

14 SUBCHAPTER C. POWERS AND DUTIES OF TEMPORARY ADMINISTRATOR

15 Sec. 452.101. LIMITED POWERS OF TEMPORARY ADMINISTRATOR.

16 (a) A temporary administrator may exercise only the rights and  
17 powers:

18 (1) specifically expressed in the court's order  
19 appointing the temporary administrator; or

20 (2) expressed in the court's subsequent orders.

21 (b) An act performed by a temporary administrator is void  
22 unless expressly authorized by the court's orders. (Tex. Prob.  
23 Code, Sec. 133 (part).)

24 Sec. 452.102. ADDITIONAL BOND FOR EXTENSION OF RIGHTS AND  
25 POWERS. A court that extends the rights and powers of a temporary  
26 administrator in an order subsequent to the order appointing the  
27 temporary administrator may require additional bond commensurate

1 with the extension. (Tex. Prob. Code, Sec. 133 (part).)

2 [Sections 452.103-452.150 reserved for expansion]

3 SUBCHAPTER D. EXPIRATION AND CLOSING OF TEMPORARY ADMINISTRATION

4 Sec. 452.151. ACCOUNTING. At the expiration of a temporary  
5 appointment, the temporary administrator shall file with the court  
6 clerk:

7 (1) a sworn list of all estate property that has come  
8 into the temporary administrator's possession;

9 (2) a return of all sales made by the temporary  
10 administrator; and

11 (3) a full exhibit and account of all the temporary  
12 administrator's acts as temporary administrator. (Tex. Prob. Code,  
13 Sec. 134.)

14 Sec. 452.152. CLOSING TEMPORARY ADMINISTRATION. (a) The  
15 court shall act on the list, return, exhibit, and account filed  
16 under Section 452.151.

17 (b) When letters of temporary administration expire or  
18 become ineffective for any cause, the court immediately shall enter  
19 an order requiring the temporary administrator to promptly deliver  
20 the estate remaining in the temporary administrator's possession to  
21 the person legally entitled to possession of the estate.

22 (c) On proof of delivery under Subsection (b), the temporary  
23 administrator shall be discharged and the sureties on the temporary  
24 administrator's bond shall be released as to any future liability.  
25 (Tex. Prob. Code, Sec. 135.)

26 CHAPTER 453. ADMINISTRATION OF COMMUNITY PROPERTY

27 Sec. 453.001. EFFECT OF CHAPTER



1 Sec. 453.002. ADMINISTRATION OF COMMUNITY PROPERTY NOT  
2 NECESSARY

3 Sec. 453.003. GENERAL POWERS OF SURVIVING SPOUSE IF NO  
4 ADMINISTRATION IS PENDING

5 Sec. 453.004. COLLECTION OF UNPAID WAGES IF NO  
6 ADMINISTRATION IS PENDING

7 Sec. 453.005. REMARRIAGE OF SURVIVING SPOUSE

8 Sec. 453.006. ACCOUNT OF COMMUNITY DEBTS AND  
9 DISPOSITION OF COMMUNITY PROPERTY

10 Sec. 453.007. DELIVERY OF COMMUNITY ESTATE ON FINAL  
11 PARTITION

12 Sec. 453.008. LIABILITY OF SURVIVING SPOUSE FOR LOSS

13 Sec. 453.009. DISTRIBUTION OF POWERS BETWEEN PERSONAL  
14 REPRESENTATIVE AND SURVIVING SPOUSE

15 CHAPTER 453. ADMINISTRATION OF COMMUNITY PROPERTY

16 Sec. 453.001. EFFECT OF CHAPTER. This chapter does not  
17 prohibit the administration of community property under other  
18 provisions of this title relating to the administration of an  
19 estate. (Tex. Prob. Code, Sec. 155 (part).)

20 Sec. 453.002. ADMINISTRATION OF COMMUNITY PROPERTY NOT  
21 NECESSARY. If a spouse dies intestate and the community property  
22 passes to the surviving spouse, no administration of the community  
23 property is necessary. (Tex. Prob. Code, Sec. 155 (part).)

24 Sec. 453.003. GENERAL POWERS OF SURVIVING SPOUSE IF NO  
25 ADMINISTRATION IS PENDING. (a) If there is no qualified executor  
26 or administrator of a deceased spouse's estate, the surviving  
27 spouse, as the surviving partner of the marital partnership, may:

- 1           (1) sue and be sued to recover community property;
- 2           (2) sell, mortgage, lease, and otherwise dispose of
- 3 community property to pay community debts;
- 4           (3) collect claims due to the community estate; and
- 5           (4) exercise other powers as necessary to:
  - 6               (A) preserve the community property;
  - 7               (B) discharge community obligations; and
  - 8               (C) wind up community affairs.

9           (b) This section does not affect the disposition of the  
10 deceased spouse's property. (Tex. Prob. Code, Secs. 160(a), (c).)

11           Sec. 453.004. COLLECTION OF UNPAID WAGES IF NO  
12 ADMINISTRATION IS PENDING. (a) If a person who owes money to the  
13 community estate for current wages at the time of a deceased  
14 spouse's death is provided an affidavit stating that the affiant is  
15 the surviving spouse and that no one has qualified as executor or  
16 administrator of the deceased spouse's estate, the person who pays  
17 or delivers to the affiant the deceased spouse's final paycheck for  
18 the wages, including any unpaid sick pay or vacation pay, is  
19 released from liability to the same extent as if the payment or  
20 delivery is made to the deceased spouse's personal representative.  
21 The person is not required to inquire into the truth of the  
22 affidavit.

23           (b) An affiant to whom the payment or delivery is made under  
24 Subsection (a) is answerable to a person having a prior right and is  
25 accountable to a personal representative who is appointed. The  
26 affiant is liable for any damage or loss to a person that arises  
27 from a payment or delivery made in reliance on the affidavit.

1           (c) This section does not affect the disposition of the  
2 deceased spouse's property. (Tex. Prob. Code, Secs. 160(b), (c).)

3           Sec. 453.005. REMARRIAGE OF SURVIVING SPOUSE. The  
4 remarriage of a surviving spouse does not terminate the surviving  
5 spouse's powers as a surviving partner. (Tex. Prob. Code, Sec.  
6 176.)

7           Sec. 453.006. ACCOUNT OF COMMUNITY DEBTS AND DISPOSITION OF  
8 COMMUNITY PROPERTY. (a) The surviving spouse shall keep a fair and  
9 full account and statement of:

10                 (1) all community debts and expenses paid by the  
11 surviving spouse; and

12                 (2) the disposition made of the community property.

13           (b) The surviving spouse or personal representative shall  
14 keep a separate, distinct account of all community debts allowed or  
15 paid in the administration and settlement of an estate described by  
16 Sections 101.052(a) and (b). (Tex. Prob. Code, Secs. 156 (part),  
17 168 (part).)

18           Sec. 453.007. DELIVERY OF COMMUNITY ESTATE ON FINAL  
19 PARTITION. On final partition of the community estate, the  
20 surviving spouse shall deliver to the deceased spouse's heirs or  
21 devisees their interest in the estate, and the increase in and  
22 profits of the interest, after deducting from the interest:

23                 (1) the proportion of the community debts chargeable  
24 to the interest;

25                 (2) unavoidable losses;

26                 (3) necessary and reasonable expenses; and

27                 (4) a reasonable commission for the management of the

1 interest. (Tex. Prob. Code, Sec. 168 (part).)

2       Sec. 453.008. LIABILITY OF SURVIVING SPOUSE FOR LOSS. A  
3 surviving spouse is not liable for a loss sustained by the community  
4 estate unless the surviving spouse is guilty of gross negligence or  
5 bad faith. (Tex. Prob. Code, Sec. 168 (part).)

6       Sec. 453.009. DISTRIBUTION OF POWERS BETWEEN PERSONAL  
7 REPRESENTATIVE AND SURVIVING SPOUSE. (a) A qualified personal  
8 representative of a deceased spouse's estate may administer:

9           (1) the separate property of the deceased spouse;

10           (2) the community property that was by law under the  
11 management of the deceased spouse during the marriage; and

12           (3) the community property that was by law under the  
13 joint control of the spouses during the marriage.

