

By: Hartnett

H.B. No. 2046

A BILL TO BE ENTITLED

AN ACT

relating to decedents' estates.

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

ARTICLE 1. CHANGES TO TEXAS PROBATE CODE

SECTION 1.01. Section 4D, Texas Probate Code, is amended by adding Subsections (b-1) and (b-2) and amending Subsections (e), (f), (g), and (i) to read as follows:

(b-1) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(b-2) If a judge of a county court transfers a contested matter in a probate proceeding to a district court on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may transfer the entire proceeding to that court on the judge's own motion or on the motion of a party. A district court to which an entire probate proceeding is transferred as provided by this subsection may hear the proceeding as if originally filed in that court.

(e) A statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under

1 this section has the jurisdiction and authority granted to a
2 statutory probate court by this code. A statutory probate court
3 judge assigned to hear only the contested matter in a probate
4 proceeding shall, on ~~On~~ resolution of the ~~[a contested]~~ matter
5 ~~[for which a statutory probate court judge is assigned under this~~
6 ~~section],~~ including any appeal of the matter, ~~[the statutory~~
7 ~~probate court judge shall]~~ return the matter to the county court for
8 further proceedings not inconsistent with the orders of the
9 statutory probate court or court of appeals, as applicable. A
10 statutory probate court judge assigned to the entire probate
11 proceeding as provided by Subsection (b-1) of this section shall,
12 on resolution of the contested matter in the proceeding, including
13 an appeal of the matter, return the entire proceeding to the county
14 court for further proceedings not inconsistent with the orders of
15 the statutory probate court or court of appeals, as applicable.

16 (f) A district court to which a contested matter in a
17 probate proceeding or the entire proceeding is transferred under
18 this section has the jurisdiction and authority granted to a
19 statutory probate court by this code. A district court to which
20 only the contested matter is transferred shall, on ~~On~~ resolution
21 of the ~~[a contested]~~ matter ~~[transferred to the district court~~
22 ~~under this section],~~ including any appeal of the matter, ~~[the~~
23 ~~district court shall]~~ return the matter to the county court for
24 further proceedings not inconsistent with the orders of the
25 district court or court of appeals, as applicable. A district court
26 to which an entire probate proceeding is transferred as provided by
27 Subsection (b-2) of this section shall, on resolution of the

1 contested matter in the proceeding, including an appeal of the
2 matter, return the entire proceeding to the county court for
3 further proceedings not inconsistent with the orders of the
4 district court or court of appeals, as applicable.

5 (g) If only the contested matter in a probate proceeding is
6 assigned to a statutory probate court judge or transferred to a
7 district court under this section, the [The] county court shall
8 continue to exercise jurisdiction over the management of the
9 estate, other than a contested matter, until final disposition of
10 the contested matter is made in accordance with this section. Any
11 [After a contested matter is transferred to a district court, any]
12 matter related to a [the] probate proceeding in which only a
13 contested matter is transferred to a district court may be brought
14 in the district court. The district court in which a matter
15 related to the [~~probate~~] proceeding is filed may, on its own motion
16 or on the motion of any party, find that the matter is not a
17 contested matter and transfer the matter to the county court with
18 jurisdiction of the management of the estate.

19 (i) The clerk of a district court to which a contested
20 matter in a probate proceeding or the entire proceeding is
21 transferred under this section may perform in relation to the
22 transferred [~~contested~~] matter or proceeding, as applicable, any
23 function a county clerk may perform with respect to that type of
24 matter or proceeding.

25 SECTION 1.02. Section 4H, Texas Probate Code, is amended to
26 read as follows:

27 Sec. 4H. CONCURRENT JURISDICTION WITH DISTRICT COURT. A

1 statutory probate court has concurrent jurisdiction with the
2 district court in:

3 (1) a personal injury, survival, or wrongful death
4 action by or against a person in the person's capacity as a personal
5 representative;

6 (2) an action by or against a trustee;

7 (3) an action involving an inter vivos trust,
8 testamentary trust, or charitable trust, including a charitable
9 trust as defined by Section 123.001, Property Code;

10 (4) an action involving a personal representative of
11 an estate in which each other party aligned with the personal
12 representative is not an interested person in that estate;

13 (5) an action against an agent or former agent under a
14 power of attorney arising out of the agent's performance of the
15 duties of an agent; and

16 (6) an action to determine the validity of a power of
17 attorney or to determine an agent's rights, powers, or duties under
18 a power of attorney.

19 SECTION 1.03. The heading to Section 5B, Texas Probate
20 Code, is amended to read as follows:

21 Sec. 5B. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING
22 RELATED TO PROBATE PROCEEDING.

23 SECTION 1.04. Section 6, Texas Probate Code, is amended to
24 read as follows:

25 Sec. 6. VENUE: [~~FOR~~] PROBATE OF WILLS AND GRANTING OF
26 LETTERS TESTAMENTARY AND OF ADMINISTRATION [~~OF ESTATES OF~~
27 ~~DECEDENTS~~]. Wills shall be admitted to probate, and letters

1 testamentary or of administration shall be granted:

2 (1) in [~~(a) In~~] the county where the decedent
3 [~~deceased~~] resided, if the decedent [~~he~~] had a domicile or fixed
4 place of residence in this State; [+]

5 (2) if [~~(b) If~~] the decedent [~~deceased~~] had no
6 domicile or fixed place of residence in this State but died in this
7 State, then either in the county where the decedent's [~~his~~]
8 principal estate [~~property~~] was at the time of the decedent's [~~his~~]
9 death, or in the county where the decedent [~~he~~] died; or [+]

10 (3) if the decedent [~~(c) If he~~] had no domicile or
11 fixed place of residence in this State, and died outside the limits
12 of this State:

13 (A) [~~, then~~] in any county in this State where the
14 decedent's [~~his~~] nearest of kin reside; or [+]

15 (B) [~~(d) But~~] if there are [~~he had~~] no kindred of
16 the decedent in this State, then in the county where the decedent's
17 [~~his~~] principal estate was situated at the time of the decedent's
18 [~~his~~] death.

19 ~~[(e) In the county where the applicant resides, when~~
20 ~~administration is for the purpose only of receiving funds or money~~
21 ~~due to a deceased person or his estate from any governmental source~~
22 ~~or agency, provided, that unless the mother or father or spouse or~~
23 ~~adult child of the deceased is applicant, citation shall be served~~
24 ~~personally on the living parents and spouses and adult children, if~~
25 ~~any, of the deceased person, or upon those who are alive and whose~~
26 ~~addresses are known to the applicant.]~~

27 SECTION 1.05. Chapter I, Texas Probate Code, is amended by

1 adding Sections 6A, 6B, and 6C to read as follows:

2 Sec. 6A. VENUE: ACTION RELATED TO PROBATE PROCEEDING IN
3 STATUTORY PROBATE COURT. Except as provided by Section 6B of this
4 code, venue for any cause of action related to a probate proceeding
5 pending in a statutory probate court is proper in the statutory
6 probate court in which the decedent's estate is pending.

7 Sec. 6B. VENUE: CERTAIN ACTIONS INVOLVING PERSONAL
8 REPRESENTATIVE. Notwithstanding any other provision of this
9 chapter, the proper venue for an action by or against a personal
10 representative for personal injury, death, or property damages is
11 determined under Section 15.007, Civil Practice and Remedies Code.

12 Sec. 6C. VENUE: HEIRSHIP PROCEEDINGS. (a) Venue for a
13 proceeding to determine a decedent's heirs is in:

14 (1) the court of the county in which a proceeding
15 admitting the decedent's will to probate or administering the
16 decedent's estate was most recently pending; or

17 (2) the court of the county in which venue would be
18 proper for commencement of an administration of the decedent's
19 estate under Section 6 of this code if:

20 (A) no will of the decedent has been admitted to
21 probate in this state and no administration of the decedent's
22 estate has been granted in this state; or

23 (B) the proceeding is commenced by the trustee of
24 a trust holding assets for the benefit of the decedent.

25 (b) Notwithstanding Subsection (a) of this section and
26 Section 6 of this code, if there is no administration pending of the
27 estate of a deceased ward who died intestate, venue for a proceeding

1 to determine the deceased ward's heirs is in the probate court in
2 which the guardianship proceedings with respect to the ward's
3 estate were pending on the date of the ward's death. A proceeding
4 described by this subsection may be brought as part of the
5 guardianship proceedings with respect to the ward's estate, and the
6 court may determine the heirs' respective shares and interests in
7 the estate as provided by the laws of this state.

8 SECTION 1.06. Chapter I, Texas Probate Code, is amended by
9 amending Section 8 and adding Sections 8A and 8B to read as follows:

10 Sec. 8. CONCURRENT VENUE IN PROBATE PROCEEDING [~~AND~~
11 ~~TRANSFER OF PROCEEDINGS~~]. (a) Concurrent Venue. When two or more
12 courts have concurrent venue of [~~an estate or~~] a probate proceeding
13 [~~to declare heirship under Section 48(a) of this code~~], the court in
14 which the application for the [~~a~~] proceeding [~~in probate or~~
15 ~~determination of heirship~~] is first filed shall have and retain
16 jurisdiction of the [~~estate or heirship~~] proceeding[, ~~as~~
17 ~~appropriate,~~] to the exclusion of the other court or courts. The
18 proceeding shall be deemed commenced by the filing of an
19 application averring facts sufficient to confer venue; and the
20 proceeding first legally commenced shall extend to all of the
21 property of the decedent or the decedent's estate. Provided,
22 however, that a bona fide purchaser of real property in reliance on
23 any such subsequent proceeding, without knowledge of its
24 invalidity, shall be protected in such purchase unless before the
25 purchase the decree admitting the will to probate, determining
26 heirship, or granting administration in the prior proceeding is
27 [~~shall be~~] recorded in the office of the county clerk of the county

1 in which such property is located.

2 (b) Probate Proceedings in More Than One County. If probate
 3 proceedings involving the same estate are [~~a proceeding in probate~~
 4 ~~or to declare heirship under Section 48(a) of this code is~~]
 5 commenced in more than one county, each [~~the~~] proceeding commenced
 6 in a county other than the county in which a proceeding was first
 7 commenced is [~~shall be~~] stayed [~~except in the county where first~~
 8 ~~commenced~~] until final determination of venue by the court in the
 9 county where first commenced. If the proper venue is finally
 10 determined to be in another county, the clerk, after making and
 11 retaining a true copy of the entire file in the case, shall transmit
 12 the original file to the proper county, and the proceeding shall
 13 thereupon be had in the proper county in the same manner as if the
 14 proceeding had originally been instituted therein.

15 (c) Jurisdiction to Determine Venue. Subject to
 16 Subsections (a) and (b) of this section, a court in which an
 17 application for a probate proceeding is filed has jurisdiction to
 18 determine venue for the proceeding and for any matter related to the
 19 proceeding. A court's determination under this subsection is not
 20 subject to collateral attack.

21 Sec. 8A. TRANSFER OF VENUE IN PROBATE PROCEEDING [~~Transfer~~
 22 ~~of Proceeding~~]. (a) [~~(1)~~] Transfer for Want of Venue. If it
 23 appears to the court at any time before the final decree in a
 24 probate proceeding that the proceeding was commenced in a court
 25 which did not have priority of venue over such proceeding, the court
 26 shall, on the application of any interested person, transfer the
 27 proceeding to the proper county by transmitting to the proper court

1 in such county the original file in such case, together with
2 certified copies of all entries in the judge's probate docket
3 theretofore made, and the proceeding [~~probate of the will,~~
4 ~~determination of heirship, or administration of the estate~~] in such
5 county shall be completed in the same manner as if the proceeding
6 had originally been instituted therein; but, if the question as to
7 priority of venue is not raised before final decree in the
8 proceedings is announced, the finality of such decree shall not be
9 affected by any error in venue.

10 (b) [~~(2)~~] Transfer for Convenience [~~of the Estate~~]. If it
11 appears to the court at any time before a probate proceeding [~~the~~
12 ~~estate is closed or, if there is no administration of the estate,~~
13 ~~when the proceeding in probate or to declare heirship~~] is concluded
14 that it would be in the best interest of the estate or, if there is
15 no administration of the estate, that it would be in the best
16 interest of the heirs or beneficiaries of the decedent's will, the
17 court, in its discretion, may order the proceeding transferred to
18 the proper court in any other county in this State. The clerk of the
19 court from which the proceeding is transferred shall transmit to
20 the court to which the proceeding is transferred the original file
21 in the proceeding and a certified copy of the index.

22 Sec. 8B. VALIDATION OF PRIOR PROCEEDINGS [~~(d) Validation of~~
23 ~~Prior Proceedings~~]. When a probate proceeding is transferred to
24 another county under any provision of [~~this~~] Section 8 or 8A of this
25 Code, all orders entered in connection with the proceeding shall be
26 valid and shall be recognized in the second court, provided such
27 orders were made and entered in conformance with the procedure

1 prescribed by this Code.

2 ~~[(c) Jurisdiction to Determine Venue. Any court in which~~
3 ~~there has been filed an application for a proceeding in probate or~~
4 ~~determination of heirship shall have full jurisdiction to determine~~
5 ~~the venue of the proceeding in probate or heirship proceeding, and~~
6 ~~of any proceeding relating thereto, and its determination shall not~~
7 ~~be subject to collateral attack.]~~

8 SECTION 1.07. Section 15, Texas Probate Code, is amended to
9 read as follows:

10 Sec. 15. CASE FILES. The county clerk shall maintain a case
11 file for each decedent's estate in which a probate proceeding has
12 been filed. The case file must contain all orders, judgments, and
13 proceedings of the court and any other probate filing with the
14 court, including all:

15 (1) applications for the probate of wills and for the
16 granting of administration;

17 (2) citations and notices, whether published or
18 posted, with the returns thereon;

19 (3) wills and the testimony upon which the same are
20 admitted to probate, provided that the substance only of
21 depositions shall be recorded;

22 (4) bonds and official oaths;

23 (5) inventories, appraisements, and lists of claims;

24 (5-a) affidavits in lieu of inventories, appraisements,
25 and lists of claims;

26 (6) exhibits and accounts;

27 (7) reports of hiring, renting, or sale;

1 (8) applications for sale or partition of real estate
2 and reports of sale and of commissioners of partition;

3 (9) applications for authority to execute leases for
4 mineral development, or for pooling or unitization of lands,
5 royalty, or other interest in minerals, or to lend or invest money;
6 and

7 (10) reports of lending or investing money.

8 SECTION 1.08. Section 37A(i), Texas Probate Code, is
9 amended to read as follows:

10 (i) Notice of Disclaimer. Unless the beneficiary is a
11 charitable organization or governmental agency of the state, copies
12 of any written memorandum of disclaimer shall be delivered in
13 person to, or shall be mailed by registered or certified mail to and
14 received by, the legal representative of the transferor of the
15 interest or the holder of legal title to the property to which the
16 disclaimer relates not later than nine months after the death of the
17 decedent or, if the interest is a future interest, not later than
18 nine months after the date the person who will receive the property
19 or interest is finally ascertained and the person's interest is
20 indefeasibly vested. If the beneficiary is a charitable
21 organization or government agency of the state, the notices
22 required by this section shall be filed not later than the later of:

23 (1) the first anniversary of the date the beneficiary
24 receives the notice required by Section 128A of this code; [7] or

25 (2) the expiration of the six-month period following
26 the date the personal representative files:

27 (A) the inventory, appraisement, and list of

1 claims due or owing to the estate; or

2 (B) the affidavit in lieu of the inventory,
3 appraisement, and list of claims~~[, whichever occurs later]~~.

4 SECTION 1.09. The heading to Section 48, Texas Probate
5 Code, is amended to read as follows:

6 Sec. 48. PROCEEDINGS TO DECLARE HEIRSHIP. [~~WHEN AND WHERE~~
7 ~~INSTITUTED.~~]

8 SECTION 1.10. Section 48(a), Texas Probate Code, is amended
9 to read as follows:

10 (a) When a person dies intestate owning or entitled to real
11 or personal property in Texas, and there shall have been no
12 administration in this State upon the person's [~~his~~] estate; or
13 when it is necessary for the trustee of a trust holding assets for
14 the benefit of a decedent to determine the heirs of the decedent; or
15 when there has been a will probated in this State or elsewhere, or
16 an administration in this State upon the estate of such decedent,
17 and any real or personal property in this State has been omitted
18 from such will or from such administration, or no final disposition
19 thereof has been made in such administration, the court of the
20 county in which [~~such proceedings were last pending, or in the event~~
21 ~~no will of such decedent has been admitted to probate in this State,~~
22 ~~and no administration has been granted in this State upon the estate~~
23 ~~of such decedent, then the court of the county in which]~~ venue would
24 be proper [~~for commencement of an administration of the decedent's~~
25 ~~estate]~~ under Section 6C [~~6~~] of this code~~[,]~~ may determine and
26 declare in the manner hereinafter provided who are the heirs and
27 only heirs of such decedent, and their respective shares and

1 interests, under the laws of this State, in the estate of such
2 decedent or, if applicable, in the trust, and proceedings therefor
3 shall be known as proceedings to declare heirship.