14       (b) The surviving spouse, as surviving partner of the  
15 marital partnership, is entitled to:

16           (1) retain possession and control of the community  
17 property that was legally under the sole management of the  
18 surviving spouse during the marriage; and

19           (2) exercise over that property any power this chapter  
20 authorizes the surviving spouse to exercise if there is no  
21 administration pending on the deceased spouse's estate.

22       (c) The surviving spouse, by written instrument filed with  
23 the clerk, may waive any right to exercise powers as community  
24 survivor. If the surviving spouse files a waiver under this  
25 subsection, the deceased spouse's personal representative may  
26 administer the entire community estate. (Tex. Prob. Code, Sec.  
27 177.)

1 CHAPTER 454. ADMINISTRATION OF ESTATE OF PERSON PRESUMED DEAD

2 SUBCHAPTER A. ESTATES OF PERSONS PRESUMED DEAD

3 Sec. 454.001. APPLICABILITY; DETERMINATION OF DEATH

4 Sec. 454.002. GRANT OF LETTERS ON PROOF OF DEATH

5 Sec. 454.003. CITATION AND SEARCH

6 Sec. 454.004. DISTRIBUTION OF ESTATE

7 [Sections 454.005-454.050 reserved for expansion]

8 SUBCHAPTER B. PERSONS PRESUMED DEAD BUT SUBSEQUENTLY

9 PROVED LIVING

10 Sec. 454.051. RESTORATION OF ESTATE

11 Sec. 454.052. LIABILITY OF PERSONAL REPRESENTATIVE AND

12 OTHERS ACTING UNDER COURT ORDER; BONDS

13 NOT VOIDED

14 CHAPTER 454. ADMINISTRATION OF ESTATE OF PERSON PRESUMED DEAD

15 SUBCHAPTER A. ESTATES OF PERSONS PRESUMED DEAD

16 Sec. 454.001. APPLICABILITY; DETERMINATION OF DEATH. (a)

17 This subchapter applies in a proceeding to probate a person's will  
18 or administer a person's estate if there is no direct evidence that  
19 the person is dead.

20 (b) The court has jurisdiction to determine the fact, time,  
21 and place of the person's death. (Tex. Prob. Code, Sec. 72(a)  
22 (part).)

23 Sec. 454.002. GRANT OF LETTERS ON PROOF OF DEATH. On  
24 application for the grant of letters testamentary or of  
25 administration for the estate of a person presumed to be dead, the  
26 court shall grant the letters if the death of the person is proved  
27 by circumstantial evidence to the court's satisfaction. (Tex.



1 provided by Subsection (b), a person who was proved by  
2 circumstantial evidence to be dead under Section 454.002 and who,  
3 in a subsequent action, is proved by direct evidence to have been  
4 living at any time after the date the court granted the letters  
5 under that section, is entitled to restoration of the person's  
6 estate or the residue of the person's estate, including the rents  
7 and profits from the estate.

8 (b) For estate property sold by the personal representative  
9 of the estate, a distributee, or a distributee's successors or  
10 assignees to a bona fide purchaser for value, the right of a person  
11 to restoration is limited to the proceeds of the sale or the residue  
12 of the sold property with any increase of the proceeds or the  
13 residue. (Tex. Prob. Code, Sec. 72(a) (part).)

14 Sec. 454.052. LIABILITY OF PERSONAL REPRESENTATIVE AND  
15 OTHERS ACTING UNDER COURT ORDER; BONDS NOT VOIDED. (a) Anyone,  
16 including a personal representative, who delivered to another the  
17 estate or any part of the estate of a person who was proved by  
18 circumstantial evidence to be dead under Section 454.002 and who,  
19 in a subsequent action, is proved by direct evidence to have been  
20 living at any time after the date the court granted the letters  
21 testamentary or of administration under that section is not liable  
22 for any part of the estate delivered in accordance with the court's  
23 order.

24 (b) Subject to Subsection (c), the bond of a personal  
25 representative of the estate of a person described by Subsection  
26 (a) is not void in any event.

27 (c) A surety is not liable for any act of the personal

1 representative that was done in compliance with or approved by the  
2 court's order. (Tex. Prob. Code, Sec. 72(a) (part).)

3 [Chapters 455-500 reserved for expansion]

4 SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND  
5 FIDUCIARIES

6 CHAPTER 501. ANCILLARY PROBATE OF FOREIGN WILL

7 Sec. 501.001. AUTHORITY FOR ANCILLARY PROBATE OF  
8 FOREIGN WILL

9 Sec. 501.002. APPLICATION FOR ANCILLARY PROBATE OF  
10 FOREIGN WILL

11 Sec. 501.003. CITATION AND NOTICE

12 Sec. 501.004. RECORDING BY CLERK

13 Sec. 501.005. EFFECT OF FILING AND RECORDING FOREIGN  
14 WILL

15 Sec. 501.006. ANCILLARY LETTERS TESTAMENTARY

16 Sec. 501.007. EFFECT ON PROPERTY

17 Sec. 501.008. SETTING ASIDE OF CERTAIN FOREIGN WILLS

18 CHAPTER 501. ANCILLARY PROBATE OF FOREIGN WILL

19 Sec. 501.001. AUTHORITY FOR ANCILLARY PROBATE OF FOREIGN  
20 WILL. The written will of a testator who was not domiciled in this  
21 state at the time of the testator's death may be admitted to probate  
22 in this state if:

23 (1) the will would affect any property in this state;  
24 and

25 (2) proof is presented that the will stands probated  
26 or otherwise established in any state of the United States or a  
27 foreign nation. (Tex. Prob. Code, Sec. 95(a).)



1           Sec. 501.002. APPLICATION FOR ANCILLARY PROBATE OF FOREIGN  
2 WILL. (a) An application for ancillary probate in this state of a  
3 foreign will admitted to probate or otherwise established in the  
4 jurisdiction in which the testator was domiciled at the time of the  
5 testator's death is required to indicate only that probate in this  
6 state is requested on the basis of the authenticated copy of the  
7 foreign proceedings in which the will was admitted to probate or  
8 otherwise established.

9           (b) An application for ancillary probate in this state of a  
10 foreign will that has been admitted to probate or otherwise  
11 established in a jurisdiction other than the jurisdiction in which  
12 the testator was domiciled at the time of the testator's death must:

13                   (1) include all information required for an  
14 application for probate of a domestic will; and

15                   (2) state the name and address of:

16                           (A) each devisee; and

17                           (B) each person who would be entitled to a  
18 portion of the estate as an heir in the absence of a will.

19           (c) An application described by Subsection (a) or (b) must  
20 include for filing a copy of the foreign will and the judgment,  
21 order, or decree by which the will was admitted to probate or  
22 otherwise established. The copy must:

23                   (1) be attested by and with the original signature of  
24 the court clerk or other official who has custody of the will or who  
25 is in charge of probate records;

26                   (2) include a certificate with the original signature  
27 of the judge or presiding magistrate of the court stating that the

1 attestation is in proper form; and

2 (3) have the court seal affixed, if a court seal  
3 exists. (Tex. Prob. Code, Secs. 95(b)(1) (part), (2) (part), (c)  
4 (part).)

5 Sec. 501.003. CITATION AND NOTICE. (a) Citation or notice  
6 is not required for an application described by Section 501.002(a).

7 (b) For an application described by Section 501.002(b), a  
8 citation shall be issued and served by registered or certified mail  
9 on each devisee and heir identified in the application. (Tex. Prob.  
10 Code, Secs. 95(b)(1) (part), (2) (part).)

11 Sec. 501.004. RECORDING BY CLERK. (a) If a foreign will  
12 submitted for ancillary probate in this state has been admitted to  
13 probate or otherwise established in the jurisdiction in which the  
14 testator was domiciled at the time of the testator's death, it is  
15 the ministerial duty of the court clerk to record the will and the  
16 evidence of the will's probate or other establishment in the  
17 minutes of the court.

18 (b) If a foreign will submitted for ancillary probate in  
19 this state has been admitted to probate or otherwise established in  
20 a jurisdiction other than the jurisdiction in which the testator  
21 was domiciled at the time of the testator's death, and a contest  
22 against the ancillary probate is not filed as authorized by Chapter  
23 504, the court clerk shall record the will and the evidence of the  
24 will's probate or other establishment in the minutes of the court.