4 SECTION 1.11. Section 49(a), Texas Probate Code, is amended
5 to read as follows:

6 (a) Such proceedings may be instituted and maintained under
7 a circumstance specified in Section 48(a) of this code [~~in any of~~
8 ~~the instances enumerated above~~] by the qualified personal
9 representative of the estate of such decedent, by a party seeking
10 the appointment of an independent administrator under Section 145
11 of this code, by the trustee of a trust holding assets for the
12 benefit of the decedent, by any person or persons claiming to be a
13 secured creditor or the owner of the whole or a part of the estate of
14 such decedent, or by the guardian of the estate of a ward, if the
15 proceedings are instituted and maintained in the probate court in
16 which the proceedings for the guardianship of the estate were
17 pending at the time of the death of the ward. In such a case an
18 application shall be filed in a proper court stating the following
19 information:

20 (1) the name of the decedent and the time and place of
21 death;

22 (2) the names and residences of the decedent's heirs,
23 the relationship of each heir to the decedent, and the true interest
24 of the applicant and each of the heirs in the estate of the decedent
25 or in the trust, as applicable;

26 (3) all the material facts and circumstances within
27 the knowledge and information of the applicant that might

1 reasonably tend to show the time or place of death or the names or
2 residences of all heirs, if the time or place of death or the names
3 or residences of all the heirs are not definitely known to the
4 applicant;

5 (4) a statement that all children born to or adopted by
6 the decedent have been listed;

7 (5) a statement that each marriage of the decedent has
8 been listed with the date of the marriage, the name of the spouse,
9 and if the marriage was terminated, the date and place of
10 termination, and other facts to show whether a spouse has had an
11 interest in the property of the decedent;

12 (6) whether the decedent died testate and if so, what
13 disposition has been made of the will;

14 (7) a general description of all the real and personal
15 property belonging to the estate of the decedent or held in trust
16 for the benefit of the decedent, as applicable; and

17 (8) an explanation for the omission of any of the
18 foregoing information that is omitted from the application.

19 SECTION 1.12. Section 59, Texas Probate Code, is amended by
20 adding Subsection (a-1) and amending Subsection (b) to read as
21 follows:

22 (a-1) As an alternative to the self-proving of a will by the
23 affidavits of the testator and the attesting witnesses under
24 Subsection (a) of this section, a will may be simultaneously
25 executed, attested, and made self-proved before an officer
26 authorized to administer oaths under the laws of this state, and the
27 testimony of the witnesses in the probate of the will may be made

1 unnecessary, with the inclusion in the will of the following in form
2 and contents substantially as follows:

3 I, _____, as testator, after being duly
4 sworn, declare to the undersigned witnesses and to the undersigned
5 authority that this instrument is my will, that I have willingly
6 made and executed it in the presence of the undersigned witnesses,
7 all of whom were present at the same time, as my free act and deed,
8 and that I have requested each of the undersigned witnesses to sign
9 this will in my presence and in the presence of each other. I now
10 sign this will in the presence of the attesting witnesses and the
11 undersigned authority on this _____ day of _____,
12 20_____.

13 _____
14 Testator

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

1 20.

2 _____

3 Witness

4 _____

5 Witness

6 Subscribed and sworn to before me by the said _____,
7 testator, and by the said _____ and _____,
8 witnesses, this _____ day of _____, 20_____.

9 (SEAL)

10 (Signed) _____

11 (Official Capacity of Officer)

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

1 SECTION 1.13. Section 64, Texas Probate Code, is amended to
2 read as follows:

3 Sec. 64. FORFEITURE CLAUSE. A provision in a will that
4 would cause a forfeiture of [~~a devise~~] or void a devise or provision
5 in favor of a person or the person's descendants or a trust for the
6 benefit of a person or the person's descendants for bringing any
7 court action, including contesting a will, is unenforceable if:

8 (1) just [~~probable~~] cause existed [~~exists~~] for
9 bringing the action; and

10 (2) the action was brought and maintained in good
11 faith.

12 SECTION 1.14. Sections 67(a) and (b), Texas Probate Code,
13 are amended to read as follows:

14 (a) Whenever a pretermitted child is not mentioned in the
15 testator's will, provided for in the testator's will, or otherwise
16 provided for by the testator, the pretermitted child shall succeed
17 to a portion of the testator's estate as provided by Subsection
18 (a)(1) or (a)(2) of this section.

19 (1) If the testator has one or more children living
20 when he executes his last will, and:

21 (A) No provision is made therein for any such
22 child, a pretermitted child succeeds to the portion of the
23 testator's separate and community estate to which the pretermitted
24 child would have been entitled pursuant to Section 38(a) of this
25 code had the testator died intestate without a surviving spouse
26 owning only that portion of his estate not devised or bequeathed to
27 either the testator's surviving spouse or the other parent of the

1 pretermitted child.

2 (B) Provision, whether vested or contingent, is
3 made therein for one or more of such children, a pretermitted child
4 is entitled to share in the testator's estate as follows:

5 (i) The portion of the testator's estate to
6 which the pretermitted child is entitled is limited to the
7 disposition made to children under the will.

8 (ii) The pretermitted child shall receive
9 such share of the testator's estate, as limited in Subparagraph
10 (i), as he would have received had the testator included all
11 pretermitted children with the children upon whom benefits were
12 conferred under the will, and given an equal share of such benefits
13 to each such child.

14 (iii) To the extent that it is feasible, the
15 interest of the pretermitted child in the testator's estate shall
16 be of the same character, whether an equitable or legal life estate
17 or in fee, as the interest that the testator conferred upon his
18 children under the will.

19 (2) If the testator has no child living when he
20 executes his last will, the pretermitted child succeeds to the
21 portion of the testator's separate and community estate to which
22 the pretermitted child would have been entitled pursuant to Section
23 38(a) of this code had the testator died intestate without a
24 surviving spouse owning only that portion of his estate not devised
25 or bequeathed to either the testator's surviving spouse or the
26 other parent of the pretermitted child.

27 (b) The pretermitted child may recover the share of the

1 testator's estate to which he is entitled either from the other
2 children under Subsection (a)(1)(B) or the testamentary
3 beneficiaries under Subsections (a)(1)(A) and (a)(2) other than the
4 testator's surviving spouse and the other parent of the
5 pretermitted child, ratably, out of the portions of such estate
6 passing to such persons under the will. In abating the interests of
7 such beneficiaries, the character of the testamentary plan adopted
8 by the testator shall be preserved to the maximum extent possible.

9 SECTION 1.15. Section 84(a), Texas Probate Code, is amended
10 to read as follows:

11 (a) Self-Proved Will. If a will is self-proved as provided
12 in this Code or, if executed in another state, is self-proved in
13 accordance with the laws of the state of the testator's domicile at
14 the time of the execution, no further proof of its execution with
15 the formalities and solemnities and under the circumstances
16 required to make it a valid will shall be necessary.

17 SECTION 1.16. Section 128A(h), Texas Probate Code, is
18 amended to read as follows:

19 (h) The affidavit or certificate required by Subsection (g)
20 of this section may be included with any pleading or other document
21 filed with the clerk of the court, including the inventory,
22 appraisal, and list of claims, an affidavit in lieu of the
23 inventory, appraisal, and list of claims, or an application for
24 an extension of the deadline to file the inventory, appraisal,
25 and list of claims or an affidavit in lieu of the inventory,
26 appraisal, and list of claims, provided that the pleading or
27 other document with which the affidavit or certificate is included

1 is filed not later than the date the affidavit or certificate is
2 required to be filed as provided by Subsection (g) of this section.

3 SECTION 1.17. Section 143, Texas Probate Code, is amended
4 to read as follows:

5 Sec. 143. SUMMARY PROCEEDINGS FOR SMALL ESTATES AFTER
6 PERSONAL REPRESENTATIVE APPOINTED. Whenever, after the inventory,
7 appraisement, and list of claims or the affidavit in lieu of the
8 inventory, appraisement, and list of claims has been filed by a
9 personal representative, it is established that the estate of a
10 decedent, exclusive of the homestead and exempt property and family
11 allowance to the surviving spouse and minor children, does not
12 exceed the amount sufficient to pay the claims of Classes One to
13 Four, inclusive, as claims are hereinafter classified, the personal
14 representative shall, upon order of the court, pay the claims in the
15 order provided and to the extent permitted by the assets of the
16 estate subject to the payment of such claims, and thereafter
17 present his account with an application for the settlement and
18 allowance thereof. Thereupon the court, with or without notice,
19 may adjust, correct, settle, allow or disallow such account, and,
20 if the account is settled and allowed, may decree final
21 distribution, discharge the personal representative, and close the
22 administration.

23 SECTION 1.18. Sections 145(g), (h), (i), and (j), Texas
24 Probate Code, are amended to read as follows:

25 (g) The court may not appoint an independent administrator
26 to serve in an intestate administration unless and until the
27 parties seeking appointment of the independent administrator have

1 been determined, through a proceeding to declare heirship under
2 Chapter III of this code, to constitute all of the decedent's heirs.
3 ~~[In no case shall any independent administrator be appointed by any~~
4 ~~court to serve in any intestate administration until those parties~~
5 ~~seeking the appointment of said independent administrator offer~~
6 ~~clear and convincing evidence to the court that they constitute all~~
7 ~~of the said decedent's heirs.]~~

8 (h) When an independent administration has been created,
9 and the order appointing an independent executor has been entered
10 by the county court, and the inventory, appraisement, and list
11 aforesaid has been filed by the executor and approved by the county
12 court or an affidavit in lieu of the inventory, appraisement, and
13 list of claims has been filed by the executor, as long as the estate
14 is represented by an independent executor, further action of any
15 nature shall not be had in the county court except where this Code
16 specifically and explicitly provides for some action in the county
17 court.

18 (i) If a distributee described in Subsections (c) through
19 (e) of this section is an incapacitated person, the guardian of the
20 person of the distributee may sign the application on behalf of the
21 distributee. If the county court finds that either the granting of
22 independent administration or the appointment of the person, firm,
23 or corporation designated in the application as independent
24 executor would not be in the best interests of the incapacitated
25 person, then, notwithstanding anything to the contrary in
26 Subsections (c) through (e) of this section, the county court shall
27 not enter an order granting independent administration of the

1 estate. If such distributee who is an incapacitated person has no
2 guardian of the person, the county court may appoint a guardian ad
3 litem to make application on behalf of the incapacitated person if
4 the county court considers such an appointment necessary to protect
5 the interest of the distributees. Alternatively, if the
6 distributee who is an incapacitated person is a minor and has no
7 guardian of the person, the natural guardian or guardians of the
8 minor may consent on the minor's behalf if there is no conflict of
9 interest between the minor and the natural guardian or guardians.

10 (j) If a trust is created in the decedent's will, the person
11 or class of persons first eligible to receive the income from the
12 trust, when determined as if the trust were to be in existence on
13 the date of the decedent's death, shall, for the purposes of
14 Subsections (c) and (d) of this section, be deemed to be the
15 distributee or distributees on behalf of such trust, and any other
16 trust or trusts coming into existence upon the termination of such
17 trust, and are authorized to apply for independent administration
18 on behalf of the trusts without the consent or agreement of the
19 trustee or any other beneficiary of the trust, or the trustee or any
20 beneficiary of any other trust which may come into existence upon
21 the termination of such trust. If a trust beneficiary who is
22 considered to be a distributee under this subsection is an
23 incapacitated person, the trustee or cotrustee may file the
24 application or give the consent, provided that the trustee or
25 cotrustee is not the person proposed to serve as the independent
26 executor.

27 SECTION 1.19. Part 4, Chapter VI, Texas Probate Code, is

1 amended by adding Sections 145A, 145B, and 145C to read as follows:

2 Sec. 145A. GRANTING POWER OF SALE BY AGREEMENT. In a
3 situation in which a decedent does not have a will or a decedent's
4 will does not contain language authorizing the personal
5 representative to sell real property or contains language that is
6 not sufficient to grant the representative that authority, the
7 court may include in an order appointing an independent executor
8 under Section 145 of this code any general or specific authority
9 regarding the power of the independent executor to sell real
10 property that may be consented to by the beneficiaries who are to
11 receive any interest in the real property in the application for
12 independent administration or in their consents to the independent
13 administration. The independent executor, in such event, may sell
14 the real property under the authority granted in the court order
15 without the further consent of those beneficiaries.

16 Sec. 145B. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT
17 APPROVAL. Unless this code specifically provides otherwise, any
18 action that a personal representative subject to court supervision
19 may take with or without a court order may be taken by an
20 independent executor without a court order. The other provisions
21 of this part are designed to provide additional guidance regarding
22 independent administrations in specified situations, and are not
23 designed to limit by omission or otherwise the application of the
24 general principles set forth in this part.

25 Sec. 145C. POWER OF SALE OF ESTATE PROPERTY. (a) General.
26 (1) An independent executor has the power of sale of estate
27 property set forth in the will, if applicable, that may be exercised

1 without court approval as otherwise provided for independent
2 administrations.

3 (2) Unless limited by the terms of a will, an
4 independent executor, in addition to any power of sale of estate
5 property given in the will, has the same power of sale for the same
6 purposes as a personal representative has in a supervised
7 administration, but without the requirement of court approval. The
8 procedural requirements applicable to a supervised administration
9 do not apply.

10 (b) Protection of Person Purchasing Estate Property. (1) A
11 person who is not a devisee or heir is not required to inquire into
12 an independent executor's power of sale of estate property or the
13 propriety of the exercise of the power of sale if the person deals
14 with the independent executor in good faith and:

15 (A) a power of sale is granted to the independent
16 executor in the will or in the court order appointing the
17 independent executor; or

18 (B) the independent executor provides an
19 affidavit, executed and sworn to under oath and recorded in the deed
20 records of the county where the property is located, that the sale
21 is necessary or advisable for any of the purposes described in
22 Section 341(1) of this code.

23 (2) As to acts undertaken in good faith reliance, the
24 affidavit described by Subsection (b)(1)(B) of this section is
25 conclusive proof, as between a purchaser of property from an
26 estate, and the personal representative of the estate or the heirs
27 and distributees of the estate, with respect to the authority of the

1 independent executor to sell the property. The signature or
2 joinder of a devisee or heir who has an interest in the property
3 being sold as described in this section is not necessary for the
4 purchaser to obtain all right, title, and interest of the estate in
5 the property being sold.

6 (3) This section does not relieve the independent
7 executor from any duty owed to a devisee or heir in relation,
8 directly or indirectly, to the sale.

9 (c) No Limitations. This section does not limit the
10 authority of an independent executor to take any other action
11 without court supervision or approval with respect to estate assets
12 that may take place in a supervised administration, for purposes
13 and within the scope otherwise authorized by this code, including
14 the authority to enter into a lease and to borrow money.

15 SECTION 1.20. Section 146, Texas Probate Code, is amended
16 by adding Subsections (a-1) and (b-1) through (b-7) and amending
17 Subsection (b) to read as follows:

18 (a-1) Statement in Notice of Claim. To be effective, the
19 notice provided under Subsection (a)(2) of this section must
20 include, in addition to the other information required by Section
21 294(d) of this code, a statement that a claim may be effectively
22 presented by only one of the methods prescribed by this section.

23 (b) Secured Claims for Money. Within six months after the
24 date letters are granted or within four months after the date notice
25 is received under Section 295 of this code, whichever is later, a
26 creditor with a claim for money secured by real or personal property
27 of the estate must give notice to the independent executor of the

1 creditor's election to have the creditor's claim approved as a
2 matured secured claim to be paid in due course of administration.
3 In addition to giving the notice within this period, a creditor
4 whose claim is secured by real property shall record a notice of the
5 creditor's election under this subsection in the deed records of
6 the county in which the real property is located. If no [the]
7 election to be a matured secured creditor is made, or the election
8 is made, but not within the prescribed period, or is made within the
9 prescribed period but the creditor has a lien against real property
10 and fails to record notice of the claim in the deed records as
11 required within the prescribed period [is not made], the claim
12 shall be [is] a preferred debt and lien against the specific
13 property securing the indebtedness and shall be paid according to
14 the terms of the contract that secured the lien, and the claim may
15 not be asserted against other assets of the estate. The independent
16 executor may pay the claim before the claim matures if paying the
17 claim before maturity is in the best interest of the estate.

18 (b-1) Matured Secured Claims. (1) A claim approved as a
19 matured secured claim under Subsection (b) of this section remains
20 secured by any lien or security interest against the specific
21 property securing payment of the claim but subordinated to the
22 payment from the property of claims having a higher classification
23 under Section 322 of this code. However, the secured creditor:

24 (A) is not entitled to exercise any remedies in a
25 manner that prevents the payment of the higher priority claims and
26 allowances; and

27 (B) during the administration of the estate, is

1 not entitled to exercise any contractual collection rights,
2 including the power to foreclose, without either the prior written
3 approval of the independent executor or court approval.

4 (2) Subdivision (1) of this subsection may not be
5 construed to suspend or otherwise prevent a creditor with a matured
6 secured claim from seeking judicial relief of any kind or from
7 executing any judgment against an independent executor. Except
8 with respect to real property, any third party acting in good faith
9 may obtain good title with respect to an estate asset acquired
10 through a secured creditor's extrajudicial collection rights,
11 without regard to whether the creditor had the right to collect the
12 asset or whether the creditor acted improperly in exercising those
13 rights during an estate administration due to having elected
14 matured secured status.

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

23 (b-2) Preferred Debt and Lien Claims. During an independent
24 administration, a secured creditor whose claim is a preferred debt
25 and lien against property securing the indebtedness under
26 Subsection (b) of this section is free to exercise any judicial or
27 extrajudicial collection rights, including the right to

1 foreclosure and execution; provided, however, that the creditor
2 does not have the right to conduct a nonjudicial foreclosure sale
3 within six months after letters are granted.

4 (b-3) Certain Unsecured Claims; Barring of Claims. An
5 unsecured creditor who has a claim for money against an estate and
6 who receives a notice under Section 294(d) of this code shall give
7 to the independent executor notice of the nature and amount of the
8 claim not later than the 120th day after the date the notice is
9 received or the claim is barred.

10 (b-4) Notices Required by Creditors. Notice to the
11 independent executor required by Subsections (b) and (b-3) of this
12 section must be contained in:

13 (1) a written instrument that is hand-delivered with
14 proof of receipt, or mailed by certified mail, return receipt
15 requested with proof of receipt, to the independent executor or the
16 executor's attorney;

17 (2) a pleading filed in a lawsuit with respect to the
18 claim; or

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

21 (b-5) Filing Requirements Applicable. Subsection (b-4) of
22 this section does not exempt a creditor who elects matured secured
23 status from the filing requirements of Subsection (b) of this
24 section, to the extent those requirements are applicable.

25 (b-6) Statute of Limitations. Except as otherwise provided
26 by Section 16.062, Civil Practice and Remedies Code, the running of
27 the statute of limitations shall be tolled only by a written

1 approval of a claim signed by an independent executor, a pleading
2 filed in a suit pending at the time of the decedent's death, or a
3 suit brought by the creditor against the independent executor. In
4 particular, the presentation of a statement or claim, or a notice
5 with respect to a claim, to an independent executor does not toll
6 the running of the statute of limitations with respect to that
7 claim.

8 (b-7) Other Claim Procedures of Code Generally Do Not Apply.
9 Except as otherwise provided by this section, the procedural
10 provisions of this code governing creditor claims in supervised
11 administrations do not apply to independent administrations. By
12 way of example, but not as a limitation:

13 (1) Section 313 of this code does not apply to
14 independent administrations, and consequently a creditor's claim
15 may not be barred solely because the creditor failed to file a suit
16 not later than the 90th day after the date an independent executor
17 rejected the claim or with respect to a claim for which the
18 independent executor takes no action; and

19 (2) Sections 306(f)-(k) of this code do not apply to
20 independent administrations.

21 SECTION 1.21. Section 149B(a), Texas Probate Code, is
22 amended to read as follows:

23 (a) In addition to or in lieu of the right to an accounting
24 provided by Section 149A of this code, at any time after the
25 expiration of two years from the date the court clerk first issues
26 letters testamentary or of administration to any personal
27 representative of an estate [~~that an independent administration was~~

1 ~~created and the order appointing an independent executor was~~
2 ~~entered],~~ a person interested in the estate then subject to
3 independent administration may petition the county court, as that
4 term is defined by Section 3 of this code, for an accounting and
5 distribution. The court may order an accounting to be made with the
6 court by the independent executor at such time as the court deems
7 proper. The accounting shall include the information that the
8 court deems necessary to determine whether any part of the estate
9 should be distributed.

10 SECTION 1.22. Section 149C(a), Texas Probate Code, is
11 amended to read as follows:

12 (a) The county court, as that term is defined by Section 3 of
13 this code, on its own motion or on motion of any interested person,
14 after the independent executor has been cited by personal service
15 to answer at a time and place fixed in the notice, may remove an
16 independent executor when:

17 (1) the independent executor fails to return within
18 ninety days after qualification, unless such time is extended by
19 order of the court, either an inventory of the property of the
20 estate and list of claims that have come to the independent
21 executor's knowledge or an affidavit in lieu of the inventory,
22 appraisement, and list of claims;

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

27 (3) the independent executor fails to make an

1 accounting which is required by law to be made;

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

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

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

11 SECTION 1.23. Section 151, Texas Probate Code, is amended
12 to read as follows:

13 Sec. 151. CLOSING INDEPENDENT ADMINISTRATION BY CLOSING
14 REPORT OR NOTICE OF CLOSING ESTATE [~~AFFIDAVIT~~]. (a) Filing of
15 Closing Report or Notice of Closing Estate [~~Affidavit~~]. When all of
16 the debts known to exist against the estate have been paid, or when
17 they have been paid so far as the assets in the hands of the
18 independent executor will permit, when there is no pending
19 litigation, and when the independent executor has distributed to
20 the persons entitled thereto all assets of the estate, if any,
21 remaining after payment of debts, the independent executor may file
22 with the court a closing report or a notice of closing of the
23 estate.

24 (a-1) Closing Report. An independent executor may file [+
25 [~~1~~] a closing report verified by affidavit that:

26 (1) shows:

27 (A) the [~~(i) The~~] property of the estate which

1 came into the possession [~~hands~~] of the independent executor;

2 (B) the [~~(ii) The~~] debts that have been paid;

3 (C) the [~~(iii) The~~] debts, if any, still owing by
4 the estate;

5 (D) the [~~(iv) The~~] property of the estate, if
6 any, remaining on hand after payment of debts; and

7 (E) the [~~(v) The~~] names and residences of the
8 persons to whom the property of the estate, if any, remaining on
9 hand after payment of debts has been distributed; and

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

14 (b) Notice of Closing Estate. (1) Instead of filing a
15 closing report under Subsection (a-1) of this section, an
16 independent executor may file a notice of closing estate verified
17 by affidavit that states:

18 (A) that all debts known to exist against the
19 estate have been paid or have been paid to the extent permitted by
20 the assets in the independent executor's possession;

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

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

26 (2) Before filing the notice, the independent executor
27 shall provide to each distributee of the estate a copy of the notice

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

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

14 (2) The closing of an [filing of such an affidavit and
15 proof of delivery, if required, shall terminate the] independent
16 administration by filing of a closing report or notice of closing
17 estate terminates [and] the power and authority of the independent
18 executor, but shall not relieve the independent executor from
19 liability for any mismanagement of the estate or from liability for
20 any false statements contained in the report or notice [affidavit].

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

1 independent executor in the report or notice [~~such affidavit~~].

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

9 (d) [~~(c)~~] Authority to Transfer Property of a Decedent
10 After Filing the Closing Report or Notice of Closing Estate
11 [~~Affidavit~~]. An independent executor's closing report or notice of
12 closing estate [~~affidavit closing the independent administration~~]
13 shall constitute sufficient legal authority to all persons owing
14 any money, having custody of any property, or acting as registrar or
15 transfer agent or trustee of any evidence of interest,
16 indebtedness, property, or right that belongs to the estate, for
17 payment or transfer without additional administration to the
18 distributees [~~persons~~] described in the will as entitled to receive
19 the particular asset or who as heirs at law are entitled to receive
20 the asset. The distributees [~~persons~~] described in the will as
21 entitled to receive the particular asset or the heirs at law
22 entitled to receive the asset may enforce their right to the payment
23 or transfer by suit.

24 (e) [~~(d)~~] Delivery Subject to Receipt or Proof of Delivery.
25 An independent executor may not be required to deliver tangible or
26 intangible personal property to a distributee unless the
27 independent executor receives [~~shall receive~~], at or before the

1 time of delivery of the property, a signed receipt or other proof of
2 delivery of the property to the distributee. An independent
3 executor may [~~shall~~] not require a waiver or release from the
4 distributee as a condition of delivery of property to a
5 distributee.

6 SECTION 1.24. Section 168, Texas Probate Code, is amended
7 to read as follows:

8 Sec. 168. ACCOUNTING BY SURVIVOR. The survivor shall keep a
9 fair and full account and statement of all community debts and
10 expenses paid by the survivor [~~him~~], and of the disposition made of
11 the community property; and, upon final partition of such estate,
12 shall deliver to the heirs, devisees or legatees of the deceased
13 spouse their interest in such estate, and the increase and profits
14 of the same, after deducting therefrom the proportion of the
15 community debts chargeable thereto, unavoidable losses, necessary
16 and reasonable expenses, and a reasonable compensation
17 [~~commission~~] for the management of the same. The survivor may not
18 be liable for losses sustained by the estate, except when the
19 survivor has been guilty of gross negligence or bad faith.

20 SECTION 1.25. Section 222(a), Texas Probate Code, is
21 amended to read as follows:

22 (a) Without Notice. (1) The court, on its own motion or on
23 motion of any interested person, and without notice, may remove any
24 personal representative, appointed under provisions of this Code,
25 who:

26 (A) Neglects to qualify in the manner and time
27 required by law;

1 (B) Fails [~~to return~~] within ninety days after
2 qualification, unless such time is extended by order of the court,
3 to either return an inventory of the property of the estate and list
4 of claims that have come to his knowledge or file an affidavit in
5 lieu of the inventory and list of claims;

6 (C) Having been required to give a new bond,
7 fails to do so within the time prescribed;

8 (D) Absents himself from the State for a period
9 of three months at one time without permission of the court, or
10 removes from the State;

11 (E) Cannot be served with notices or other
12 processes because of the fact that the:

13 (i) personal representative's whereabouts
14 are unknown;

15 (ii) personal representative is eluding
16 service; or

17 (iii) personal representative is a
18 nonresident of this state who does not have a resident agent to
19 accept service of process in any probate proceeding or other action
20 relating to the estate; or

21 (F) Has misapplied, embezzled, or removed from
22 the State, or is about to misapply, embezzle, or remove from the
23 State, all or any part of the property committed to the personal
24 representative's care.

25 (2) The court may remove a personal representative
26 under Paragraph (F), Subdivision (1), of this subsection only on
27 the presentation of clear and convincing evidence given under oath.

1 SECTION 1.26. Section 227, Texas Probate Code, is amended
2 to read as follows:

3 Sec. 227. SUCCESSORS RETURN OF INVENTORY, APPRAISEMENT, AND
4 LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND
5 LIST OF CLAIMS. An appointee who has been qualified to succeed to a
6 prior personal representative shall make and return to the court an
7 inventory, appraisal, and list of claims of the estate or file an
8 affidavit in lieu of the inventory, appraisal, and list of
9 claims, within ninety days after being qualified, in like manner as
10 is provided for [~~required of~~] original appointees; and he shall
11 also in like manner return additional inventories, appraisements,
12 and lists of claims or file additional affidavits. In all orders
13 appointing successor representatives of estates, the court shall
14 appoint appraisers as in original appointments upon the application
15 of any person interested in the estate.

16 SECTION 1.27. Section 241, Texas Probate Code, is amended
17 to read as follows:

18 Sec. 241. COMPENSATION OF PERSONAL REPRESENTATIVES. [~~(a)~~]
19 Executors, administrators, and temporary administrators who have
20 taken care of and managed the estate of a decedent in compliance
21 with the standards of this code shall be entitled to reasonable
22 compensation unless the decedent's will provides otherwise
23 [~~receive a commission of five per cent (5%) on all sums they may~~
24 ~~actually receive in cash, and the same per cent on all sums they may~~
25 ~~actually pay out in cash, in the administration of the estate on a~~
26 ~~finding by the court that the executor or administrator has taken~~
27 ~~care of and managed the estate in compliance with the standards of~~

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

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

24 (2) the executor or administrator has been removed
25 under Section 149C or 222 of this code.

26 [(b) ~~Definition. In this section, "financial institution"~~
27 ~~means an organization authorized to do business under state or~~

1 ~~federal laws relating to financial institutions, including banks~~
2 ~~and trust companies, savings banks, building and loan associations,~~
3 ~~savings and loan companies or associations, and credit unions.]~~

4 SECTION 1.28. Section 250, Texas Probate Code, is amended
5 to read as follows:

6 Sec. 250. INVENTORY AND APPRAISEMENT; AFFIDAVIT IN LIEU OF
7 INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) Within ninety
8 days after the representative's [~~his~~] qualification, unless a
9 longer time shall be granted by the court, the representative shall
10 prepare and file with the clerk of court a verified, full, and
11 detailed inventory, in one written instrument, of all the property
12 of such estate which has come to the representative's [~~his~~]
13 possession or knowledge, which inventory shall include:

14 (1) [~~(a)~~] all real property of the estate situated in
15 the State of Texas; and

16 (2) [~~(b)~~] all personal property of the estate wherever
17 situated.

18 (b) The representative shall set out in the inventory the
19 representative's [~~his~~] appraisement of the fair market value of
20 each item thereof as of the date of death in the case of grant of
21 letters testamentary or of administration, as the case may be;
22 provided that if the court shall appoint an appraiser or appraisers
23 of the estate, the representative shall determine the fair market
24 value of each item of the inventory with the assistance of such
25 appraiser or appraisers and shall set out in the inventory such
26 appraisement. The inventory shall specify what portion of the
27 property, if any, is separate property and what portion, if any, is

1 community property. [~~If any property is owned in common with~~
2 ~~others, the interest owned by the estate shall be shown, together~~
3 ~~with the names and relationship, if known, of co-owners.] Such
4 inventory, when approved by the court and duly filed with the clerk
5 of court, shall constitute for all purposes the inventory and
6 appraisement of the estate referred to in this Code. The court for
7 good cause shown may require the filing of the inventory and
8 appraisement at a time prior to ninety days after the qualification
9 of the representative.~~

10 (c) Notwithstanding Subsection (a) of this section, if
11 there are no unpaid debts, except for secured debts, taxes, and
12 administration expenses, at the time the inventory is due,
13 including any extensions, the representative may file with the
14 court clerk, in lieu of the inventory, appraisement, and list of
15 claims, an affidavit stating that all debts, except for secured
16 debts, taxes, and administration expenses, are paid and that all
17 beneficiaries have received a verified, full, and detailed
18 inventory. The affidavit in lieu of the inventory, appraisement,
19 and list of claims must be filed within the 90-day period prescribed
20 by Subsection (a) of this section, unless the court grants an
21 extension.

22 (d) In this section, "beneficiary" means a person, entity,
23 state, governmental agency of the state, charitable organization,
24 or trust entitled to receive real or personal property:

25 (1) under the terms of a decedent's will, to be
26 determined for purposes of this subsection with the assumption that
27 each person who is alive on the date of the decedent's death

1 survives any period required to receive the bequest as specified by
2 the terms of the will; or

3 (2) as an heir of the decedent.

4 SECTION 1.29. Section 256, Texas Probate Code, is amended
5 to read as follows:

6 Sec. 256. DISCOVERY OF ADDITIONAL PROPERTY. (a) If, after
7 the filing of the inventory and appraisalment, property or claims
8 not included in the inventory shall come to the possession or
9 knowledge of the representative, the representative [~~he~~] shall
10 forthwith file with the clerk of court a verified, full, and
11 detailed supplemental inventory and appraisalment.

12 (b) If, after the filing of an affidavit in lieu of the
13 inventory and appraisalment, property or claims not included in the
14 inventory given to the beneficiaries shall come to the possession
15 or knowledge of the representative, the representative shall
16 forthwith file with the clerk of court a supplemental affidavit in
17 lieu of the inventory and appraisalment stating that all
18 beneficiaries have received a verified, full, and detailed
19 supplemental inventory and appraisalment.

20 SECTION 1.30. Section 260, Texas Probate Code, is amended
21 to read as follows:

22 Sec. 260. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO
23 RETURN AN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT
24 IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. If there be
25 more than one representative qualified as such, any one or more of
26 them, on the neglect of the others, may make and return an inventory
27 and appraisalment and list of claims or file an affidavit in lieu of

1 an inventory, appraisement, and list of claims; and the
2 representative so neglecting shall not thereafter interfere with
3 the estate or have any power over same; but the representative so
4 returning the inventory, appraisement, and list of claims or filing
5 the affidavit in lieu of an inventory, appraisement, and list of
6 claims shall have the whole administration, unless, within sixty
7 days after the return or the filing, the delinquent or delinquents
8 shall assign to the court in writing and under oath a reasonable
9 excuse which the court may deem satisfactory; and if no excuse is
10 filed or if the excuse filed is not deemed sufficient, the court
11 shall enter an order removing any and all such delinquents and
12 revoking their letters.

13 SECTION 1.31. Section 262, Texas Probate Code, is amended
14 to read as follows:

15 Sec. 262. EXECUTOR OR ADMINISTRATOR REQUIRED TO REPORT ON
16 CONDITION OF ESTATE. At any time after the return of the inventory,
17 appraisement, and list of claims of a deceased person or the filing
18 of an affidavit in lieu of the inventory, appraisement, and list of
19 claims, any one entitled to a portion of the estate may, by a
20 written complaint filed in the court in which such case is pending,
21 cause the executor or administrator of the estate to be cited to
22 appear and render under oath an exhibit of the condition of the
23 estate.

24 SECTION 1.32. Sections 271(a) and (b), Texas Probate Code,
25 are amended to read as follows:

26 (a) Unless an affidavit is filed under Subsection (b) of
27 this section, immediately after the inventory, appraisement, and

1 list of claims have been approved or after the affidavit in lieu of
2 the inventory, appraisement, and list of claims has been filed, the
3 court shall, by order, set apart:

4 (1) the homestead for the use and benefit of the
5 surviving spouse and minor children; and

6 (2) all other property of the estate that is exempt
7 from execution or forced sale by the constitution and laws of this
8 state for the use and benefit of the surviving spouse and minor
9 children and unmarried children remaining with the family of the
10 deceased.

11 (b) Before the approval of the inventory, appraisement, and
12 list of claims or, if applicable, after the filing of the affidavit
13 in lieu of the inventory, appraisement, and list of claims:

14 (1) a surviving spouse or any person who is authorized
15 to act on behalf of minor children of the deceased may apply to the
16 court to have exempt property, including the homestead, set aside
17 by filing an application and a verified affidavit listing all of the
18 property that the applicant claims is exempt; and

19 (2) any unmarried children remaining with the family
20 of the deceased may apply to the court to have all exempt property
21 other than the homestead set aside by filing an application and a
22 verified affidavit listing all of the other property that the
23 applicant claims is exempt.