25 (c) A court order is not necessary for the recording of a  
26 foreign will in accordance with this section. (Tex. Prob. Code,  
27 Secs. 95(d)(1) (part), (2) (part).)

1           Sec. 501.005.   EFFECT OF FILING AND RECORDING FOREIGN WILL.  
2 On filing and recording a foreign will in accordance with this  
3 chapter, the foreign will:

- 4           (1) is considered to be admitted to probate; and  
5           (2) has the same effect for all purposes as if the  
6 original will had been admitted to probate by order of a court of  
7 this state, subject to contest in the manner and to the extent  
8 provided by Chapter 504. (Tex. Prob. Code, Secs. 95(d)(1) (part),  
9 (2) (part).)

10          Sec. 501.006.   ANCILLARY LETTERS TESTAMENTARY.   (a) On  
11 application, an executor named in a foreign will admitted to  
12 ancillary probate in this state in accordance with this chapter is  
13 entitled to receive ancillary letters testamentary on proof made to  
14 the court that:

- 15           (1) the executor has qualified to serve as executor in  
16 the jurisdiction in which the will was previously admitted to  
17 probate or otherwise established; and  
18           (2) the executor is not disqualified from serving in  
19 that capacity in this state.

20           (b) After the proof required by Subsection (a) is made, the  
21 court shall enter an order directing that ancillary letters  
22 testamentary be issued to the executor. The court shall revoke any  
23 letters of administration previously issued by the court to any  
24 other person on application of the executor after personal service  
25 of citation on the person to whom the letters were issued. (Tex.  
26 Prob. Code, Sec. 105.)

27          Sec. 501.007.   EFFECT ON PROPERTY.   A foreign will admitted

1 to ancillary probate in this state as provided by this chapter after  
2 having been admitted to probate or otherwise established in the  
3 jurisdiction in which the testator was domiciled at the time of the  
4 testator's death is effective to dispose of property in this state  
5 regardless of whether the will was executed with the formalities  
6 required by this title. (Tex. Prob. Code, Sec. 95(e).)

7       Sec. 501.008. SETTING ASIDE OF CERTAIN FOREIGN WILLS. (a)  
8 This section applies only to a foreign will admitted to ancillary  
9 probate in this state, in accordance with the procedures prescribed  
10 by this chapter, based on the previous probate or other  
11 establishment of the will in the jurisdiction in which the testator  
12 was domiciled at the time of the testator's death.

13       (b) The admission to probate in this state of a foreign will  
14 to which this section applies shall be set aside if it is  
15 subsequently proven in a proceeding brought for that purpose that  
16 the foreign jurisdiction in which the will was admitted to probate  
17 or otherwise established was not in fact the domicile of the  
18 testator at the time of the testator's death.

19       (c) The title or rights of a person who, before commencement  
20 of a proceeding to set aside the admission to probate of a foreign  
21 will under this section, purchases property in good faith and for  
22 value from the personal representative or a devisee or otherwise  
23 deals in good faith with the personal representative or a devisee  
24 are not affected by the subsequent setting aside of the admission to  
25 probate in this state. (Tex. Prob. Code, Sec. 95(f).)

1 CHAPTER 502. ORIGINAL PROBATE OF FOREIGN WILL

2 Sec. 502.001. ORIGINAL PROBATE OF FOREIGN WILL

3 AUTHORIZED

4 Sec. 502.002. PROOF OF FOREIGN WILL IN ORIGINAL

5 PROBATE PROCEEDING

6 CHAPTER 502. ORIGINAL PROBATE OF FOREIGN WILL

7 Sec. 502.001. ORIGINAL PROBATE OF FOREIGN WILL AUTHORIZED.

8 (a) This section applies only to a will of a testator who dies  
9 domiciled outside of this state that:

10 (1) on probate, may operate on any property in this  
11 state; and

12 (2) is valid under the laws of this state.

13 (b) A court may grant original probate of a will described  
14 by Subsection (a) in the same manner as the court grants the probate  
15 of other wills under this title if the will:

16 (1) has not been rejected from probate or  
17 establishment in the jurisdiction in which the testator died  
18 domiciled; or

19 (2) has been rejected from probate or establishment in  
20 the jurisdiction in which the testator died domiciled solely for a  
21 cause that is not a ground for rejection of a will of a testator who  
22 died domiciled in this state.

23 (c) A court may delay passing on an application for probate  
24 of a foreign will pending the result of probate or establishment, or  
25 of a contest of probate or establishment, in the jurisdiction in  
26 which the testator died domiciled. (Tex. Prob. Code, Sec. 103.)

27 Sec. 502.002. PROOF OF FOREIGN WILL IN ORIGINAL PROBATE

1 PROCEEDING. (a) A copy of the will of a testator who dies domiciled  
2 outside of this state, authenticated in the manner required by this  
3 title, is sufficient proof of the contents of the will to admit the  
4 will to probate in an original proceeding in this state if an  
5 objection to the will is not made.

6 (b) This section does not:

7 (1) authorize the probate of a will that would not  
8 otherwise be admissible to probate; or

9 (2) if an objection is made to a will, relieve the  
10 proponent from offering proof of the contents and legal sufficiency  
11 of the will as otherwise required.

12 (c) Subsection (b)(2) does not require the proponent to  
13 produce the original will unless ordered by the court. (Tex. Prob.  
14 Code, Sec. 104.)

15 CHAPTER 503. RECORDING OF FOREIGN TESTAMENTARY INSTRUMENT

16 SUBCHAPTER A. REQUIREMENTS FOR RECORDING FOREIGN TESTAMENTARY

17 INSTRUMENT

18 Sec. 503.001. AUTHORIZATION TO RECORD CERTAIN FOREIGN

19 TESTAMENTARY INSTRUMENTS IN DEED

20 RECORDS

21 Sec. 503.002. ORIGINAL SIGNATURES NOT REQUIRED

22 Sec. 503.003. CONTEST OF RECORDED FOREIGN TESTAMENTARY

23 INSTRUMENT PERMITTED

24 [Sections 503.004-503.050 reserved for expansion]

1                   SUBCHAPTER B. EFFECTS OF RECORDED FOREIGN

2                                   TESTAMENTARY INSTRUMENT

3   Sec. 503.051. RECORDED FOREIGN TESTAMENTARY INSTRUMENT

4                                   AS CONVEYANCE

5   Sec. 503.052. RECORDED FOREIGN TESTAMENTARY INSTRUMENT

6                                   AS NOTICE OF TITLE

7           CHAPTER 503. RECORDING OF FOREIGN TESTAMENTARY INSTRUMENT

8           SUBCHAPTER A. REQUIREMENTS FOR RECORDING FOREIGN TESTAMENTARY

9                                   INSTRUMENT

10           Sec. 503.001. AUTHORIZATION TO RECORD CERTAIN FOREIGN  
11 TESTAMENTARY INSTRUMENTS IN DEED RECORDS. (a) A copy of a will or  
12 other testamentary instrument that conveys, or in any other manner  
13 disposes of, land in this state and that has been probated according  
14 to the laws of any state of the United States or a country other than  
15 the United States, along with a copy of the judgment, order, or  
16 decree by which the instrument was admitted to probate that has the  
17 attestation, seal, and certificate required by Section 501.002(c),  
18 may be filed and recorded in the deed records in any county in this  
19 state in which the land is located:

20                   (1) without further proof or authentication, subject  
21 to Section 503.003; and

22                   (2) in the same manner as a deed or conveyance is  
23 required to be recorded under the laws of this state.

24           (b) A copy of a will or other testamentary instrument  
25 described by Subsection (a), along with a copy of the judgment,  
26 order, or decree by which the instrument was admitted to probate  
27 that has the attestation and certificate required by Section

1 501.002(c), is:

2 (1) prima facie evidence that the instrument has been  
3 admitted to probate according to the laws of the state or country in  
4 which it was allegedly admitted to probate; and

5 (2) sufficient to authorize the instrument and the  
6 judgment, order, or decree to be recorded in the deed records in the  
7 proper county or counties in this state. (Tex. Prob. Code, Secs. 96  
8 (part), 97.)

9 Sec. 503.002. ORIGINAL SIGNATURES NOT REQUIRED.  
10 Notwithstanding Section 501.002(c), the original signatures  
11 required by that section may not be required for a recordation in  
12 the deed records in accordance with Section 503.001 or for a purpose  
13 described by Section 503.051 or 503.052. (Tex. Prob. Code, Sec.  
14 95(c) (part).)

15 Sec. 503.003. CONTEST OF RECORDED FOREIGN TESTAMENTARY  
16 INSTRUMENT PERMITTED. The validity of a will or other testamentary  
17 instrument, a copy of which is filed and recorded as provided by  
18 Section 503.001, may be contested in the manner and to the extent  
19 provided by Subchapter A, Chapter 504. (Tex. Prob. Code, Sec. 96  
20 (part).)

21 [Sections 503.004-503.050 reserved for expansion]

22 SUBCHAPTER B. EFFECTS OF RECORDED FOREIGN  
23 TESTAMENTARY INSTRUMENT

24 Sec. 503.051. RECORDED FOREIGN TESTAMENTARY INSTRUMENT AS  
25 CONVEYANCE. A copy of a foreign will or other testamentary  
26 instrument described by Section 503.001 and the copy of the  
27 judgment, order, or decree by which the instrument was admitted to



1 probate that are attested and proved as provided by that section and  
2 delivered to the county clerk of the proper county in this state to  
3 be recorded in the deed records:

4 (1) take effect and are valid as a deed of conveyance  
5 of all property in this state covered by the instrument; and

6 (2) have the same effect as a recorded deed or other  
7 conveyance of land beginning at the time the instrument is  
8 delivered to the clerk to be recorded. (Tex. Prob. Code, Sec. 98.)

9 Sec. 503.052. RECORDED FOREIGN TESTAMENTARY INSTRUMENT AS  
10 NOTICE OF TITLE. A copy of a foreign will or other testamentary  
11 instrument described by Section 503.001 and the copy of the  
12 judgment, order, or decree by which the instrument was admitted to  
13 probate that is attested and proved as provided by that section and  
14 filed for recording in the deed records of the proper county in this  
15 state constitute notice to all persons of the:

16 (1) existence of the instrument; and

17 (2) title or titles conferred by the instrument.  
18 (Tex. Prob. Code, Sec. 99.)

19 CHAPTER 504. CONTEST OF OR OTHER CHALLENGE TO FOREIGN TESTAMENTARY  
20 INSTRUMENT

21 SUBCHAPTER A. CONTEST OR SETTING ASIDE PROBATE OF FOREIGN WILL IN  
22 THIS STATE

23 Sec. 504.001. GROUNDS FOR CONTESTING FOREIGN WILL  
24 PROBATED IN DOMICILIARY JURISDICTION

25 Sec. 504.002. GROUNDS FOR CONTESTING FOREIGN WILL  
26 PROBATED IN NON-DOMICILIARY  
27 JURISDICTION

1 Sec. 504.003. PROCEDURES AND TIME LIMITS FOR

2 CONTESTING FOREIGN WILL

3 Sec. 504.004. PROBATE OF FOREIGN WILL SET ASIDE FOR

4 LACK OF SERVICE

5 [Sections 504.005-504.050 reserved for expansion]

6 SUBCHAPTER B. CONTEST OR FINAL REJECTION IN FOREIGN JURISDICTION

7 Sec. 504.051. NOTICE OF WILL CONTEST IN FOREIGN

8 JURISDICTION

9 Sec. 504.052. EFFECT OF NOTICE

10 Sec. 504.053. EFFECT OF REJECTION OF TESTAMENTARY

11 INSTRUMENT BY FOREIGN JURISDICTION

12 CHAPTER 504. CONTEST OF OR OTHER CHALLENGE TO FOREIGN TESTAMENTARY

13 INSTRUMENT

14 SUBCHAPTER A. CONTEST OR SETTING ASIDE PROBATE OF FOREIGN WILL IN

15 THIS STATE

16 Sec. 504.001. GROUNDS FOR CONTESTING FOREIGN WILL PROBATED

17 IN DOMICILIARY JURISDICTION. (a) Subject to Subsection (b), an  
18 interested person may contest a foreign will that has been:

19 (1) admitted to probate or established in the  
20 jurisdiction in which the testator was domiciled at the time of the  
21 testator's death; and

22 (2) admitted to probate in this state or filed in the  
23 deed records of any county of this state.

24 (b) A will described by Subsection (a) may be contested only  
25 on the grounds that:

26 (1) the proceedings in the jurisdiction in which the  
27 testator was domiciled at the time of the testator's death were not

1 authenticated in the manner required for ancillary probate or  
2 recording in the deed records in this state;

3 (2) the will has been finally rejected for probate in  
4 this state in another proceeding; or

5 (3) the probate of the will has been set aside in the  
6 jurisdiction in which the testator was domiciled at the time of the  
7 testator's death. (Tex. Prob. Code, Sec. 100(a).)

8 Sec. 504.002. GROUNDS FOR CONTESTING FOREIGN WILL PROBATED  
9 IN NON-DOMICILIARY JURISDICTION. A foreign will admitted to  
10 probate or established in any jurisdiction other than the  
11 jurisdiction in which the testator was domiciled at the time of the  
12 testator's death may be contested on any grounds that are the basis  
13 for the contest of a domestic will. (Tex. Prob. Code, Sec. 100(b)  
14 (part).)

15 Sec. 504.003. PROCEDURES AND TIME LIMITS FOR CONTESTING  
16 FOREIGN WILL. (a) The probate in this state of a foreign will  
17 probated or established in a jurisdiction other than the  
18 jurisdiction in which the testator was domiciled at the time of the  
19 testator's death may be contested in the manner that would apply if  
20 the testator had been domiciled in this state at the time of the  
21 testator's death.

22 (b) A foreign will admitted to ancillary probate in this  
23 state or filed in the deed records of any county of this state may be  
24 contested using the same procedures and within the same time limits  
25 applicable to the contest of a will admitted to original probate in  
26 this state. (Tex. Prob. Code, Secs. 95(d)(2) (part), 100(c).)

27 Sec. 504.004. PROBATE OF FOREIGN WILL SET ASIDE FOR LACK OF

1 SERVICE. (a) The probate in this state of a foreign will shall be  
2 set aside if:

3 (1) the will was probated in this state:

4 (A) in accordance with the procedure applicable  
5 to the probate of a will admitted to probate in the jurisdiction in  
6 which the testator was domiciled at the time of the testator's  
7 death; and

8 (B) without the service of citation required for  
9 a will admitted to probate in another jurisdiction that was not the  
10 testator's domicile at the time of the testator's death; and

11 (2) it is proved that the foreign jurisdiction in  
12 which the will was probated was not the testator's domicile at the  
13 time of the testator's death.

14 (b) If otherwise entitled, a will the probate of which is  
15 set aside in accordance with Subsection (a) may be:

16 (1) reprobated in accordance with the procedure  
17 prescribed for the probate of a will admitted in a jurisdiction that  
18 was not the testator's domicile at the time of the testator's death;  
19 or

20 (2) admitted to original probate in this state in the  
21 proceeding in which the ancillary probate was set aside or in a  
22 subsequent proceeding. (Tex. Prob. Code, Sec. 100(b) (part).)

23 [Sections 504.005-504.050 reserved for expansion]

24 SUBCHAPTER B. CONTEST OR FINAL REJECTION IN FOREIGN JURISDICTION

25 Sec. 504.051. NOTICE OF WILL CONTEST IN FOREIGN  
26 JURISDICTION. Verified notice that a proceeding to contest a will  
27 probated or established in a foreign jurisdiction has been

1 commenced in that jurisdiction may be filed and recorded in the  
2 minutes of the court in this state in which the foreign will was  
3 probated, or in the deed records of any county of this state in  
4 which the foreign will was recorded, within the time limits for the  
5 contest of a foreign will in this state. (Tex. Prob. Code, Sec. 101  
6 (part).)

7       Sec. 504.052. EFFECT OF NOTICE. After a notice is filed and  
8 recorded under Section 504.051, the probate or recording in this  
9 state of the foreign will that is the subject of the notice has no  
10 effect until verified proof is filed and recorded that the foreign  
11 proceedings:

- 12               (1) have been terminated in favor of the will; or  
13               (2) were never commenced. (Tex. Prob. Code, Sec. 101  
14 (part).)