24 SECTION 1.33. Section 286, Texas Probate Code, is amended
25 to read as follows:

26 Sec. 286. FAMILY ALLOWANCE TO SURVIVING SPOUSES AND MINORS.

27 (a) Unless an affidavit is filed under Subsection (b) of this

1 section, immediately after the inventory, appraisalment, and list of
2 claims have been approved or the affidavit in lieu of the inventory,
3 appraisalment, and list of claims has been filed, the court shall fix
4 a family allowance for the support of the surviving spouse and minor
5 children of the deceased.

6 (b) Before the approval of the inventory, appraisalment, and
7 list of claims or, if applicable, before the filing of the affidavit
8 in lieu of the inventory, appraisalment, and list of claims, a
9 surviving spouse or any person who is authorized to act on behalf of
10 minor children of the deceased may apply to the court to have the
11 court fix the family allowance by filing an application and a
12 verified affidavit describing the amount necessary for the
13 maintenance of the surviving spouse and minor children for one year
14 after the date of the death of the decedent and describing the
15 spouse's separate property and any property that minor children
16 have in their own right. The applicant bears the burden of proof by
17 a preponderance of the evidence at any hearing on the application.
18 The court shall fix a family allowance for the support of the
19 surviving spouse and minor children of the deceased.

20 SECTION 1.34. Section 293, Texas Probate Code, is amended
21 to read as follows:

22 Sec. 293. SALE TO RAISE FUNDS FOR FAMILY ALLOWANCE. If
23 there be no personal property of the deceased that the surviving
24 spouse or guardian is willing to take for such allowance, or not a
25 sufficiency of them, and if there be no funds or not sufficient
26 funds in the hands of such executor or administrator to pay such
27 allowance, or any part thereof, then the court, as soon as the

1 inventory, appraisement, and list of claims are returned and
2 approved or, if applicable, the affidavit in lieu of the inventory,
3 appraisement, and list of claims is filed, shall order a sale of so
4 much of the estate for cash as will be sufficient to raise the
5 amount of such allowance, or a part thereof, as the case requires.

6 SECTION 1.35. The heading to Section 322, Texas Probate
7 Code, is amended to read as follows:

8 Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATE [~~ESTATES~~]
9 OF DECEDENT.

10 SECTION 1.36. Section 333(a), Texas Probate Code, is
11 amended to read as follows:

12 (a) The representative of an estate, after approval of
13 inventory and appraisement or after the filing of the affidavit in
14 lieu of the inventory, appraisement, and list of claims, shall
15 promptly apply for an order of the court to sell at public auction
16 or privately, for cash or on credit not exceeding six months, all of
17 the estate that is liable to perish, waste, or deteriorate in value,
18 or that will be an expense or disadvantage to the estate if kept.
19 Property exempt from forced sale, specific legacies, and personal
20 property necessary to carry on a farm, ranch, factory, or any other
21 business which it is thought best to operate, shall not be included
22 in such sales.

23 SECTION 1.37. Section 373(c), Texas Probate Code, is
24 amended to read as follows:

25 (c) Partial Distribution. At any time after the original
26 grant of letters testamentary or of administration, and the filing
27 and approval of the inventory or the filing of the affidavit in lieu

1 of the inventory, appraisement, and list of claims, the executor or
2 administrator, or the heirs, devisees, or legatees of the estate,
3 or any of them, may, by written application filed in the court in
4 which the estate is pending, request a distribution of any portion
5 of the estate. All interested parties shall be personally cited, as
6 in other distributions, including known creditors. The court may
7 upon proper citation and hearing distribute any portion of the
8 estate it deems advisable. In the event a distribution is to be
9 made to one or more heirs or devisees, and not to all the heirs or
10 devisees, the court shall require a refunding bond in an amount to
11 be determined by the court to be filed with the court and, upon its
12 approval, the court shall order the distribution of that portion of
13 the estate, unless such requirement is waived in writing and the
14 waiver is filed with the court by all interested parties. This
15 section shall apply to corpus as well as income, notwithstanding
16 any other provisions of this Code.

17 SECTION 1.38. Section 378B(a), Texas Probate Code, is
18 amended to read as follows:

19 (a) Except as provided by Subsection (b) of this section and
20 unless the will provides otherwise, all expenses incurred in
21 connection with the settlement of a decedent's estate, including
22 debts, funeral expenses, estate taxes, penalties relating to estate
23 taxes, and family allowances, shall be charged against the
24 principal of the estate. Fees and expenses of an attorney,
25 accountant, or other professional advisor, compensation
26 [~~commissions~~] and expenses of a personal representative, court
27 costs, and all other similar fees or expenses relating to the

1 administration of the estate and interest relating to estate taxes
2 shall be allocated between the income and principal of the estate as
3 the executor determines in its discretion to be just and equitable.

4 SECTION 1.39. Section 385(a), Texas Probate Code, is
5 amended to read as follows:

6 (a) Application for Partition. When a husband or wife shall
7 die leaving any community property, the survivor may, at any time
8 after letters testamentary or of administration have been granted,
9 and an inventory, appraisement, and list of the claims of the estate
10 have been returned or an affidavit in lieu of the inventory,
11 appraisement, and list of claims has been filed, make application
12 in writing to the court which granted such letters for a partition
13 of such community property.

14 SECTION 1.40. Section 436, Texas Probate Code, is amended
15 by adding Subdivision (2-a) and amending Subdivisions (7) and (11)
16 to read as follows:

17 (2-a) "Charitable organization" means any
18 corporation, community chest, fund, or foundation that is exempt
19 from federal income tax under Section 501(a) of the Internal
20 Revenue Code of 1986 by being listed as an exempt organization in
21 Section 501(c)(3) of that code.

22 (7) "Party" means a person who, by the terms of the
23 account, has a present right, subject to request, to payment from a
24 multiple-party account. A P.O.D. payee, including a charitable
25 organization, or beneficiary of a trust account is a party only
26 after the account becomes payable to the P.O.D payee or beneficiary
27 [~~him~~] by reason of the P.O.D payee or beneficiary [~~his~~] surviving

1 the original payee or trustee. Unless the context otherwise
2 requires, it includes a guardian, personal representative, or
3 assignee, including an attaching creditor, of a party. It also
4 includes a person identified as a trustee of an account for another
5 whether or not a beneficiary is named, but it does not include a
6 named beneficiary unless the beneficiary has a present right of
7 withdrawal.

8 (11) "P.O.D. payee" means a person or charitable
9 organization designated on a P.O.D. account as one to whom the
10 account is payable on request after the death of one or more
11 persons.

12 SECTION 1.41. Section 439(a), Texas Probate Code, is
13 amended to read as follows:

14 (a) Sums remaining on deposit at the death of a party to a
15 joint account belong to the surviving party or parties against the
16 estate of the decedent if, by a written agreement signed by the
17 party who dies, the interest of such deceased party is made to
18 survive to the surviving party or parties. Notwithstanding any
19 other law, an agreement is sufficient to confer an absolute right of
20 survivorship on parties to a joint account under this subsection if
21 the agreement states in substantially the following form: "On the
22 death of one party to a joint account, all sums in the account on the
23 date of the death vest in and belong to the surviving party as his or
24 her separate property and estate." A survivorship agreement will
25 not be inferred from the mere fact that the account is a joint
26 account or that the account is designated JT TEN, Joint Tenancy,
27 joint, or other similar abbreviation. If there are two or more

1 surviving parties, their respective ownerships during lifetime
2 shall be in proportion to their previous ownership interests under
3 Section 438 of this code augmented by an equal share for each
4 survivor of any interest the decedent may have owned in the account
5 immediately before his death, and the right of survivorship
6 continues between the surviving parties if a written agreement
7 signed by a party who dies so provides.

8 SECTION 1.42. Section 452, Texas Probate Code, is amended
9 to read as follows:

10 Sec. 452. FORMALITIES. (a) An agreement between spouses
11 creating a right of survivorship in community property must be in
12 writing and signed by both spouses. If an agreement in writing is
13 signed by both spouses, the agreement shall be sufficient to create
14 a right of survivorship in the community property described in the
15 agreement if it includes any of the following phrases:

- 16 (1) "with right of survivorship";
17 (2) "will become the property of the survivor";
18 (3) "will vest in and belong to the surviving spouse";
19 or
20 (4) "shall pass to the surviving spouse."

21 (b) An agreement that otherwise meets the requirements of
22 this part, however, shall be effective without including any of
23 those phrases.

24 (c) A survivorship agreement will not be inferred from the
25 mere fact that the account is a joint account or that the account is
26 designated JT TEN, Joint Tenancy, joint, or other similar
27 abbreviation.

1 SECTION 1.43. Section 471, Texas Probate Code, is amended
2 by amending Subdivision (2) and adding Subdivision (2-a) to read as
3 follows:

4 (2) "Divorced individual" means an individual whose
5 marriage has been dissolved, [~~regardless of~~] whether by divorce,
6 [~~or~~] annulment, or a declaration that the marriage is void.

7 (2-a) "Relative" means an individual who is related to
8 another individual by consanguinity or affinity, as determined
9 under Sections 573.022 and 573.024, Government Code, respectively.

10 SECTION 1.44. Sections 472 and 473, Texas Probate Code, are
11 amended to read as follows:

12 Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS
13 ON DISSOLUTION OF MARRIAGE. (a) Except as otherwise provided by a
14 court order, the express terms of a trust instrument executed by a
15 divorced individual before the individual's marriage was
16 dissolved, or an express provision of a contract relating to the
17 division of the marital estate entered into between a divorced
18 individual and the individual's former spouse before, during, or
19 after the marriage, the dissolution of the marriage revokes the
20 following:

21 (1) a revocable disposition or appointment of property
22 made by a divorced individual to the individual's former spouse or
23 any relative of the former spouse who is not a relative of the
24 divorced individual in a trust instrument executed before the
25 dissolution of the marriage;

26 (2) a provision in a trust instrument executed by a
27 divorced individual before the dissolution of the marriage that

1 confers a general or special power of appointment on the
2 individual's former spouse or any relative of the former spouse who
3 is not a relative of the divorced individual; and

4 (3) a nomination in a trust instrument executed by a
5 divorced individual before the dissolution of the marriage that
6 nominates the individual's former spouse or any relative of the
7 former spouse who is not a relative of the divorced individual to
8 serve in a fiduciary or representative capacity, including as a
9 personal representative, executor, trustee, conservator, agent, or
10 guardian.

11 (b) After the dissolution of a marriage, an interest granted
12 in a provision of a trust instrument that is revoked under
13 Subsection (a)(1) or (2) of this section passes as if the former
14 spouse of the divorced individual who executed the trust instrument
15 and each relative of the former spouse who is not a relative of the
16 divorced individual disclaimed the interest granted in the
17 provision, and an interest granted in a provision of a trust
18 instrument that is revoked under Subsection (a)(3) of this section
19 passes as if the former spouse and each relative of the former
20 spouse who is not a relative of the divorced individual died
21 immediately before the dissolution of the marriage.

22 Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND
23 PROPERTY. (a) A bona fide purchaser of property from a divorced
24 individual's former spouse or any relative of the former spouse who
25 is not a relative of the divorced individual or a person who
26 receives from a divorced individual's former spouse or any relative
27 of the former spouse who is not a relative of the divorced

1 individual a payment, benefit, or property in partial or full
2 satisfaction of an enforceable obligation:

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

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

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

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

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

19 SECTION 1.45. Section 25.0022(i), Government Code, is
20 amended to read as follows:

21 (i) A judge assigned under this section has the
22 jurisdiction, powers, and duties given by Sections 4A, 4C, 4D, 4F,
23 4G, 4H, 5B, 606, 607, and 608, Texas Probate Code, to statutory
24 probate court judges by general law.

25 SECTION 1.46. (a) Sections 48(c), 70, and 251(f), Texas
26 Probate Code, are repealed.

27 (b) Notwithstanding the transfer of Section 5, Texas

1 Probate Code, to the Estates Code and redesignation as Section 5 of
2 that code effective January 1, 2014, by Section 2, Chapter 680 (H.B.
3 2502), Acts of the 81st Legislature, Regular Session, 2009, Section
4 5, Texas Probate Code, is repealed.

5 SECTION 1.47. (a) The changes in law made by Sections 4D,
6 4H, 6, 8, 48, and 49, Texas Probate Code, as amended by this
7 article, and Sections 6A, 6B, 6C, 8A, and 8B, Texas Probate Code, as
8 added by this article, apply only to an action filed or other
9 proceeding commenced on or after the effective date of this Act. An
10 action filed or other proceeding commenced before the effective
11 date of this Act is governed by the law in effect on the date the
12 action was filed or the proceeding was commenced, and the former law
13 is continued in effect for that purpose.

14 (b) The changes in law made by Sections 64, 67, 84, 128A,
15 143, 145, 146, 149C, 168, 222, 227, 241, 250, 256, 260, 262, 271,
16 286, 293, 333, 373, 378B, 385, 471, 472, and 473, Texas Probate
17 Code, as amended by this article, and Sections 145A, 145B, and 145C,
18 Texas Probate Code, as added by this article, apply only to the
19 estate of a decedent who dies on or after the effective date of this
20 Act. The estate of a decedent who dies before the effective date of
21 this Act is governed by the law in effect on the date of the
22 decedent's death, and the former law is continued in effect for that
23 purpose.

24 (c) The changes in law made by this article to Section 59,
25 Texas Probate Code, apply only to a will executed on or after the
26 effective date of this Act. A will executed before the effective
27 date of this Act is governed by the law in effect on the date the

1 will was executed, and the former law is continued in effect for
2 that purpose.

3 (d) The changes in law made by this article to Section 149B,
4 Texas Probate Code, apply only to a petition for an accounting and
5 distribution filed on or after the effective date of this Act. A
6 petition for an accounting and distribution filed before the
7 effective date of this Act is governed by the law in effect on the
8 date the petition is filed, and the former law is continued in
9 effect for that purpose.

10 (e) The changes in law made by this article to Section 151,
11 Texas Probate Code, apply only to a closing report or notice of
12 closing of an estate filed on or after the effective date of this
13 Act. A closing report or notice of closing of an estate filed
14 before the effective date of this Act is governed by the law in
15 effect on the date the closing report or notice is filed, and the
16 former law is continued in effect for that purpose.

17 (f) The changes in law made by this article to Sections 436
18 and 439, Texas Probate Code, apply only to multiple-party accounts
19 created or existing on or after the effective date of this Act and
20 are intended to clarify existing law.

21 (g) The changes in law made by this article to Section 452,
22 Texas Probate Code, apply only to agreements created or existing on
23 or after the effective date of this Act, and are intended to
24 overturn the ruling of the Texas Supreme Court in *Holmes v. Beatty*,
25 290 S.W.3d 852 (Tex. 2009).

26 ARTICLE 2. CHANGES TO ESTATES CODE

27 SECTION 2.01. The heading to Subtitle A, Title 2, Estates

1 Code, as effective January 1, 2014, is amended to read as follows:

2 SUBTITLE A. SCOPE, JURISDICTION, VENUE, AND COURTS

3 SECTION 2.02. Section 32.003, Estates Code, as effective
4 January 1, 2014, is amended by adding Subsections (b-1) and (b-2)
5 and amending Subsections (e), (f), (g), and (i) to read as follows:

6 (b-1) If a judge of a county court requests the assignment
7 of a statutory probate court judge to hear a contested matter in a
8 probate proceeding on the judge's own motion or on the motion of a
9 party to the proceeding as provided by this section, the judge may
10 request that the statutory probate court judge be assigned to the
11 entire proceeding on the judge's own motion or on the motion of a
12 party.

13 (b-2) If a judge of a county court transfers a contested
14 matter in a probate proceeding to a district court on the judge's
15 own motion or on the motion of a party to the proceeding as provided
16 by this section, the judge may transfer the entire proceeding to
17 that court on the judge's own motion or on the motion of a party. A
18 district court to which an entire probate proceeding is transferred
19 as provided by this subsection may hear the proceeding as if
20 originally filed in that court.

21 (e) A statutory probate court judge assigned to a contested
22 matter in a probate proceeding or to the entire proceeding under
23 this section has the jurisdiction and authority granted to a
24 statutory probate court by this subtitle. A statutory probate
25 court judge assigned to hear only the contested matter in a probate
26 proceeding shall, on [On] resolution of the [a-contested] matter
27 ~~[for which a statutory probate court judge is assigned under this~~

1 ~~section]~~, including any appeal of the matter, [~~the statutory~~
2 ~~probate court judge shall]~~ return the matter to the county court for
3 further proceedings not inconsistent with the orders of the
4 statutory probate court or court of appeals, as applicable. A
5 statutory probate court judge assigned to the entire probate
6 proceeding as provided by Subsection (b-1) shall, on resolution of
7 the contested matter in the proceeding, including an appeal of the
8 matter, return the entire proceeding to the county court for
9 further proceedings not inconsistent with the orders of the
10 statutory probate court or court of appeals, as applicable.

11 (f) A district court to which a contested matter in a
12 probate proceeding or the entire proceeding is transferred under
13 this section has the jurisdiction and authority granted to a
14 statutory probate court by this subtitle. A district court to which
15 only the contested matter is transferred shall, on [~~On~~] resolution
16 of the [~~a contested~~] matter [~~transferred to the district court~~
17 ~~under this section~~], including any appeal of the matter, [~~the~~
18 ~~district court shall]~~ return the matter to the county court for
19 further proceedings not inconsistent with the orders of the
20 district court or court of appeals, as applicable. A district court
21 to which an entire probate proceeding is transferred as provided by
22 Subsection (b-2) shall, on resolution of the contested matter in
23 the proceeding, including an appeal of the matter, return the
24 entire proceeding to the county court for further proceedings not
25 inconsistent with the orders of the district court or court of
26 appeals, as applicable.