15       Sec. 504.053. EFFECT OF REJECTION OF TESTAMENTARY  
16 INSTRUMENT BY FOREIGN JURISDICTION. (a) Except as provided by  
17 Subsection (b), final rejection of a will or other testamentary  
18 instrument from probate or establishment in a foreign jurisdiction  
19 in which the testator was domiciled at the time of the testator's  
20 death is conclusive in this state.

21               (b) A will or other testamentary instrument that is finally  
22 rejected from probate or establishment in a foreign jurisdiction in  
23 which the testator was domiciled at the time of the testator's death  
24 may be admitted to probate or continue to be effective in this state  
25 if the will or other instrument was rejected solely for a cause that  
26 is not a ground for rejection of a will of a testator who died  
27 domiciled in this state. (Tex. Prob. Code, Sec. 102.)

1 CHAPTER 505. FOREIGN PERSONAL REPRESENTATIVES, TRUSTEES, AND

2 FIDUCIARIES

3 SUBCHAPTER A. FOREIGN CORPORATE FIDUCIARY

4 Sec. 505.001. DEFINITION

5 Sec. 505.002. APPLICABILITY OF OTHER LAW

6 Sec. 505.003. AUTHORITY OF FOREIGN CORPORATE FIDUCIARY

7 TO SERVE IN FIDUCIARY CAPACITY

8 Sec. 505.004. FILING REQUIREMENTS; DESIGNATION

9 Sec. 505.005. SERVICE OF NOTICE OR PROCESS ON

10 SECRETARY OF STATE

11 Sec. 505.006. CRIMINAL PENALTY; EFFECT OF CONVICTION

12 [Sections 505.007-505.050 reserved for expansion]

13 SUBCHAPTER B. FOREIGN EXECUTORS AND TRUSTEES

14 Sec. 505.051. APPLICABILITY OF BOND REQUIREMENT

15 Sec. 505.052. POWER TO SELL PROPERTY

16 [Sections 505.053-505.100 reserved for expansion]

17 SUBCHAPTER C. RECOVERY OF DEBTS BY FOREIGN EXECUTOR OR

18 ADMINISTRATOR

19 Sec. 505.101. SUIT TO RECOVER DEBT

20 Sec. 505.102. JURISDICTION

21 Sec. 505.103. RESTRICTION ON SUIT BROUGHT BY FOREIGN

22 EXECUTOR OR ADMINISTRATOR

23 CHAPTER 505. FOREIGN PERSONAL REPRESENTATIVES, TRUSTEES, AND

24 FIDUCIARIES

25 SUBCHAPTER A. FOREIGN CORPORATE FIDUCIARY

26 Sec. 505.001. DEFINITION. In this subchapter, "foreign

27 corporate fiduciary" means a corporate fiduciary that does not have

1 its main office or a branch office in this state. (Tex. Prob. Code,  
2 Sec. 105A(a) (part).)

3 Sec. 505.002. APPLICABILITY OF OTHER LAW. (a) A foreign  
4 corporate fiduciary acting in a fiduciary capacity in this state in  
5 strict accordance with this subchapter:

6 (1) is not transacting business in this state within  
7 the meaning of Section 9.001, Business Organizations Code; and

8 (2) is qualified to serve in that capacity under  
9 Section 501.006.

10 (b) This subchapter is in addition to, and not a limitation  
11 on, Subtitles F and G, Title 3, Finance Code. (Tex. Prob. Code,  
12 Secs. 105A(c), (d).)

13 Sec. 505.003. AUTHORITY OF FOREIGN CORPORATE FIDUCIARY TO  
14 SERVE IN FIDUCIARY CAPACITY. (a) Subject to Subsections (b) and  
15 (c) and Section 505.004, a foreign corporate fiduciary may be  
16 appointed by will, deed, agreement, declaration, indenture, court  
17 order or decree, or otherwise and may serve in this state in any  
18 fiduciary capacity, including as:

19 (1) trustee of a personal or corporate trust;

20 (2) executor;

21 (3) administrator; or

22 (4) guardian of the estate.

23 (b) A foreign corporate fiduciary appointed to serve in a  
24 fiduciary capacity in this state must have the corporate power to  
25 act in that capacity.

26 (c) This section applies only to the extent that the home  
27 state of the foreign corporate fiduciary appointed to serve in a

1 fiduciary capacity in this state grants to a corporate fiduciary  
2 whose home state is this state the authority to serve in like  
3 fiduciary capacity. (Tex. Prob. Code, Sec. 105A(a) (part).)

4       Sec. 505.004. FILING REQUIREMENTS; DESIGNATION. (a) A  
5 foreign corporate fiduciary must file the following documents with  
6 the secretary of state before qualifying or serving in this state in  
7 a fiduciary capacity as authorized by Section 505.003:

8           (1) a copy of the fiduciary's charter, articles of  
9 incorporation or of association, and all amendments to those  
10 documents, certified by the fiduciary's secretary under the  
11 fiduciary's corporate seal;

12           (2) a properly executed written instrument that by the  
13 instrument's terms is of indefinite duration and irrevocable,  
14 appointing the secretary of state and the secretary of state's  
15 successors as the fiduciary's agent for service of process on whom  
16 notices and processes issued by a court of this state may be served  
17 in an action or proceeding relating to a trust, estate, fund, or  
18 other matter within this state with respect to which the fiduciary  
19 is acting in a fiduciary capacity, including the acts or defaults of  
20 the fiduciary with respect to that trust, estate, or fund; and

21           (3) a written certificate of designation specifying  
22 the name and address of the officer, agent, or other person to whom  
23 the secretary of state shall forward notices and processes  
24 described by Subdivision (2).

25       (b) A foreign corporate fiduciary may change the  
26 certificate of designation under Subsection (a)(3) by filing a new  
27 certificate. (Tex. Prob. Code, Sec. 105A(b) (part).)



1           Sec. 505.005. SERVICE OF NOTICE OR PROCESS ON SECRETARY OF  
2 STATE. (a) On receipt of a notice or process described by Section  
3 505.004(a)(2), the secretary of state shall promptly forward the  
4 notice or process by registered or certified mail to the officer,  
5 agent, or other person designated by the foreign corporate  
6 fiduciary under Section 505.004 to receive the notice or process.

7           (b) Service of notice or process described by Section  
8 505.004(a)(2) on the secretary of state as agent for a foreign  
9 corporate fiduciary has the same effect as if personal service had  
10 been had in this state on the foreign corporate fiduciary. (Tex.  
11 Prob. Code, Sec. 105A(b) (part).)

12           Sec. 505.006. CRIMINAL PENALTY; EFFECT OF CONVICTION. (a)  
13 A foreign corporate fiduciary commits an offense if the fiduciary  
14 violates this subchapter.

15           (b) An offense under this section is a misdemeanor  
16 punishable by a fine not to exceed \$5,000.

17           (c) On conviction, the court may prohibit a foreign  
18 corporate fiduciary convicted of an offense under this section from  
19 thereafter serving in any fiduciary capacity in this state. (Tex.  
20 Prob. Code, Sec. 105A(e).)

21           [Sections 505.007-505.050 reserved for expansion]

22           SUBCHAPTER B. FOREIGN EXECUTORS AND TRUSTEES

23           Sec. 505.051. APPLICABILITY OF BOND REQUIREMENT. (a) A  
24 foreign executor is not required to give bond if the will appointing  
25 the foreign executor provides that the executor may serve without  
26 bond.

27           (b) The bond provisions of this title applicable to domestic



1 suit in this state for the recovery of debts due to the decedent.

2 (b) The plaintiff's letters testamentary or of  
3 administration granted by a competent tribunal, properly  
4 authenticated, must be filed with the suit. (Tex. Prob. Code, Secs.  
5 107A(a), (b).)

6 Sec. 505.102. JURISDICTION. (a) A foreign executor or  
7 administrator who files a suit authorized by Section 505.101  
8 submits personally to the jurisdiction of the courts of this state  
9 in a proceeding relating to the recovery of a debt owed to a  
10 resident of this state by the decedent whose estate the executor or  
11 administrator represents.

12 (b) Jurisdiction under this section is limited to the amount  
13 of money or value of personal property recovered in this state by  
14 the foreign executor or administrator. (Tex. Prob. Code, Sec.  
15 107A(c).)

16 Sec. 505.103. RESTRICTION ON SUIT BROUGHT BY FOREIGN  
17 EXECUTOR OR ADMINISTRATOR. A suit may not be maintained in this  
18 state by a foreign executor or administrator for a decedent's  
19 estate under this subchapter if there is:

20 (1) an executor or administrator of the decedent's  
21 estate qualified by a court of this state; or

22 (2) a pending application in this state for the  
23 appointment of an executor or administrator of the decedent's  
24 estate. (Tex. Prob. Code, Sec. 107A(d).)

25 [Chapters 506-550 reserved for expansion]

1           SUBTITLE L.   PAYMENT OF ESTATES INTO TREASURY  
2           CHAPTER 551.   PAYMENT OF CERTAIN ESTATES TO STATE  
3           SUBCHAPTER A.   PAYMENT OF CERTAIN FUNDS TO STATE  
4   Sec. 551.001.   PAYMENT OF CERTAIN SHARES OF ESTATE TO  
5                            STATE  
6   Sec. 551.002.   PAYMENT OF PORTION THAT IS IN MONEY  
7   Sec. 551.003.   PAYMENT OF PORTION THAT IS NOT IN MONEY  
8   Sec. 551.004.   COMPENSATION TO EXECUTOR OR  
9                            ADMINISTRATOR  
10   Sec. 551.005.   COMPTROLLER INDISPENSABLE PARTY  
11   Sec. 551.006.   COMPTROLLER'S RECEIPT  
12           [Sections 551.007-551.050 reserved for expansion]  
13           SUBCHAPTER B.   RECOVERY OF FUNDS PAID TO STATE  
14   Sec. 551.051.   RECOVERY OF FUNDS  
15   Sec. 551.052.   ACTION FOR RECOVERY  
16   Sec. 551.053.   JUDGMENT  
17   Sec. 551.054.   PAYMENT OF COSTS  
18   Sec. 551.055.   REPRESENTATION OF COMPTROLLER  
19           [Sections 551.056-551.100 reserved for expansion]  
20           SUBCHAPTER C.   PENALTIES; ENFORCEMENT  
21   Sec. 551.101.   LIABILITY OF COURT CLERK; PENALTY  
22   Sec. 551.102.   DAMAGES FOR FAILURE TO MAKE PAYMENTS  
23   Sec. 551.103.   ENFORCEMENT OF PAYMENT AND DAMAGES;  
24                            RECOVERY ON BOND  
25           CHAPTER 551.   PAYMENT OF CERTAIN ESTATES TO STATE  
26           SUBCHAPTER A.   PAYMENT OF CERTAIN FUNDS TO STATE  
27           Sec. 551.001.   PAYMENT OF CERTAIN SHARES OF ESTATE TO STATE.

1 (a) The court, by written order, shall require the executor or  
2 administrator of an estate to pay to the comptroller as provided by  
3 this subchapter the share of that estate of a person entitled to  
4 that share who does not demand the share from the executor or  
5 administrator within six months after the date of, as applicable:

6 (1) a court order approving the report of the  
7 commissioners of partition made under Section 360.154; or

8 (2) the settlement of the final account of the  
9 executor or administrator.

10 (b) This section does not apply to the share of an estate to  
11 which a resident minor without a guardian is entitled. (Tex. Prob.  
12 Code, Sec. 427 (part).)

13 Sec. 551.002. PAYMENT OF PORTION THAT IS IN MONEY. The  
14 executor or administrator shall pay the portion of the share  
15 subject to Section 551.001 that is in money to the comptroller.  
16 (Tex. Prob. Code, Sec. 427 (part).)

17 Sec. 551.003. PAYMENT OF PORTION THAT IS NOT IN MONEY. (a)  
18 The court's order under Section 551.001 must require the executor  
19 or administrator to:

20 (1) sell, on terms determined best by the court, the  
21 portion of a share subject to that section that is in property other  
22 than money; and

23 (2) on collection of the proceeds of the sale, pay the  
24 proceeds to the comptroller.

25 (b) An action to recover the proceeds of a sale under this  
26 section is governed by Subchapter B. (Tex. Prob. Code, Sec. 427  
27 (part).)

1           Sec. 551.004. COMPENSATION TO EXECUTOR OR ADMINISTRATOR.  
2 The executor or administrator is entitled to reasonable  
3 compensation for services performed under Section 551.003. (Tex.  
4 Prob. Code, Sec. 427 (part).)

5           Sec. 551.005. COMPTROLLER INDISPENSABLE PARTY. (a) The  
6 comptroller is an indispensable party to a judicial or  
7 administrative proceeding concerning the disposition and handling  
8 of any share of an estate that is or may be payable to the  
9 comptroller under Section 551.001.

10           (b) The clerk of a court that orders an executor or  
11 administrator to pay funds to the comptroller under Section 551.001  
12 shall serve on the comptroller, by personal service of citation, a  
13 certified copy of the court order not later than the fifth day after  
14 the date the order is issued. (Tex. Prob. Code, Sec. 428.)

15           Sec. 551.006. COMPTROLLER'S RECEIPT. (a) An executor or  
16 administrator who pays to the comptroller under this subchapter any  
17 funds of the estate represented by the executor or administrator  
18 shall:

19                 (1) obtain from the comptroller a receipt for the  
20 payment, with official seal attached; and

21                 (2) file the receipt with the clerk of the court that  
22 orders the payment.

23           (b) The court clerk shall record the comptroller's receipt  
24 in the minutes of the court. (Tex. Prob. Code, Sec. 430.)

25           [Sections 551.007-551.050 reserved for expansion]

26           SUBCHAPTER B. RECOVERY OF FUNDS PAID TO STATE

27           Sec. 551.051. RECOVERY OF FUNDS. If funds of an estate have

1 been paid to the comptroller under this chapter, an heir or devisee  
2 or an assignee of an heir or devisee may recover the share of the  
3 funds to which the heir, devisee, or assignee is entitled. (Tex.  
4 Prob. Code, Sec. 433(a) (part).)

5       Sec. 551.052. ACTION FOR RECOVERY. (a) A person claiming  
6 funds under Section 551.051 must bring an action, on or before the  
7 fourth anniversary of the date of the order requiring payment under  
8 this chapter to the comptroller, by filing a petition in the  
9 district court of Travis County against the comptroller. The  
10 petition must set forth:

11             (1) the plaintiff's right to the funds; and

12             (2) the amount claimed by the plaintiff.

13       (b) On the filing of a petition under Subsection (a), the  
14 court clerk shall issue a citation for the comptroller to appear and  
15 represent the interest of this state in the action. The citation  
16 must be served by personal service.

17       (c) Proceedings in an action brought under this section are  
18 governed by the rules applicable to other civil actions. (Tex.  
19 Prob. Code, Secs. 433(a) (part), (b) (part), (c) (part).)

20       Sec. 551.053. JUDGMENT. (a) If a plaintiff establishes the  
21 plaintiff's right to funds claimed under this subchapter, the court  
22 shall award a judgment that specifies the amount to which the  
23 plaintiff is entitled.

24       (b) A certified copy of the judgment constitutes sufficient  
25 authority for the comptroller to pay the judgment. (Tex. Prob.  
26 Code, Sec. 433(c) (part).)

27       Sec. 551.054. PAYMENT OF COSTS. The costs of an action

1 brought under this subchapter shall be adjudged against the  
2 plaintiff. The plaintiff may be required to secure the costs.  
3 (Tex. Prob. Code, Sec. 433(d).)

4 Sec. 551.055. REPRESENTATION OF COMPTROLLER. As the  
5 comptroller elects and with the approval of the attorney general,  
6 the attorney general, the county attorney or criminal district  
7 attorney for the county, or the district attorney for the district  
8 shall represent the comptroller in an action brought under this  
9 subchapter. (Tex. Prob. Code, Sec. 433(b) (part).)

10 [Sections 551.056-551.100 reserved for expansion]

11 SUBCHAPTER C. PENALTIES; ENFORCEMENT

12 Sec. 551.101. LIABILITY OF COURT CLERK; PENALTY. (a) A  
13 court clerk who fails to timely comply with Section 551.005(b) is  
14 liable for a \$100 penalty.