27 (g) If only the contested matter in a probate proceeding is

1 assigned to a statutory probate court judge or transferred to a
2 district court under this section, the [~~The~~] county court shall
3 continue to exercise jurisdiction over the management of the
4 estate, other than a contested matter, until final disposition of
5 the contested matter is made in accordance with this section. Any
6 [~~After a contested matter is transferred to a district court, any~~]
7 matter related to a a [~~the~~] probate proceeding in which only a
8 contested matter is transferred to a district court may be brought
9 in the district court. The district court in which a matter related
10 to the [~~probate~~] proceeding is filed may, on its own motion or on
11 the motion of any party, find that the matter is not a contested
12 matter and transfer the matter to the county court with
13 jurisdiction of the management of the estate.

14 (i) The clerk of a district court to which a contested
15 matter in a probate proceeding or the entire proceeding is
16 transferred under this section may perform in relation to the
17 transferred [~~contested~~] matter or proceeding, as applicable, any
18 function a county clerk may perform with respect to that type of
19 matter or proceeding.

20 SECTION 2.03. Section 32.007, Estates Code, as effective
21 January 1, 2014, is amended to read as follows:

22 Sec. 32.007. CONCURRENT JURISDICTION WITH DISTRICT COURT.
23 A statutory probate court has concurrent jurisdiction with the
24 district court in:

25 (1) a personal injury, survival, or wrongful death
26 action by or against a person in the person's capacity as a personal
27 representative;

1 (A) if the decedent died in this state, in the
2 county in which:

3 (i) the decedent's principal estate was
4 located at the time of the decedent's death; or

5 (ii) the decedent died; or

6 (B) if the decedent died outside of this state:

7 (i) in any county in this state in which the
8 decedent's nearest of kin reside; or

9 (ii) if there is no next of kin of the
10 decedent in this state, in the county in which the decedent's
11 principal estate was located at the time of the decedent's death.

12 Sec. 33.002. ACTION RELATED TO PROBATE PROCEEDING IN
13 STATUTORY PROBATE COURT. Except as provided by Section 33.003,
14 venue for any cause of action related to a probate proceeding
15 pending in a statutory probate court is proper in the statutory
16 probate court in which the decedent's estate is pending.

17 Sec. 33.003. CERTAIN ACTIONS INVOLVING PERSONAL
18 REPRESENTATIVE. Notwithstanding any other provision of this
19 chapter, the proper venue for an action by or against a personal
20 representative for personal injury, death, or property damages is
21 determined under Section 15.007, Civil Practice and Remedies Code.

22 Sec. 33.004. HEIRSHIP PROCEEDINGS. (a) Venue for a
23 proceeding to determine a decedent's heirs is in:

24 (1) the court of the county in which a proceeding
25 admitting the decedent's will to probate or administering the
26 decedent's estate was most recently pending; or

27 (2) the court of the county in which venue would be

1 proper for commencement of an administration of the decedent's
2 estate under Section 33.001 if:

3 (A) no will of the decedent has been admitted to
4 probate in this state and no administration of the decedent's
5 estate has been granted in this state; or

6 (B) the proceeding is commenced by the trustee of
7 a trust holding assets for the benefit of the decedent.

8 (b) Notwithstanding Subsection (a) and Section 33.001, if
9 there is no administration pending of the estate of a deceased ward
10 who died intestate, venue for a proceeding to determine the
11 deceased ward's heirs is in the probate court in which the
12 guardianship proceedings with respect to the ward's estate were
13 pending on the date of the ward's death. A proceeding described by
14 this subsection may be brought as part of the guardianship
15 proceedings with respect to the ward's estate, and the court may
16 determine the heirs' respective shares and interests in the estate
17 as provided by the laws of this state.

18 [Sections 33.005-33.050 reserved for expansion]

19 SUBCHAPTER B. DETERMINATION OF VENUE

20 Sec. 33.051. COMMENCEMENT OF PROCEEDING. For purposes of
21 this subchapter, a probate proceeding is considered commenced on
22 the filing of an application for the proceeding that avers facts
23 sufficient to confer venue on the court in which the application is
24 filed.

25 Sec. 33.052. CONCURRENT VENUE. (a) If applications for
26 probate proceedings involving the same estate are filed in two or
27 more courts having concurrent venue, the court in which a

1 proceeding involving the estate was first commenced has and retains
2 jurisdiction of the proceeding to the exclusion of the other court
3 or courts in which a proceeding involving the same estate was
4 commenced.

5 (b) The first commenced probate proceeding extends to all of
6 the decedent's property, including the decedent's estate property.

7 Sec. 33.053. PROBATE PROCEEDINGS IN MORE THAN ONE COUNTY.
8 If probate proceedings involving the same estate are commenced in
9 more than one county, each proceeding commenced in a county other
10 than the county in which a proceeding was first commenced is stayed
11 until the court in which the proceeding was first commenced makes a
12 final determination of venue.

13 Sec. 33.054. JURISDICTION TO DETERMINE VENUE. (a) Subject
14 to Sections 33.052 and 33.053, a court in which an application for a
15 probate proceeding is filed has jurisdiction to determine venue for
16 the proceeding and for any matter related to the proceeding.

17 (b) A court's determination under this section is not
18 subject to collateral attack.

19 Sec. 33.055. PROTECTION FOR CERTAIN PURCHASERS.
20 Notwithstanding Section 33.052, a bona fide purchaser of real
21 property who relied on a probate proceeding that was not the first
22 commenced proceeding, without knowledge that the proceeding was not
23 the first commenced proceeding, shall be protected with respect to
24 the purchase unless before the purchase an order rendered in the
25 first commenced proceeding admitting the decedent's will to
26 probate, determining the decedent's heirs, or granting
27 administration of the decedent's estate was recorded in the office

1 of the county clerk of the county in which the purchased property is
2 located.

3 [Sections 33.056-33.100 reserved for expansion]

4 SUBCHAPTER C. TRANSFER OF PROBATE PROCEEDING

5 Sec. 33.101. TRANSFER TO OTHER COUNTY IN WHICH VENUE IS
6 PROPER. If probate proceedings involving the same estate are
7 commenced in more than one county and the court making a
8 determination of venue as provided by Section 33.053 determines
9 that venue is proper in another county, the court clerk shall make
10 and retain a copy of the entire file in the case and transmit the
11 original file to the court in the county in which venue is proper.
12 The court to which the file is transmitted shall conduct the
13 proceeding in the same manner as if the proceeding had originally
14 been commenced in that county.

15 Sec. 33.102. TRANSFER FOR WANT OF VENUE. (a) If it appears
16 to the court at any time before the final order in a probate
17 proceeding is rendered that the court does not have priority of
18 venue over the proceeding, the court shall, on the application of an
19 interested person, transfer the proceeding to the proper county by
20 transmitting to the proper court in that county:

- 21 (1) the original file in the case; and
22 (2) certified copies of all entries that have been
23 made in the judge's probate docket in the proceeding.

24 (b) The court of the county to which a probate proceeding is
25 transferred under Subsection (a) shall complete the proceeding in
26 the same manner as if the proceeding had originally been commenced
27 in that county.

1 (c) If the question as to priority of venue is not raised
2 before a final order in a probate proceeding is announced, the
3 finality of the order is not affected by any error in venue.

4 Sec. 33.103. TRANSFER FOR CONVENIENCE. (a) The court may
5 order that a probate proceeding be transferred to the proper court
6 in another county in this state if it appears to the court at any
7 time before the proceeding is concluded that the transfer would be
8 in the best interest of:

9 (1) the estate; or

10 (2) if there is no administration of the estate, the
11 decedent's heirs or beneficiaries under the decedent's will.

12 (b) The clerk of the court from which the probate proceeding
13 described by Subsection (a) is transferred shall transmit to the
14 court to which the proceeding is transferred:

15 (1) the original file in the proceeding; and

16 (2) a certified copy of the index.

17 Sec. 33.104. VALIDATION OF PREVIOUS PROCEEDINGS. All
18 orders entered in connection with a probate proceeding that is
19 transferred to another county under a provision of this subchapter
20 are valid and shall be recognized in the court to which the
21 proceeding is transferred if the orders were made and entered in
22 conformance with the procedure prescribed by this code.

23 SECTION 2.05. Section 52.052(b), Estates Code, as effective
24 January 1, 2014, is amended to read as follows:

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

- 1 (1) application for the probate of a will;
- 2 (2) application for the granting of administration;
- 3 (3) citation and notice, whether published or posted,
- 4 including the return on the citation or notice;
- 5 (4) will and the testimony on which the will is
- 6 admitted to probate;
- 7 (5) bond and official oath;
- 8 (6) inventory, appraisement, and list of claims;
- 9 (6-a) affidavit in lieu of the inventory,
- 10 appraisement, and list of claims;
- 11 (7) exhibit and account;
- 12 (8) report of renting;
- 13 (9) application for sale or partition of real estate;
- 14 (10) report of sale;
- 15 (11) report of the commissioners of partition;
- 16 (12) application for authority to execute a lease for
- 17 mineral development, or for pooling or unitization of lands,
- 18 royalty, or other interest in minerals, or to lend or invest money;
- 19 and
- 20 (13) report of lending or investing money.

21 SECTION 2.06. Section 112.052, Estates Code, as effective
22 January 1, 2014, is amended by adding Subsection (d) to read as
23 follows:

24 (d) A survivorship agreement may not be inferred from the
25 mere fact that an account is a joint account or that an account is
26 designated JT TEN, Joint Tenancy, joint, or other similar
27 abbreviation.

1 SECTION 2.07. Section 113.001, Estates Code, as effective
2 January 1, 2014, is amended by adding Subdivision (2-a) and
3 amending Subdivision (5) to read as follows:

4 (2-a) "Charitable organization" means any
5 corporation, community chest, fund, or foundation that is exempt
6 from federal income tax under Section 501(a) of the Internal
7 Revenue Code of 1986 by being listed as an exempt organization in
8 Section 501(c)(3) of that code.

9 (5) "P.O.D. payee" means a person or charitable
10 organization designated on a P.O.D. account as a person to whom the
11 account is payable on request after the death of one or more
12 persons.

13 SECTION 2.08. Section 113.002(b), Estates Code, as
14 effective January 1, 2014, is amended to read as follows:

15 (b) A P.O.D. payee, including a charitable organization, or
16 beneficiary of a trust account is a party only after the account
17 becomes payable to the P.O.D. payee or beneficiary by reason of the
18 P.O.D. payee or beneficiary surviving the original payee or
19 trustee.

20 SECTION 2.09. Section 113.151(c), Estates Code, as
21 effective January 1, 2014, is amended to read as follows:

22 (c) A survivorship agreement may not be inferred from the
23 mere fact that the account is a joint account or that the account is
24 designated JT TEN, Joint Tenancy, joint, or other similar
25 abbreviation.

26 SECTION 2.10. Section 122.056(b), Estates Code, as
27 effective January 1, 2014, is amended to read as follows:

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

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

6 (2) the expiration of the six-month period following
7 the date the personal representative files:

8 (A) the inventory, appraisement, and list of
9 claims due or owing to the estate; or

10 (B) the affidavit in lieu of the inventory,
11 appraisement, and list of claims.

12 SECTION 2.11. Section 123.051, Estates Code, as effective
13 January 1, 2014, is amended by amending Subdivision (2) and adding
14 Subdivision (2-a) to read as follows:

15 (2) "Divorced individual" means an individual whose
16 marriage has been dissolved by divorce, ~~[or]~~ annulment, or a
17 declaration that the marriage is void.

18 (2-a) "Relative" means an individual who is related to
19 another individual by consanguinity or affinity, as determined
20 under Sections 573.022 and 573.024, Government Code, respectively.

21 SECTION 2.12. Section 123.052(a), Estates Code, as
22 effective January 1, 2014, is amended to read as follows:

23 (a) The dissolution of the marriage revokes a provision in a
24 trust instrument that was executed by a divorced individual before
25 the divorced individual's marriage was dissolved and that:

26 (1) is a revocable disposition or appointment of
27 property made to the divorced individual's former spouse or any

1 relative of the former spouse who is not a relative of the divorced
2 individual;

3 (2) confers a general or special power of appointment
4 on the divorced individual's former spouse or any relative of the
5 former spouse who is not a relative of the divorced individual; or

6 (3) nominates the divorced individual's former spouse
7 or any relative of the former spouse who is not a relative of the
8 divorced individual to serve:

9 (A) as a personal representative, trustee,
10 conservator, agent, or guardian; or

11 (B) in another fiduciary or representative
12 capacity.

13 SECTION 2.13. Section 123.053, Estates Code, as effective
14 January 1, 2014, is amended to read as follows:

15 Sec. 123.053. EFFECT OF REVOCATION. (a) An interest
16 granted in a provision of a trust instrument that is revoked under
17 Section 123.052(a)(1) or (2) passes as if the former spouse of the
18 divorced individual who executed the trust instrument and each
19 relative of the former spouse who is not a relative of the divorced
20 individual disclaimed the interest granted in the provision.

21 (b) An interest granted in a provision of a trust instrument
22 that is revoked under Section 123.052(a)(3) passes as if the former
23 spouse and each relative of the former spouse who is not a relative
24 of the divorced individual died immediately before the dissolution
25 of the marriage.

26 SECTION 2.14. Section 123.054, Estates Code, as effective
27 January 1, 2014, is amended to read as follows:

1 Sec. 123.054. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS
2 OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A bona fide purchaser
3 of property from a divorced individual's former spouse or any
4 relative of the former spouse who is not a relative of the divorced
5 individual or a person who receives from the former spouse or any
6 relative of the former spouse who is not a relative of the divorced
7 individual a payment, benefit, or property in partial or full
8 satisfaction of an enforceable obligation:

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

11 (2) is not liable under this subchapter for the amount
12 of the payment or the value of the property or benefit.

13 SECTION 2.15. Section 123.055, Estates Code, as effective
14 January 1, 2014, is amended to read as follows:

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

22 (1) shall return the payment, benefit, or property to
23 the person who is entitled to the payment, benefit, or property
24 under this subchapter; or

25 (2) is personally liable to the person described by
26 Subdivision (1) for the amount of the payment or the value of the
27 benefit or property received, as applicable.

1 SECTION 2.16. Section 202.001, Estates Code, as effective
2 January 1, 2014, is amended to read as follows:

3 Sec. 202.001. GENERAL AUTHORIZATION FOR AND NATURE OF
4 PROCEEDING TO DECLARE HEIRSHIP. In the manner provided by this
5 chapter, a court may determine through a proceeding to declare
6 heirship:

7 (1) the persons who are a decedent's heirs and only
8 heirs; and

9 (2) the heirs' respective shares and interests under
10 the laws of this state in the decedent's estate or, if applicable,
11 in the trust.

12 SECTION 2.17. Section 202.002, Estates Code, as effective
13 January 1, 2014, is amended to read as follows:

14 Sec. 202.002. CIRCUMSTANCES UNDER WHICH PROCEEDING TO
15 DECLARE HEIRSHIP IS AUTHORIZED. A court may conduct a proceeding to
16 declare heirship when:

17 (1) a person dies intestate owning or entitled to
18 property in this state and there has been no administration in this
19 state of the person's estate; ~~or~~

20 (2) there has been a will probated in this state or
21 elsewhere or an administration in this state of a ~~the~~ decedent's
22 estate, but:

23 (A) property in this state was omitted from the
24 will or administration; or

25 (B) no final disposition of property in this
26 state has been made in the administration; or

27 (3) it is necessary for the trustee of a trust holding

1 assets for the benefit of a decedent to determine the heirs of the
2 decedent.

3 SECTION 2.18. Section 202.004, Estates Code, as effective
4 January 1, 2014, is amended to read as follows:

5 Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO
6 DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent
7 may be commenced and maintained under a circumstance specified by
8 Section 202.002 by:

9 (1) the personal representative of the decedent's
10 estate;

11 (2) a person claiming to be a secured creditor or the
12 owner of all or part of the decedent's estate; ~~[or]~~

13 (3) if the decedent was a ward with respect to whom a
14 guardian of the estate had been appointed, the guardian of the
15 estate, provided that the proceeding is commenced and maintained in
16 the probate court in which the proceedings for the guardianship of
17 the estate were pending at the time of the decedent's death;

18 (4) a party seeking the appointment of an independent
19 administrator under Section 401.003; or

20 (5) the trustee of a trust holding assets for the
21 benefit of a decedent.

22 SECTION 2.19. Section 202.005, Estates Code, as effective
23 January 1, 2014, is amended to read as follows:

24 Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE
25 HEIRSHIP. A person authorized by Section 202.004 to commence a
26 proceeding to declare heirship must file an application in a court
27 specified by Section 33.004 ~~[202.003]~~ to commence the proceeding.