15 (b) The penalty under Subsection (a) shall be recovered  
16 through an action brought in the name of this state, after personal  
17 service of citation, on the information of any resident. Half of  
18 the penalty shall be paid to the informer and the other half to this  
19 state. (Tex. Prob. Code, Sec. 429.)

20 Sec. 551.102. DAMAGES FOR FAILURE TO MAKE PAYMENTS. (a) An  
21 executor or administrator who fails to pay funds of an estate to the  
22 comptroller as required by an order under Section 551.001 on or  
23 before the 30th day after the date of the order is liable, after  
24 personal service of citation charging that failure and after proof  
25 of the failure, for damages. The damages:

26 (1) accrue at the rate of five percent of the amount of  
27 the funds per month for each month or fraction of a month after the



1 30th day after the date of the order that the executor or  
2 administrator fails to make the payment; and

3 (2) must be paid to the comptroller out of the  
4 executor's or administrator's own estate.

5 (b) Damages under this section may be recovered in any court  
6 of competent jurisdiction. (Tex. Prob. Code, Sec. 431.)

7 Sec. 551.103. ENFORCEMENT OF PAYMENT AND DAMAGES; RECOVERY  
8 ON BOND. (a) The comptroller may apply in the name of this state to  
9 the court that issued an order for the payment of funds of an estate  
10 under this chapter to enforce the payment of:

11 (1) funds the executor or administrator has failed to  
12 pay to the comptroller under the order; and

13 (2) any damages that have accrued under Section  
14 551.102.

15 (b) The court shall enforce the payment under Subsection (a)  
16 in the manner prescribed for enforcement of other payment orders.

17 (c) In addition to the action under Subsection (a), the  
18 comptroller may bring an action in the name of this state against  
19 the executor or administrator and the sureties on the executor's or  
20 administrator's bond for the recovery of the funds ordered to be  
21 paid and any accrued damages.

22 (d) The county attorney or criminal district attorney for  
23 the county, the district attorney for the district, or the attorney  
24 general, at the election of the comptroller and with the approval of  
25 the attorney general, shall represent the comptroller in all  
26 proceedings under this section, and shall also represent the  
27 interests of this state in all other matters arising under this

1 code. (Tex. Prob. Code, Sec. 432.)

2 [Chapters 552-600 reserved for expansion]

3 SUBTITLE M. DURABLE POWERS OF ATTORNEY

4 [Chapters 601-650 reserved for expansion]

5 [Subtitles N-W reserved for expansion]

6 SUBTITLE X. TEXAS PROBATE CODE: SCOPE, JURISDICTION, AND COURTS

7 CHAPTER I. GENERAL PROVISIONS

8 [Reserved for expansion]

9 SUBTITLE Y. TEXAS PROBATE CODE: INDEPENDENT ADMINISTRATION

10 CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION

11 PART 4. INDEPENDENT ADMINISTRATION

12 [Reserved for expansion]

13 SUBTITLE Z. TEXAS PROBATE CODE: DURABLE POWERS OF ATTORNEY

14 [Reserved for expansion]

15 [Titles 3-24 reserved for expansion]

16 TITLE 25. TEXAS PROBATE CODE: GUARDIANSHIP

17 [Reserved for expansion]

18 SECTION 2. TRANSFER AND REDESIGNATION. Sections 2, 4, 5,  
19 5A, 5B, 5C, 6, and 8, Texas Probate Code, are transferred to Chapter  
20 I, Subtitle X, Title 2, Estates and Guardianships Code, as added by  
21 Section 1 of this Act, and redesignated as Sections 2, 4, 5, 5A, 5B,  
22 5C, 6, and 8, Estates and Guardianships Code, respectively.

23 SECTION 3. TRANSFER AND REDESIGNATION. Sections 145  
24 through 154A, Texas Probate Code, are transferred to Part 4,  
25 Chapter VI, Subtitle Y, Title 2, Estates and Guardianships Code, as  
26 added by Section 1 of this Act, and redesignated as Sections 145  
27 through 154A, Estates and Guardianships Code, respectively.

1 SECTION 4. TRANSFER AND REDESIGNATION. Chapter XII, Texas  
2 Probate Code, is transferred to Subtitle Z, Title 2, Estates and  
3 Guardianships Code, as added by Section 1 of this Act, and Sections  
4 481 through 506 of that chapter are redesignated as Sections 481  
5 through 506, Estates and Guardianships Code, respectively.

6 SECTION 5. TRANSFER AND REDESIGNATION. Chapter XIII, Texas  
7 Probate Code, is transferred to Title 25, Estates and Guardianships  
8 Code, as added by Section 1 of this Act, and redesignated as Chapter  
9 XIII of that title, and Sections 601 through 905 of that chapter are  
10 redesignated as Sections 601 through 905, Estates and Guardianships  
11 Code, respectively.

12 SECTION 6. CONFORMING AMENDMENT. Section 2, Texas Probate  
13 Code, redesignated as Section 2, Estates and Guardianships Code, by  
14 Section 2 of this Act, is amended to read as follows:

15 Sec. 2. EFFECTIVE DATE AND APPLICATION. [~~(a) Effective Date.~~  
16 ~~This Code shall take effect and be in force on and after January 1,~~  
17 ~~1956. The procedure herein prescribed shall govern all probate~~  
18 ~~proceedings in county and probate courts brought after the~~  
19 ~~effective date of this Act, and also all further procedure in~~  
20 ~~proceedings in probate then pending, except to the extent that in~~  
21 ~~the opinion of the court, with respect to proceedings in probate~~  
22 ~~then pending, its application in particular proceedings or parts~~  
23 ~~thereof would not be feasible or would work injustice, in which~~  
24 ~~event the former procedure shall apply.~~

25 [~~(b) Rights Not Affected. No act done in any proceeding~~  
26 ~~commenced before this Code takes effect, and no accrued right,~~  
27 ~~shall be impaired by the provisions of this Code. When a right is~~

1 ~~acquired, extinguished, or barred upon the expiration of a~~  
2 ~~prescribed period of time which has commenced to run by the~~  
3 ~~provision of any statute in force before this Code takes effect,~~  
4 ~~such provision shall remain in force and be deemed a part of this~~  
5 ~~Code with respect to such right. All things properly done under any~~  
6 ~~previously existing statute prior to the taking effect of this Code~~  
7 ~~shall be treated as valid. Where citation or other process or~~  
8 ~~notice is issued and served in compliance with existing statutes~~  
9 ~~prior to the taking effect of this Code, the party upon whom such~~  
10 ~~citation or other process has been served shall have the time~~  
11 ~~provided for under such previously existing statutes in which to~~  
12 ~~comply therewith.~~

13 ~~[(c) Subdivisions Have No Legal Effect. The division of this~~  
14 ~~Code into Chapters, Parts, Sections, Subsections, and Paragraphs is~~  
15 ~~solely for convenience and shall have no legal effect.~~

16 ~~[(d) Severability. If any provision of this Code, or the~~  
17 ~~application thereof to any person or circumstance, is held invalid,~~  
18 ~~such invalidity shall not affect other provisions or applications~~  
19 ~~of the Code which can be given effect without the invalid provision~~  
20 ~~or application, and to this end the provisions of this Code are~~  
21 ~~declared to be severable, and the Legislature hereby states that it~~  
22 ~~would have enacted such portions of the Code which can lawfully be~~  
23 ~~given effect regardless of the possible invalidity of other~~  
24 ~~provisions of the Code.]~~

25 (e) Nature of Proceeding. The administration of the estate  
26 of a decedent, from the filing of the application for probate and  
27 administration, or for administration, until the decree of final

1 distribution and the discharge of the last personal representative,  
2 shall be considered as one proceeding for purposes of jurisdiction.  
3 The entire proceeding is a proceeding in rem.