1 The application must state:

2 (1) the decedent's name and time and place of death;

3 (2) the names and residences of the decedent's heirs,
4 the relationship of each heir to the decedent, and the true interest
5 of the applicant and each of the heirs in the decedent's estate or
6 in the trust, as applicable;

7 (3) if the time or place of the decedent's death or the
8 name or residence of an heir is not definitely known to the
9 applicant, all the material facts and circumstances with respect to
10 which the applicant has knowledge and information that might
11 reasonably tend to show the time or place of the decedent's death or
12 the name or residence of the heir;

13 (4) that all children born to or adopted by the
14 decedent have been listed;

15 (5) that each of the decedent's marriages has been
16 listed with:

17 (A) the date of the marriage;

18 (B) the name of the spouse;

19 (C) the date and place of termination if the
20 marriage was terminated; and

21 (D) other facts to show whether a spouse has had
22 an interest in the decedent's property;

23 (6) whether the decedent died testate and, if so, what
24 disposition has been made of the will;

25 (7) a general description of all property belonging to
26 the decedent's estate or held in trust for the benefit of the
27 decedent, as applicable; and

1 (8) an explanation for the omission from the
2 application of any of the information required by this section.

3 SECTION 2.20. Section 251.101, Estates Code, as effective
4 January 1, 2014, is amended to read as follows:

5 Sec. 251.101. SELF-PROVED WILL. A self-proved will is a
6 will:

7 (1) to which a self-proving affidavit subscribed and
8 sworn to by the testator and witnesses is attached or annexed; or

9 (2) that is simultaneously executed, attested, and
10 made self-proved as provided by Section 251.1045 [~~is a self-proved~~
11 ~~will~~].

12 SECTION 2.21. Section 251.102(a), Estates Code, as
13 effective January 1, 2014, is amended to read as follows:

14 (a) A self-proved will may be admitted to probate without
15 the testimony of any subscribing witnesses if:

16 (1) the testator and witnesses execute a self-proving
17 affidavit; or

18 (2) the will is simultaneously executed, attested, and
19 made self-proved as provided by Section 251.1045.

20 SECTION 2.22. Subchapter C, Chapter 251, Estates Code, as
21 effective January 1, 2014, is amended by adding Section 251.1045 to
22 read as follows:

23 Sec. 251.1045. SIMULTANEOUS EXECUTION, ATTESTATION, AND
24 SELF-PROVING. As an alternative to the self-proving of a will by
25 the affidavits of the testator and the attesting witnesses as
26 provided by Section 251.104, a will may be simultaneously executed,
27 attested, and made self-proved before an officer authorized to

1 administer oaths under the laws of this state, and the testimony of
2 the witnesses in the probate of the will may be made unnecessary,
3 with the inclusion in the will of the following in form and contents
4 substantially as follows:

5 I, _____, as testator, after being duly
6 sworn, declare to the undersigned witnesses and to the undersigned
7 authority that this instrument is my will, that I have willingly
8 made and executed it in the presence of the undersigned witnesses,
9 all of whom were present at the same time, as my free act and deed,
10 and that I have requested each of the undersigned witnesses to sign
11 this will in my presence and in the presence of each other. I now
12 sign this will in the presence of the attesting witnesses and the
13 undersigned authority on this _____ day of _____,
14 20_____.

15 _____
16 Testator

17 The undersigned, _____ and _____, each being at
18 least fourteen years of age, after being duly sworn, declare to the
19 testator and to the undersigned authority that the testator
20 declared to us that this instrument is the testator's will and that
21 the testator requested us to act as witnesses to the testator's will
22 and signature. The testator then signed this will in our presence,
23 all of us being present at the same time. The testator is eighteen
24 years of age or over (or being under such age, is or has been
25 lawfully married, or is a member of the armed forces of the United
26 States or of an auxiliary of the armed forces of the United States
27 or of the United States Maritime Service), and we believe the

1 testator to be of sound mind. We now sign our names as attesting
2 witnesses in the presence of the testator, each other, and the
3 undersigned authority on this _____ day of _____,
4 20_____.

5 _____
6 Witness

7 _____
8 Witness

9 Subscribed and sworn to before me by the said _____,
10 testator, and by the said _____ and _____,
11 witnesses, this _____ day of _____, 20_____.

12 (SEAL)

13 (Signed)_____
14 (Official Capacity of Officer) _____

15 SECTION 2.23. Chapter 254, Estates Code, as effective
16 January 1, 2014, is amended by adding Section 254.005 to read as
17 follows:

18 Sec. 254.005. FORFEITURE CLAUSE. A provision in a will that
19 would cause a forfeiture of or void a devise or provision in favor
20 of a person or the person's descendants or a trust for the benefit
21 of a person or the person's descendants for bringing any court
22 action, including contesting a will, is unenforceable if:

- 23 (1) just cause existed for bringing the action; and
24 (2) the action was brought and maintained in good
25 faith.

26 SECTION 2.24. Section 255.053(a), Estates Code, as
27 effective January 1, 2014, is amended to read as follows:

1 (a) If no provision is made in the testator's last will for
2 any child of the testator who is living when the testator executes
3 the will, a pretermitted child succeeds to the portion of the
4 testator's separate and community estate, other than any portion of
5 the estate devised to either the testator's surviving spouse or the
6 pretermitted child's other parent, to which the pretermitted child
7 would have been entitled under Section 201.001 if the testator had
8 died intestate without a surviving spouse.

9 SECTION 2.25. Section 255.054, Estates Code, as effective
10 January 1, 2014, is amended to read as follows:

11 Sec. 255.054. SUCCESSION BY PRETERMITTED CHILD IF TESTATOR
12 HAS NO LIVING CHILD AT WILL'S EXECUTION. If a testator has no child
13 living when the testator executes the testator's last will, a
14 pretermitted child succeeds to the portion of the testator's
15 separate and community estate, other than any portion of the estate
16 devised to either the testator's surviving spouse or the
17 pretermitted child's other parent, to which the pretermitted child
18 would have been entitled under Section 201.001 if the testator had
19 died intestate without a surviving spouse.

20 SECTION 2.26. Section 255.055(a), Estates Code, as
21 effective January 1, 2014, is amended to read as follows:

22 (a) A pretermitted child may recover the share of the
23 testator's estate to which the child is entitled from the testator's
24 other children under Section 255.053(b) or from the testamentary
25 beneficiaries under Sections 255.053(a) and 255.054, other than the
26 testator's surviving spouse and the pretermitted child's other
27 parent, ratably, out of the portions of the estate passing to those

1 persons under the will.

2 SECTION 2.27. Section 256.152(b), Estates Code, as
3 effective January 1, 2014, is amended to read as follows:

4 (b) A will that is self-proved as provided by this title or,
5 if executed in another state, is self-proved in accordance with the
6 laws of the state of the testator's domicile at the time of the
7 execution is not required to have any additional proof that the will
8 was executed with the formalities and solemnities and under the
9 circumstances required to make the will valid.

10 SECTION 2.28. Section 308.004(b), Estates Code, as
11 effective January 1, 2014, is amended to read as follows:

12 (b) The affidavit or certificate required by Subsection (a)
13 may be included with any pleading or other document filed with the
14 court clerk, including the inventory, appraisement, and list of
15 claims, an affidavit in lieu of the inventory, appraisement, and
16 list of claims, or an application for an extension of the deadline
17 to file the inventory, appraisement, and list of claims or an
18 affidavit in lieu of the inventory, appraisement, and list of
19 claims, provided that the pleading or other document is filed not
20 later than the date the affidavit or certificate is required to be
21 filed under Subsection (a).

22 SECTION 2.29. The heading to Subchapter B, Chapter 309,
23 Estates Code, as effective January 1, 2014, is amended to read as
24 follows:

25 SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST
26 OF CLAIMS; AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST

27 OF CLAIMS

1 SECTION 2.30. Section 309.051(a), Estates Code, as
2 effective January 1, 2014, is amended to read as follows:

3 (a) Except as provided by Subsection (c) or unless a longer
4 period is granted by the court, before the 91st day after the date
5 the personal representative qualifies, the representative shall
6 prepare and file with the court clerk a single written instrument
7 that contains a verified, full, and detailed inventory of all
8 estate property that has come into the representative's possession
9 or of which the representative has knowledge. The inventory must:

10 (1) include:

11 (A) all estate real property located in this
12 state; and

13 (B) all estate personal property regardless of
14 where the property is located; and

15 (2) specify~~+~~

16 [~~(A)~~] which portion of the property, if any, is
17 separate property and which, if any, is community property~~+, and~~

18 [~~(B) if estate property is owned in common with~~
19 ~~others, the interest of the estate in that property and the names~~
20 ~~and relationship, if known, of the co-owners].~~

21 SECTION 2.31. Section 309.052, Estates Code, as effective
22 January 1, 2014, is amended to read as follows:

23 Sec. 309.052. LIST OF CLAIMS. A complete list of claims due
24 or owing to the estate must be attached to the inventory and
25 appraisal required by Section 309.051. The list of claims must
26 state:

27 (1) the name and, if known, address of each person

1 indebted to the estate; and

2 (2) regarding each claim:

3 (A) the nature of the debt, whether by note,
4 bill, bond, or other written obligation, or by account or verbal
5 contract;

6 (B) the date the debt was incurred;

7 (C) the date the debt was or is due;

8 (D) the amount of the claim, the rate of interest
9 on the claim, and the period for which the claim bears interest; and

10 (E) whether the claim is separate property or
11 community property [~~and~~

12 [~~(F) if any portion of the claim is held in common~~
13 ~~with others, the interest of the estate in the claim and the names~~
14 ~~and relationships, if any, of the other part owners]~~.

15 SECTION 2.32. Section 309.055, Estates Code, as effective
16 January 1, 2014, is amended to read as follows:

17 Sec. 309.055. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO
18 FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN
19 LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) If more
20 than one personal representative qualifies to serve, any one or
21 more of the representatives, on the neglect of the other
22 representatives, may make and file an inventory, appraisalment, and
23 list of claims or an affidavit in lieu of an inventory,
24 appraisalment, and list of claims.

25 (b) A personal representative who neglects to make or file
26 an inventory, appraisalment, and list of claims or an affidavit in
27 lieu of an inventory, appraisalment, and list of claims may not

1 interfere with and does not have any power over the estate after
2 another representative makes and files an inventory, appraisalment,
3 and list of claims or an affidavit in lieu of an inventory,
4 appraisalment, and list of claims.

5 (c) The personal representative who files the inventory,
6 appraisalment, and list of claims or the affidavit in lieu of an
7 inventory, appraisalment, and list of claims is entitled to the
8 whole administration unless, before the 61st day after the date the
9 representative files the inventory, appraisalment, and list of
10 claims or the affidavit in lieu of an inventory, appraisalment, and
11 list of claims, one or more delinquent representatives file with
12 the court a written, sworn, and reasonable excuse that the court
13 considers satisfactory. The court shall enter an order removing
14 one or more delinquent representatives and revoking those
15 representatives' letters if:

16 (1) an excuse is not filed; or

17 (2) the court does not consider the filed excuse
18 sufficient.

19 SECTION 2.33. Subchapter B, Chapter 309, Estates Code, as
20 effective January 1, 2014, is amended by adding Section 309.056 to
21 read as follows:

22 Sec. 309.056. AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT,
23 AND LIST OF CLAIMS. (a) Notwithstanding Sections 309.051 and
24 309.052, if there are no unpaid debts, except for secured debts,
25 taxes, and administration expenses, at the time the inventory is
26 due, including any extensions, the personal representative may file
27 with the court clerk, in lieu of the inventory, appraisalment, and

1 list of claims, an affidavit stating that all debts, except for
2 secured debts, taxes, and administration expenses, are paid and
3 that all beneficiaries have received a verified, full, and detailed
4 inventory and appraisement. The affidavit in lieu of the
5 inventory, appraisement, and list of claims must be filed within
6 the 90-day period prescribed by Section 309.051(a), unless the
7 court grants an extension.

8 (b) In this section, "beneficiary" means a person, entity,
9 state, governmental agency of the state, charitable organization,
10 or trust entitled to receive property:

11 (1) under the terms of a decedent's will, to be
12 determined for purposes of this section with the assumption that
13 each person who is alive on the date of the decedent's death
14 survives any period required to receive the bequest as specified by
15 the terms of the will; or

16 (2) as an heir of the decedent.

17 SECTION 2.34. Section 309.101, Estates Code, as effective
18 January 1, 2014, is amended to read as follows:

19 Sec. 309.101. DISCOVERY OF ADDITIONAL PROPERTY OR CLAIMS.

20 (a) If after the filing of the inventory, appraisement, and list of
21 claims the personal representative acquires possession or
22 knowledge of property or claims of the estate not included in the
23 inventory, appraisement, and list of claims the representative
24 shall promptly file with the court clerk a verified, full, and
25 detailed supplemental inventory, appraisement, and list of claims.

26 (b) If after the filing of the affidavit in lieu of the
27 inventory, appraisement, and list of claims the personal

1 representative acquires possession or knowledge of property or
2 claims of the estate not included in the inventory and appraisalment
3 given to the beneficiaries the representative shall promptly file
4 with the court clerk a supplemental affidavit in lieu of the
5 inventory, appraisalment, and list of claims stating that all
6 beneficiaries have received a verified, full, and detailed
7 supplemental inventory and appraisalment.

8 SECTION 2.35. Section 310.003(b), Estates Code, as
9 effective January 1, 2014, is amended to read as follows:

10 (b) Fees and expenses of an attorney, accountant, or other
11 professional advisor, compensation [~~commissions~~] and expenses of a
12 personal representative, court costs, and all other similar fees or
13 expenses relating to the administration of the estate and interest
14 relating to estate taxes shall be allocated between the income and
15 principal of the estate as the executor determines in the
16 executor's discretion to be just and equitable.

17 SECTION 2.36. Sections 352.001 and 352.002, Estates Code,
18 as effective January 1, 2014, are amended to read as follows:

19 Sec. 352.001. [~~DEFINITION. In this subchapter, "financial~~
20 ~~institution" means an organization authorized to engage in business~~
21 ~~under state or federal laws relating to financial institutions,~~
22 ~~including:~~

23 [~~(1) a bank,~~

24 [~~(2) a trust company,~~

25 [~~(3) a savings bank,~~

26 [~~(4) a building and loan association,~~

27 [~~(5) a savings and loan company or association, and~~

1 ~~[(6) a credit union.~~

2 ~~[Sec. 352.002.]~~ STANDARD COMPENSATION. ~~[(a)]~~ An executor,
3 administrator, or temporary administrator who has ~~[a court finds to~~
4 ~~have]~~ taken care of and managed a decedent's ~~[an]~~ estate in
5 compliance with the standards of this title is entitled to
6 reasonable compensation unless the decedent's will provides
7 otherwise ~~[receive a five percent commission on all amounts that~~
8 ~~the executor or administrator actually receives or pays out in cash~~
9 ~~in the administration of the estate.~~

10 ~~[(b) The commission described by Subsection (a):~~

11 ~~[(1) may not exceed, in the aggregate, more than five~~
12 ~~percent of the gross fair market value of the estate subject to~~
13 ~~administration; and~~

14 ~~[(2) is not allowed for:~~

15 ~~[(A) receiving funds belonging to the testator or~~
16 ~~intestate that were, at the time of the testator's or intestate's~~
17 ~~death, either on hand or held for the testator or intestate in a~~
18 ~~financial institution or a brokerage firm, including cash or a cash~~
19 ~~equivalent held in a checking account, savings account, certificate~~
20 ~~of deposit, or money market account;~~

21 ~~[(B) collecting the proceeds of a life insurance~~
22 ~~policy; or~~

23 ~~[(C) paying out cash to an heir or legatee in that~~
24 ~~person's capacity as an heir or legatee].~~

25 SECTION 2.37. Section 352.004, Estates Code, as effective
26 January 1, 2014, is amended to read as follows:

27 Sec. 352.004. DENIAL OF COMPENSATION. The court may, on

1 application of an interested person or on the court's own motion,
2 wholly or partly deny compensation [~~a commission~~] allowed by this
3 subchapter if:

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

6 (2) the executor or administrator has been removed
7 under Section 149C or Subchapter B, Chapter 361.

8 SECTION 2.38. Sections 353.051(a) and (b), Estates Code,
9 as effective January 1, 2014, are amended to read as follows:

10 (a) Unless an application and verified affidavit are filed
11 as provided by Subsection (b), immediately after the inventory,
12 appraisement, and list of claims of an estate are approved or after
13 the affidavit in lieu of the inventory, appraisement, and list of
14 claims is filed, the court by order shall set aside:

15 (1) the homestead for the use and benefit of the
16 decedent's surviving spouse and minor children; and

17 (2) all other estate property that is exempt from
18 execution or forced sale by the constitution and laws of this state
19 for the use and benefit of the decedent's:

20 (A) surviving spouse and minor children; and

21 (B) unmarried children remaining with the
22 decedent's family.

23 (b) Before the inventory, appraisement, and list of claims
24 of an estate are approved or, if applicable, after the affidavit in
25 lieu of the inventory, appraisement, and list of claims is filed:

26 (1) the decedent's surviving spouse or any other
27 person authorized to act on behalf of the decedent's minor children

1 may apply to the court to have exempt property, including the
2 homestead, set aside by filing an application and a verified
3 affidavit listing all property that the applicant claims is exempt;
4 and

5 (2) any of the decedent's unmarried children remaining
6 with the decedent's family may apply to the court to have all exempt
7 property, other than the homestead, set aside by filing an
8 application and a verified affidavit listing all property, other
9 than the homestead, that the applicant claims is exempt.

10 SECTION 2.39. Sections 353.101(a) and (b), Estates Code, as
11 effective January 1, 2014, are amended to read as follows:

12 (a) Unless an application and verified affidavit are filed
13 as provided by Subsection (b), immediately after the inventory,
14 appraisal, and list of claims of an estate are approved or after
15 the affidavit in lieu of the inventory, appraisal, and list of
16 claims is filed, the court shall fix a family allowance for the
17 support of the decedent's surviving spouse and minor children.

18 (b) Before the inventory, appraisal, and list of claims
19 of an estate are approved or, if applicable, after the affidavit in
20 lieu of the inventory, appraisal, and list of claims is filed,
21 the decedent's surviving spouse or any other person authorized to
22 act on behalf of the decedent's minor children may apply to the
23 court to have the court fix the family allowance by filing an
24 application and a verified affidavit describing:

25 (1) the amount necessary for the maintenance of the
26 surviving spouse and the decedent's minor children for one year
27 after the date of the decedent's death; and

1 (2) the surviving spouse's separate property and any
2 property that the decedent's minor children have in their own
3 right.

4 SECTION 2.40. Section 353.107(a), Estates Code, as
5 effective January 1, 2014, is amended to read as follows:

6 (a) The court shall, as soon as the inventory, appraisalment,
7 and list of claims are returned and approved or the affidavit in
8 lieu of the inventory, appraisalment, and list of claims is filed,
9 order the sale of estate property for cash in an amount that will be
10 sufficient to raise the amount of the family allowance, or a portion
11 of that amount, as necessary, if:

12 (1) the decedent had no personal property that the
13 surviving spouse or the guardian of the decedent's minor children
14 is willing to take for the family allowance or the decedent had
15 insufficient personal property; and

16 (2) there are not sufficient estate funds in the
17 executor's or administrator's possession to pay the amount of the
18 family allowance or a portion of that amount, as applicable.

19 SECTION 2.41. Section 354.001(a), Estates Code, as
20 effective January 1, 2014, is amended to read as follows:

21 (a) If, after a personal representative of an estate has
22 filed the inventory, appraisalment, and list of claims or the
23 affidavit in lieu of the inventory, appraisalment, and list of
24 claims as provided [~~required~~] by Chapter 309, it is established
25 that the decedent's estate, excluding any homestead, exempt
26 property, and family allowance to the decedent's surviving spouse
27 and minor children, does not exceed the amount sufficient to pay the

1 claims against the estate classified as Classes 1 through 4 under
2 Section 355.102, the representative shall:

3 (1) on order of the court, pay those claims in the
4 order provided and to the extent permitted by the assets of the
5 estate subject to the payment of those claims; and

6 (2) after paying the claims in accordance with
7 Subdivision (1), present to the court the representative's account
8 with an application for the settlement and allowance of the
9 account.

10 SECTION 2.42. Section 354.051, Estates Code, as effective
11 January 1, 2014, is amended to read as follows:

12 Sec. 354.051. REQUIRED REPORT ON CONDITION OF ESTATE. At
13 any time after the return of the inventory, appraisement, and list
14 of claims of an estate or the filing of an affidavit in lieu of the
15 inventory, appraisement, and list of claims as provided for in
16 ~~[required by]~~ Chapter 309, anyone entitled to a portion of the
17 estate, by a written complaint filed in the court in which the case
18 is pending, may have the estate's executor or administrator cited
19 to appear and render under oath an exhibit of the condition of the
20 estate.

21 SECTION 2.43. Section 356.051(a), Estates Code, as
22 effective January 1, 2014, is amended to read as follows:

23 (a) After approval of the inventory, appraisement, and list
24 of claims or the filing of the affidavit in lieu of the inventory,
25 appraisement, and list of claims, the personal representative of an
26 estate promptly shall apply for a court order to sell, at public
27 auction or privately, for cash or on credit for a term not to exceed

1 six months, all estate property that is liable to perish, waste, or
2 deteriorate in value, or that will be an expense or disadvantage to
3 the estate if kept.

4 SECTION 2.44. Section 360.002(a), Estates Code, as
5 effective January 1, 2014, is amended to read as follows:

6 (a) At any time after original letters testamentary or of
7 administration are granted and the inventory, appraisement, and
8 list of claims are filed and approved or the affidavit in lieu of
9 the inventory, appraisement, and list of claims is filed, an
10 executor, administrator, heir, or devisee of a decedent's estate,
11 by written application filed in the court in which the estate is
12 pending, may request a distribution of any portion of the estate.

13 SECTION 2.45. Section 360.253(a), Estates Code, as
14 effective January 1, 2014, is amended to read as follows:

15 (a) If a spouse dies leaving community property, the
16 surviving spouse, at any time after letters testamentary or of
17 administration have been granted and an inventory, appraisement,
18 and list of claims of the estate have been returned or an affidavit
19 in lieu of the inventory, appraisement, and list of claims has been
20 filed, may apply in writing to the court that granted the letters
21 for a partition of the community property.

22 SECTION 2.46. Section 361.051, Estates Code, as effective
23 January 1, 2014, is amended to read as follows:

24 Sec. 361.051. REMOVAL WITHOUT NOTICE. The court, on the
25 court's own motion or on the motion of any interested person, and
26 without notice, may remove a personal representative appointed
27 under this title who:

1 (1) neglects to qualify in the manner and time
2 required by law;

3 (2) fails to return, before the 91st day after the date
4 the representative qualifies, either an inventory of the estate
5 property and a list of claims that have come to the representative's
6 knowledge or an affidavit in lieu of the inventory, appraisalment,
7 and list of claims, unless that deadline is extended by court order;

8 (3) if required, fails to give a new bond within the
9 time prescribed;

10 (4) is absent from the state for a consecutive period
11 of three or more months without the court's permission, or moves out
12 of state;

13 (5) cannot be served with notices or other processes
14 because:

15 (A) the representative's whereabouts are
16 unknown;

17 (B) the representative is eluding service; or

18 (C) the representative is a nonresident of this
19 state who does not have a resident agent to accept service of
20 process in any probate proceeding or other action relating to the
21 estate; or

22 (6) subject to Section 361.054(a), has misapplied,
23 embezzled, or removed from the state, or is about to misapply,
24 embezzle, or remove from the state, all or part of the property
25 entrusted to the representative's care.

26 SECTION 2.47. The heading to Section 361.155, Estates Code,
27 as effective January 1, 2014, is amended to read as follows:

1 person's will that no independent administration of his or her
2 estate may be allowed. In such case the person's estate, if
3 administered, shall be administered and settled under the direction
4 of the probate court as other estates are required to be settled and
5 not as an independent administration.

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

23 (b) Except as provided in Section 401.001(b), in situations
24 where no executor is named in the decedent's will, or in situations
25 where each executor named in the will is deceased or is disqualified
26 to serve as executor or indicates by affidavit filed with the
27 application for administration of the decedent's estate the

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

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

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

1 best interest of the estate to do so.

2 (b) The court may not appoint an independent administrator
3 to serve in an intestate administration unless and until the
4 parties seeking appointment of the independent administrator have
5 been determined, through a proceeding to declare heirship under
6 Chapter 202, to constitute all of the decedent's heirs.

7 Sec. 401.004. MEANS OF ESTABLISHING DISTRIBUTEES CONSENT.

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

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

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

1 who is an incapacitated person is a minor and has no guardian of the
2 person, the natural guardian or guardians of the minor may consent
3 on the minor's behalf if there is no conflict of interest between
4 the minor and the natural guardian or guardians.

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

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

1 approval of any remainderman.

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

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

17 (h) If a distributee of a decedent's estate dies and if by
18 virtue of the distributee's death the distributee's share of the
19 decedent's estate becomes payable to the distributee's estate, the
20 deceased distributee's personal representative may sign the
21 application for independent administration of the decedent's
22 estate under Section 401.002 or 401.003 and under Subsection (c).

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

1 judge's successors in a sum that is found by the judge to be
2 adequate under all circumstances, or a bond with one surety in a sum
3 that is found by the judge to be adequate under all circumstances,
4 if the surety is an authorized corporate surety.

5 (b) This section does not repeal any other section of this
6 title.

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

21 Sec. 401.007. NO LIABILITY OF JUDGE. Absent proof of fraud
22 or collusion on the part of a judge, no judge may be held civilly
23 liable for the commission of misdeeds or the omission of any
24 required act of any person, firm, or corporation designated as an
25 independent executor under Section 401.002 or 401.003. Section
26 351.354 does not apply to the appointment of an independent
27 executor under Section 401.002 or 401.003.

1 Sec. 401.008. PERSON DECLINING TO SERVE. A person who
2 declines to serve or resigns as independent executor of a
3 decedent's estate may be appointed an executor or administrator of
4 the estate if the estate will be administered and settled under the
5 direction of the court.

6 CHAPTER 402. ADMINISTRATION

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 402.001. GENERAL SCOPE AND EXERCISE OF POWERS. When an
9 independent administration has been created, and the order
10 appointing an independent executor has been entered by the probate
11 court, and the inventory, appraisement, and list of claims has been
12 filed by the independent executor and approved by the court or an
13 affidavit in lieu of the inventory, appraisement, and list of
14 claims has been filed by the independent executor, as long as the
15 estate is represented by an independent executor, further action of
16 any nature may not be had in the probate court except where this
17 title specifically and explicitly provides for some action in the
18 court.

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

1 [Sections 402.003-402.050 reserved for expansion]

2 SUBCHAPTER B. POWER OF SALE

3 Sec. 402.051. POWER OF SALE OF ESTATE PROPERTY GENERALLY.

4 (a) An independent executor has the power of sale of estate
5 property set forth in the will, if applicable, that may be exercised
6 without court approval as otherwise provided for independent
7 administrations.

8 (b) Unless limited by the terms of a will, an independent
9 executor, in addition to any power of sale of estate property given
10 in the will, has the same power of sale for the same purposes as a
11 personal representative has in a supervised administration, but
12 without the requirement of court approval. The procedural
13 requirements applicable to a supervised administration do not
14 apply.

15 Sec. 402.052. PROTECTION OF PERSON PURCHASING ESTATE
16 PROPERTY. (a) A person who is not a devisee or heir is not required
17 to inquire into an independent executor's power of sale of estate
18 property or the propriety of the exercise of the power of sale if
19 the person deals with the independent executor in good faith and:

20 (1) a power of sale is granted to the independent
21 executor in the will or in the court order appointing the
22 independent executor; or

23 (2) the independent executor provides an affidavit,
24 executed and sworn to under oath and recorded in the deed records of
25 the county where the property is located, that the sale is necessary
26 or advisable for any of the purposes described in Section
27 356.251(1).

1 (b) As to acts undertaken in good faith reliance, the
2 affidavit described by Subsection (a)(2) is conclusive proof, as
3 between a purchaser of property from the estate, and the personal
4 representative of an estate or the heirs and distributees of the
5 estate, with respect to the authority of the independent executor
6 to sell the property. The signature or joinder of a devisee or heir
7 who has an interest in the property being sold as described in this
8 section is not necessary for the purchaser to obtain all right,
9 title, and interest of the estate in the property being sold.

10 (c) This subchapter does not relieve the independent
11 executor from any duty owed to a devisee or heir in relation,
12 directly or indirectly, to the sale.

13 Sec. 402.053. NO LIMITATION ON OTHER ACTION. This
14 subchapter does not limit the authority of an independent executor
15 to take any other action without court supervision or approval with
16 respect to estate assets that may take place in a supervised
17 administration, for purposes and within the scope otherwise
18 authorized by this title, including the authority to enter into a
19 lease and to borrow money.

20 CHAPTER 403. EXEMPTIONS AND ALLOWANCES; CLAIMS

21 SUBCHAPTER A. EXEMPTIONS AND ALLOWANCES

22 Sec. 403.001. SETTING ASIDE EXEMPT PROPERTY AND ALLOWANCES.
23 The independent executor shall set aside and deliver to those
24 entitled exempt property and allowances for support, and allowances
25 in lieu of exempt property, as prescribed in this title, to the same
26 extent and result as if the independent executor's actions had been
27 accomplished in, and under orders of, the court.

1 [Sections 403.002-403.050 reserved for expansion]

2 SUBCHAPTER B. CLAIMS

3 Sec. 403.051. DUTY OF INDEPENDENT EXECUTOR. (a) An
4 independent executor, in the administration of an estate,
5 independently of and without application to, or any action in or by
6 the court:

7 (1) shall give the notices required under Sections
8 308.051 and 308.053;

9 (2) may give the notice to an unsecured creditor with a
10 claim for money permitted under Section 308.054 and bar a claim
11 under Section 403.055; and

12 (3) may approve or reject any claim, or take no action
13 on a claim, and shall classify and pay claims approved or
14 established by suit against the estate in the same order of
15 priority, classification, and proration prescribed in this title.

16 (b) To be effective, the notice prescribed under Subsection
17 (a)(2) must include, in addition to the other information required
18 by Section 308.054, a statement that a claim may be effectively
19 presented by only one of the methods prescribed by this subchapter.

20 Sec. 403.052. SECURED CLAIMS FOR MONEY. Within six months
21 after the date letters are granted or within four months after the
22 date notice is received under Section 308.053, whichever is later,
23 a creditor with a claim for money secured by property of the estate
24 must give notice to the independent executor of the creditor's
25 election to have the creditor's claim approved as a matured secured
26 claim to be paid in due course of administration. In addition to
27 giving the notice within this period, a creditor whose claim is

1 secured by real property shall record a notice of the creditor's
2 election under this section in the deed records of the county in
3 which the real property is located. If no election to be a matured
4 secured creditor is made, or the election is made, but not within
5 the prescribed period, or is made within the prescribed period but
6 the creditor has a lien against real property and fails to record
7 notice of the claim in the deed records as required within the
8 prescribed period, the claim shall be a preferred debt and lien
9 against the specific property securing the indebtedness and shall
10 be paid according to the terms of the contract that secured the
11 lien, and the claim may not be asserted against other assets of the
12 estate. The independent executor may pay the claim before maturity
13 if it is determined to be in the best interest of the estate to do
14 so.

15 Sec. 403.053. MATURED SECURED CLAIMS. (a) A claim approved
16 as a matured secured claim under Section 403.052 remains secured by
17 any lien or security interest against the specific property
18 securing payment of the claim but subordinated to the payment from
19 the property of claims having a higher classification under Section
20 355.102. However, the secured creditor:

21 (1) is not entitled to exercise any remedies in a
22 manner that prevents the payment of the higher priority claims and
23 allowances; and

24 (2) during the administration of the estate, is not
25 entitled to exercise any contractual collection rights, including
26 the power to foreclose, without either the prior written approval
27 of the independent executor or court approval.

1 (b) Subsection (a) may not be construed to suspend or
2 otherwise prevent a creditor with a matured secured claim from
3 seeking judicial relief of any kind or from executing any judgment
4 against an independent executor. Except with respect to real
5 property, any third party acting in good faith may obtain good title
6 with respect to an estate asset acquired through a secured
7 creditor's extrajudicial collection rights, without regard to
8 whether the creditor had the right to collect the asset or whether
9 the creditor acted improperly in exercising those rights during an
10 estate administration due to having elected matured secured status.

11 (c) If a claim approved or established by suit as a matured
12 secured claim is secured by property passing to one or more devisees
13 in accordance with Subchapter G, Chapter 255, the independent
14 executor shall collect from the devisees the amount of the debt and
15 pay that amount to the claimant or shall sell the property and pay
16 out of the sale proceeds the claim and associated expenses of sale
17 consistent with the provisions of Sections 355.153(b), (c), (d),
18 and (e) applicable to court supervised administrations.

19 Sec. 403.054. PREFERRED DEBT AND LIEN CLAIMS. During an
20 independent administration, a secured creditor whose claim is a
21 preferred debt and lien against property securing the indebtedness
22 under Section 403.052 is free to exercise any judicial or
23 extrajudicial collection rights, including the right to
24 foreclosure and execution; provided, however, that the creditor
25 does not have the right to conduct a nonjudicial foreclosure sale
26 within six months after letters are granted.

27 Sec. 403.055. CERTAIN UNSECURED CLAIMS; BARRING OF CLAIMS.

1 An unsecured creditor who has a claim for money against an estate
2 and who receives a notice under Section 308.054 shall give to the
3 independent executor notice of the nature and amount of the claim
4 not later than the 120th day after the date the notice is received
5 or the claim is barred.

6 Sec. 403.056. NOTICES REQUIRED BY CREDITORS. (a) Notice to
7 the independent executor required by Sections 403.052 and 403.055
8 must be contained in:

9 (1) a written instrument that is hand-delivered with
10 proof of receipt, or mailed by certified mail, return receipt
11 requested with proof of receipt, to the independent executor or the
12 executor's attorney;

13 (2) a pleading filed in a lawsuit with respect to the
14 claim; or

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

17 (b) This section does not exempt a creditor who elects
18 matured secured status from the filing requirements of Section
19 403.052, to the extent those requirements are applicable.

20 Sec. 403.057. STATUTE OF LIMITATIONS. Except as otherwise
21 provided by Section 16.062, Civil Practice and Remedies Code, the
22 running of the statute of limitations shall be tolled only by a
23 written approval of a claim signed by an independent executor, a
24 pleading filed in a suit pending at the time of the decedent's
25 death, or a suit brought by the creditor against the independent
26 executor. In particular, the presentation of a statement or claim,
27 or a notice with respect to a claim, to an independent executor does

1 not toll the running of the statute of limitations with respect to
2 that claim.