4 SECTION 7. CONFORMING AMENDMENT. Section 145(q), Texas  
5 Probate Code, redesignated as Section 145(q), Estates and  
6 Guardianships Code, by Section 3 of this Act, is amended to read as  
7 follows:

8 (q) Absent proof of fraud or collusion on the part of a  
9 judge, no judge may be held civilly liable for the commission of  
10 misdeeds or the omission of any required act of any person, firm, or  
11 corporation designated as an independent executor or independent  
12 administrator under Subsections (c), (d), and (e) of the section.  
13 ~~[Section 36 of this code does not apply to the appointment of an~~  
14 ~~independent executor or administrator under Subsection (c), (d), or~~  
15 ~~(e) of this section.]~~

16 SECTION 8. CONFORMING AMENDMENT. Section 154A(i), Texas  
17 Probate Code, redesignated as Section 154A(i), Estates and  
18 Guardianships Code, by Section 3 of this Act, is amended to read as  
19 follows:

20 (i) Absent proof of fraud or collusion on the part of a  
21 judge, the judge may not be held civilly liable for the commission  
22 of misdeeds or the omission of any required act of any person, firm,  
23 or corporation designated as a successor independent executor under  
24 this section. ~~[Section 36 of this code does not apply to an~~  
25 ~~appointment of a successor independent executor under this~~  
26 ~~section.]~~

27 SECTION 9. CONFORMING AMENDMENT. Section 490(a), Texas

1 Probate Code, redesignated as Section 490(a), Estates and  
2 Guardianships Code, by Section 4 of this Act, is amended to read as  
3 follows:

4 (a) The following form is known as a "statutory durable  
5 power of attorney." A person may use a statutory durable power of  
6 attorney to grant an attorney in fact or agent powers with respect  
7 to a person's property and financial matters. A power of attorney  
8 in substantially the following form has the meaning and effect  
9 prescribed by this chapter. The validity of a power of attorney as  
10 meeting the requirements of a statutory durable power of attorney  
11 is not affected by the fact that one or more of the categories of  
12 optional powers listed in the form are struck or the form includes  
13 specific limitations on or additions to the attorney in fact's or  
14 agent's powers.

15 The following form is not exclusive, and other forms of power  
16 of attorney may be used.

17 STATUTORY DURABLE POWER OF ATTORNEY

18 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.  
19 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER  
20 XII, ESTATES AND GUARDIANSHIPS [~~TEXAS PROBATE~~] CODE. IF YOU HAVE  
21 ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE.  
22 THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER  
23 HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF  
24 ATTORNEY IF YOU LATER WISH TO DO SO.

25 I, \_\_\_\_\_ (insert your name and address), appoint  
26 \_\_\_\_\_ (insert the name and address of the person appointed) as  
27 my agent (attorney-in-fact) to act for me in any lawful way with

1 respect to all of the following powers except for a power that I  
2 have crossed out below.

3 TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER  
4 WITHHELD.

5 Real property transactions;

6 Tangible personal property transactions;

7 Stock and bond transactions;

8 Commodity and option transactions;

9 Banking and other financial institution transactions;

10 Business operating transactions;

11 Insurance and annuity transactions;

12 Estate, trust, and other beneficiary transactions;

13 Claims and litigation;

14 Personal and family maintenance;

15 Benefits from social security, Medicare, Medicaid, or other  
16 governmental programs or civil or military service;

17 Retirement plan transactions;

18 Tax matters.

19 IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL  
20 BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY  
21 AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO  
22 PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I  
23 WERE PERSONALLY PRESENT.

24 SPECIAL INSTRUCTIONS:

25 Special instructions applicable to gifts (initial in front of  
26 the following sentence to have it apply):

27 I grant my agent (attorney in fact) the power to apply my

1 property to make gifts, except that the amount of a gift to an  
2 individual may not exceed the amount of annual exclusions allowed  
3 from the federal gift tax for the calendar year of the gift.

4 ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS  
5 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS  
16 EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

17 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE  
18 ALTERNATIVE NOT CHOSEN:

19 (A) This power of attorney is not affected by my subsequent  
20 disability or incapacity.

21 (B) This power of attorney becomes effective upon my  
22 disability or incapacity.

23 YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY  
24 IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

25 IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT  
26 YOU CHOSE ALTERNATIVE (A).

27 If Alternative (B) is chosen and a definition of my



1 disability or incapacity is not contained in this power of  
2 attorney, I shall be considered disabled or incapacitated for  
3 purposes of this power of attorney if a physician certifies in  
4 writing at a date later than the date this power of attorney is  
5 executed that, based on the physician's medical examination of me,  
6 I am mentally incapable of managing my financial affairs. I  
7 authorize the physician who examines me for this purpose to  
8 disclose my physical or mental condition to another person for  
9 purposes of this power of attorney. A third party who accepts this  
10 power of attorney is fully protected from any action taken under  
11 this power of attorney that is based on the determination made by a  
12 physician of my disability or incapacity.

13 I agree that any third party who receives a copy of this  
14 document may act under it. Revocation of the durable power of  
15 attorney is not effective as to a third party until the third party  
16 receives actual notice of the revocation. I agree to indemnify the  
17 third party for any claims that arise against the third party  
18 because of reliance on this power of attorney.

19 If any agent named by me dies, becomes legally disabled,  
20 resigns, or refuses to act, I name the following (each to act alone  
21 and successively, in the order named) as successor(s) to that  
22 agent: \_\_\_\_\_.

23 Signed this \_\_\_\_\_ day of \_\_\_\_\_, [~~19~~\_\_\_\_\_

24 \_\_\_\_\_  
25 (your signature)

26 State of \_\_\_\_\_

27 County of \_\_\_\_\_

1 This document was acknowledged before me on \_\_\_\_\_(date) by  
2 \_\_\_\_\_

3 (name of principal)

4 \_\_\_\_\_

5 (signature of notarial officer)

6 (Seal, if any, of notary) \_\_\_\_\_

7 (printed name)

8 My commission expires: \_\_\_\_\_

9 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER  
10 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL  
11 RESPONSIBILITIES OF AN AGENT.

12 SECTION 10. REPEALER. (a) Sections 3, 9, 10, 10A, 10B, 10C,  
13 11, 11A, 12, 13, 14, 15, 16, 17, 17A, 18, 19, 20, 21, 22, 23, 24, 25,  
14 26, 27, 28, 29, 31, 32, 33, 34, 34A, 35, 36, 36B, 36C, 36D, 36E, 36F,  
15 37, 37A, 37B, 37C, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 47A, 48,  
16 49, 50, 51, 52, 52A, 53, 53A, 53B, 53C, 53D, 53E, 54, 55, 56, 57, 58,  
17 58a, 58b, 58c, 59, 59A, 60, 61, 62, 63, 67, 68, 69, 69A, 70, 70A, 71,  
18 71A, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88,  
19 89, 89A, 89B, 89C, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101,  
20 102, 103, 104, 105, 105A, 106, 107, 107A, 108, 109, 110, 111, 112,  
21 113, 114, 115, 128, 128A, 128B, 129, 129A, 131A, 132, 133, 134, 135,  
22 137, 138, 139, 140, 141, 142, 143, 155, 156, 160, 168, 176, 177,  
23 178, 179, 180, 181, 182, 183, 186, 187, 188, 189, 190, 192, 194,  
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25 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 220, 221,  
26 221A, 221B, 222, 222A, 223, 224, 225, 226, 227, 230, 232, 233, 233A,  
27 234, 235, 238, 238A, 239, 240, 241, 242, 243, 244, 245, 249, 250,

1 251, 252, 253, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264,  
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6 319, 320, 320A, 321, 322, 322A, 322B, 323, 324, 326, 328, 329, 331,  
7 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 344, 345,  
8 345A, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357,  
9 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370,  
10 371, 372, 373, 374, 375, 377, 378, 378A, 378B, 379, 380, 381, 382,  
11 384, 385, 386, 387, 398A, 399, 400, 401, 402, 403, 404, 405, 405A,  
12 406, 407, 408, 409, 410, 412, 414, 427, 428, 429, 430, 431, 432,  
13 433, 436, 437, 438, 438A, 439, 439A, 440, 441, 442, 443, 444, 445,  
14 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458,  
15 459, 460, 461, 462, 471, 472, and 473, Texas Probate Code, are  
16 repealed.

17 (b) Section 248, Texas Probate Code, as amended by Chapters  
18 701 (S.B. 347) and 765 (H.B. 3434), Acts of the 79th Legislature,  
19 Regular Session, 2005, is repealed.

20 SECTION 11. LEGISLATIVE INTENT. This Act is enacted under  
21 Section 43, Article III, Texas Constitution. This Act is intended  
22 as a recodification only, and no substantive change in law is  
23 intended by this Act.

24 SECTION 12. EFFECTIVE DATE. This Act takes effect January  
25 1, 2014.