3 Sec. 403.058. OTHER CLAIM PROCEDURES GENERALLY DO NOT
4 APPLY. Except as otherwise provided by this subchapter, the
5 procedural provisions of this title governing creditor claims in
6 supervised administrations do not apply to independent
7 administrations. By way of example, but not as a limitation:

8 (1) Sections 355.064 and 355.066 do not apply to
9 independent administrations, and consequently a creditor's claim
10 may not be barred solely because the creditor failed to file a suit
11 not later than the 90th day after the date an independent executor
12 rejected the claim or with respect to a claim for which the
13 independent executor takes no action; and

14 (2) Sections 355.156, 355.157, 355.158, 355.159, and
15 355.160 do not apply to independent administrations.

16 Sec. 403.0585. LIABILITY OF INDEPENDENT EXECUTOR FOR
17 PAYMENT OF A CLAIM. An independent executor, in the administration
18 of an estate, may pay at any time and without personal liability a
19 claim for money against the estate to the extent approved and
20 classified by the independent executor if:

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

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

25 Sec. 403.059. ENFORCEMENT OF CLAIMS BY SUIT. Any person
26 having a debt or claim against the estate may enforce the payment of
27 the same by suit against the independent executor; and, when

1 judgment is recovered against the independent executor, the
2 execution shall run against the estate of the decedent in the
3 possession of the independent executor that is subject to the debt.
4 The independent executor shall not be required to plead to any suit
5 brought against the executor for money until after six months after
6 the date that an independent administration was created and the
7 order appointing the executor was entered by the probate court.

8 Sec. 403.060. REQUIRING HEIRS TO GIVE BOND. When an
9 independent administration is created and the order appointing an
10 independent executor is entered by the probate court, any person
11 having a debt against the estate may, by written complaint filed in
12 the probate court in which the order was entered, cause all
13 distributees of the estate, heirs at law, and other persons
14 entitled to any portion of the estate under the will, if any, to be
15 cited by personal service to appear before the court and execute a
16 bond for an amount equal to the amount of the creditor's claim or
17 the full value of the estate, as shown by the inventory and list of
18 claims, whichever is smaller. The bond must be payable to the
19 judge, and the judge's successors, and be approved by the judge, and
20 conditioned that all obligors shall pay all debts that shall be
21 established against the estate in the manner provided by law. On
22 the return of the citation served, unless a person so entitled to
23 any portion of the estate, or some of them, or some other person for
24 them, shall execute the bond to the satisfaction of the probate
25 court, the estate shall be administered and settled under the
26 direction of the probate court as other estates are required to be
27 settled. If the bond is executed and approved, the independent

1 administration shall proceed. Creditors of the estate may sue on
2 the bond, and shall be entitled to judgment on the bond for the
3 amount of their debt, or they may have their action against those in
4 possession of the estate.

5 CHAPTER 404. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

6 Sec. 404.001. ACCOUNTING. (a) At any time after the
7 expiration of 15 months after the date that an independent
8 administration was created and the order appointing an independent
9 executor was entered by the probate court, any person interested in
10 the estate may demand an accounting from the independent executor.
11 The independent executor shall furnish to the person or persons
12 making the demand an exhibit in writing, sworn and subscribed by the
13 independent executor, setting forth in detail:

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

16 (2) the disposition that has been made of the property
17 described by Subdivision (1);

18 (3) the debts that have been paid;

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

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

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

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

27 (a-1) Any other interested person shall, on demand, be

1 entitled to a copy of any exhibit or accounting that has been made
2 by an independent executor in compliance with this section.

3 (b) Should the independent executor not comply with a demand
4 for an accounting authorized by this section within 60 days after
5 receipt of the demand, the person making the demand may compel
6 compliance by an action in the probate court. After a hearing, the
7 court shall enter an order requiring the accounting to be made at
8 such time as it considers proper under the circumstances.

9 (c) After an initial accounting has been given by an
10 independent executor, any person interested in an estate may demand
11 subsequent periodic accountings at intervals of not less than 12
12 months, and such subsequent demands may be enforced in the same
13 manner as an initial demand.

14 (d) The right to an accounting accorded by this section is
15 cumulative of any other remedies which persons interested in an
16 estate may have against the independent executor of the estate.

17 Sec. 404.002. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND.
18 When it has been provided by will, regularly probated, that an
19 independent executor appointed by the will shall not be required to
20 give bond for the management of the estate devised by the will, or
21 the independent executor is not required to give bond because bond
22 has been waived by court order as authorized under Section 401.005,
23 then the independent executor may be required to give bond, on
24 proper proceedings had for that purpose as in the case of personal
25 representatives in a supervised administration, if it be made to
26 appear at any time that the independent executor is mismanaging the
27 property, or has betrayed or is about to betray the independent

1 executor's trust, or has in some other way become disqualified.

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

7 (1) the independent executor fails to return within 90
8 days after qualification, unless such time is extended by order of
9 the court, either an inventory of the property of the estate and
10 list of claims that have come to the independent executor's
11 knowledge or an affidavit in lieu of the inventory, appraisement,
12 and list of claims;

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

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

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

21 (5) the independent executor is proved to have been
22 guilty of gross misconduct or gross mismanagement in the
23 performance of the independent executor's duties; or

24 (6) the independent executor becomes an incapacitated
25 person, or is sentenced to the penitentiary, or from any other cause
26 becomes legally incapacitated from properly performing the
27 independent executor's fiduciary duties.

1 (b) The order of removal shall state the cause of removal
2 and shall direct by order the disposition of the assets remaining in
3 the name or under the control of the removed executor. The order of
4 removal shall require that letters issued to the removed executor
5 shall be surrendered and that all letters shall be canceled of
6 record. If an independent executor is removed by the court under
7 this section, the court may, on application, appoint a successor
8 independent executor as provided by Section 404.005.

9 (c) An independent executor who defends an action for the
10 independent executor's removal in good faith, whether successful or
11 not, shall be allowed out of the estate the independent executor's
12 necessary expenses and disbursements, including reasonable
13 attorney's fees, in the removal proceedings.

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

18 Sec. 404.004. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN
19 INDEPENDENT EXECUTOR. (a) Whenever a person has died, or shall
20 die, testate, owning property in this state, and the person's will
21 has been or shall be admitted to probate by the court, and the
22 probated will names an independent executor or executors, or
23 trustees acting in the capacity of independent executors, to
24 execute the terms and provisions of that will, and the will grants
25 to the independent executor, or executors, or trustees acting in
26 the capacity of independent executors, the power to raise or borrow
27 money and to mortgage, and the independent executor, or executors,

1 or trustees, have died or shall die, resign, fail to qualify, or be
2 removed from office, leaving unexecuted parts or portions of the
3 will of the testator, and an administrator with the will annexed is
4 appointed by the probate court, and an administrator's bond is
5 filed and approved by the court, then in all such cases, the court
6 may, in addition to the powers conferred on the administrator under
7 other provisions of the laws of this state, authorize, direct, and
8 empower the administrator to do and perform the acts and deeds,
9 clothed with the rights, powers, authorities, and privileges, and
10 subject to the limitations, set forth in the subsequent provisions
11 of this section.

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

26 (c) The court may order and authorize the administrator to
27 have and exercise the powers and privileges set forth in Subsection

1 (a) or (b) only to the extent that same are granted to or possessed
2 by the independent executor, or executors, or trustees acting in
3 the capacity of independent executors, under the terms of the
4 probated will of the decedent, and then only in such cases as it
5 appears, at the hearing of the application, that at the time of the
6 appointment of the administrator, there are outstanding and unpaid
7 obligations and debts of the estate, or of the independent
8 executor, or executors, or trustees, chargeable against the estate,
9 or unpaid expenses of administration, or when the court appointing
10 the administrator orders the business of the estate to be carried on
11 and it becomes necessary, from time to time, under orders of the
12 court, for the administrator to borrow money and incur obligations
13 and indebtedness in order to protect and preserve the estate.

14 (d) The court, in addition, may, on application, citation,
15 and hearing, order, authorize, and empower the administrator to
16 assume, exercise, and discharge, under the orders and directions of
17 the court, made from time to time, all or such part of the rights,
18 powers, and authorities vested in and delegated to, or possessed
19 by, the independent executor, or executors, or trustees acting in
20 the capacity of independent executors, under the terms of the will
21 of the decedent, as the court finds to be in the best interests of
22 the estate and shall, from time to time, order and direct.

23 (e) The granting to the administrator by the court of some,
24 or all, of the powers and authorities set forth in this section
25 shall be on application filed by the administrator with the county
26 clerk, setting forth such facts as, in the judgment of the
27 administrator, require the granting of the power or authority

1 requested.

2 (f) On the filing of an application under Subsection (e),
3 the clerk shall issue citation to all persons interested in the
4 estate, stating the nature of the application, and requiring those
5 persons to appear on the return day named in such citation and show
6 cause why the application should not be granted, should they choose
7 to do so. The citation shall be served by posting.

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

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

1 administration of the estate is necessary, the court shall enter an
2 order continuing independent administration and appointing the
3 person, firm, or corporation designated in the application as
4 successor independent executor, unless the probate court finds that
5 it would not be in the best interest of the estate to do so. The
6 successor independent executor shall serve with all of the powers
7 and privileges granted to the successor's predecessor independent
8 executor.

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

23 (c) If a trust is created in the decedent's will, the person
24 or class of persons first eligible to receive the income from the
25 trust, determined as if the trust were to be in existence on the
26 date of the filing of the application for an order continuing
27 independent administration, shall, for the purposes of this

1 section, be considered to be the distributee or distributees on
2 behalf of the trust, and any other trust or trusts coming into
3 existence on the termination of the trust, and are authorized to
4 apply for an order continuing independent administration on behalf
5 of the trust without the consent or agreement of the trustee or any
6 other beneficiary of the trust, or the trustee or any beneficiary of
7 any other trust which may come into existence on the termination of
8 the trust.

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

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

1 (f) In the case of all decedents, for the purposes of
2 determining who shall be the distributees under this section, it
3 shall be presumed that no distributee living at the time the
4 application for an order continuing independent administration of
5 the decedent's estate is filed shall subsequently disclaim any
6 portion of the distributee's interest in the decedent's estate.

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

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

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

1 CHAPTER 405. CLOSING AND DISTRIBUTIONS

2 Sec. 405.001. ACCOUNTING AND DISTRIBUTION. (a) In

3 addition to or in lieu of the right to an accounting provided by
4 Section 404.001, at any time after the expiration of two years after
5 the date the court clerk first issues letters testamentary or of
6 administration to any personal representative of an estate, a
7 person interested in the estate then subject to independent
8 administration may petition the court for an accounting and
9 distribution. The court may order an accounting to be made with the
10 court by the independent executor at such time as the court
11 considers proper. The accounting shall include the information
12 that the court considers necessary to determine whether any part of
13 the estate should be distributed.

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

1 (c) If all the property in the estate is ordered distributed
2 by the court and the estate is fully administered, the court may
3 also order the independent executor to file a final account with the
4 court and may enter an order closing the administration and
5 terminating the power of the independent executor to act as
6 executor.

7 Sec. 405.002. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY
8 INDEPENDENT EXECUTOR. (a) An independent executor may not be
9 required to deliver tangible or intangible personal property to a
10 distributee unless the independent executor receives, at or before
11 the time of delivery of the property, a signed receipt or other
12 proof of delivery of the property to the distributee.

13 (b) An independent executor may not require a waiver or
14 release from the distributee as a condition of delivery of property
15 to a distributee.

16 Sec. 405.003. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR.
17 (a) After an estate has been administered and if there is no
18 further need for an independent administration of the estate, the
19 independent executor of the estate may file an action for
20 declaratory judgment under Chapter 37, Civil Practice and Remedies
21 Code, seeking to discharge the independent executor from any
22 liability involving matters relating to the past administration of
23 the estate that have been fully and fairly disclosed.

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

1 (c) In a proceeding under this section, the court may
2 require the independent executor to file a final account that
3 includes any information the court considers necessary to
4 adjudicate the independent executor's request for a discharge of
5 liability. The court may audit, settle, or approve a final account
6 filed under this subsection.

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

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

23 Sec. 405.004. CLOSING INDEPENDENT ADMINISTRATION BY
24 CLOSING REPORT OR NOTICE OF CLOSING ESTATE. When all of the debts
25 known to exist against the estate have been paid, or when they have
26 been paid so far as the assets in the independent executor's
27 possession will permit, when there is no pending litigation, and

1 when the independent executor has distributed to the distributees
2 entitled to the estate all assets of the estate, if any, remaining
3 after payment of debts, the independent executor may file with the
4 court a closing report or a notice of closing of the estate.

5 Sec. 405.005. CLOSING REPORT. An independent executor may
6 file a closing report verified by affidavit that:

7 (1) shows:

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

10 (B) the debts that have been paid;

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

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

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

17 (2) includes signed receipts or other proof of
18 delivery of property to the distributees named in the closing
19 report if the closing report reflects that there was property
20 remaining on hand after payment of debts.

21 Sec. 405.006. NOTICE OF CLOSING ESTATE. (a) Instead of
22 filing a closing report under Section 405.005, an independent
23 executor may file a notice of closing estate verified by affidavit
24 that states:

25 (1) that all debts known to exist against the estate
26 have been paid or have been paid to the extent permitted by the
27 assets in the independent executor's possession;

1 (2) that all remaining assets of the estate, if any,
2 have been distributed; and

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

6 (b) Before filing the notice, the independent executor
7 shall provide to each distributee of the estate a copy of the notice
8 of closing estate. The notice of closing estate filed by the
9 independent executor must include signed receipts or other proof
10 that all distributees have received a copy of the notice of closing
11 estate.

12 Sec. 405.007. EFFECT OF FILING CLOSING REPORT OR NOTICE OF
13 CLOSING ESTATE. (a) The independent administration of an estate is
14 considered closed 30 days after the date of the filing of a closing
15 report or notice of closing estate unless an interested person
16 files an objection with the court within that time. If an
17 interested person files an objection within the 30-day period, the
18 independent administration of the estate is closed when the
19 objection has been disposed of or the court signs an order closing
20 the estate.

21 (b) The closing of an independent administration by filing
22 of a closing report or notice of closing estate terminates the power
23 and authority of the independent executor, but does not relieve the
24 independent executor from liability for any mismanagement of the
25 estate or from liability for any false statements contained in the
26 report or notice.

27 (c) When a closing report or notice of closing estate has

1 been filed, persons dealing with properties of the estate, or with
2 claims against the estate, shall deal directly with the
3 distributees of the estate; and the acts of the distributees with
4 respect to the properties or claims shall in all ways be valid and
5 binding as regards the persons with whom they deal, notwithstanding
6 any false statements made by the independent executor in the report
7 or notice.

8 (d) If the independent executor is required to give bond,
9 the independent executor's filing of the closing report and proof
10 of delivery, if required, automatically releases the sureties on
11 the bond from all liability for the future acts of the principal.
12 The filing of a notice of closing estate does not release the
13 sureties on the bond of an independent executor.

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

26 Sec. 405.008. PARTITION AND DISTRIBUTION OR SALE OF
27 PROPERTY INCAPABLE OF DIVISION. If the will does not distribute the

1 entire estate of the testator or provide a means for partition of
2 the estate, or if no will was probated, the independent executor
3 may, but may not be required to, petition the probate court for
4 either a partition and distribution of the estate or an order of
5 sale of any portion of the estate alleged by the independent
6 executor and found by the court to be incapable of a fair and equal
7 partition and distribution, or both. The estate or portion of the
8 estate shall either be partitioned and distributed or sold, or
9 both, in the manner provided for the partition and distribution of
10 property and the sale of property incapable of division in
11 supervised estates.

12 Sec. 405.009. CLOSING INDEPENDENT ADMINISTRATION ON
13 APPLICATION BY DISTRIBUTE. (a) At any time after an estate has
14 been fully administered and there is no further need for an
15 independent administration of the estate, any distributee may file
16 an application to close the administration; and, after citation on
17 the independent executor, and on hearing, the court may enter an
18 order:

19 (1) requiring the independent executor to file a
20 closing report meeting the requirements of Section 405.005;

21 (2) closing the administration;

22 (3) terminating the power of the independent executor
23 to act as independent executor; and

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

27 (b) The order of the court closing the independent

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

12 Sec. 405.010. ISSUANCE OF LETTERS. At any time before the
13 authority of an independent executor has been terminated in the
14 manner set forth in this subtitle, the clerk shall issue such number
15 of letters testamentary as the independent executor shall request.

16 Sec. 405.011. RIGHTS AND REMEDIES CUMULATIVE. The rights
17 and remedies conferred by this chapter are cumulative of other
18 rights and remedies to which a person interested in the estate may
19 be entitled under law.

20 Sec. 405.012. CLOSING PROCEDURES NOT REQUIRED. An
21 independent executor is not required to close the independent
22 administration of an estate under Section 405.003 or Sections
23 405.004 through 405.007.

24 SECTION 2.50. Section 453.007, Estates Code, as effective
25 January 1, 2014, is amended to read as follows:

26 Sec. 453.007. DELIVERY OF COMMUNITY ESTATE ON FINAL
27 PARTITION. On final partition of the community estate, the

1 surviving spouse shall deliver to the deceased spouse's heirs or
2 devisees their interest in the estate, and the increase in and
3 profits of the interest, after deducting from the interest:

4 (1) the proportion of the community debts chargeable
5 to the interest;

6 (2) unavoidable losses;

7 (3) necessary and reasonable expenses; and

8 (4) a reasonable compensation [~~commission~~] for the
9 management of the interest.

10 SECTION 2.51. (a) Sections 202.003 and 352.003, Estates
11 Code, as effective January 1, 2014, are repealed.

12 (b) The following sections of the Texas Probate Code are
13 repealed:

14 (1) Sections 4D, 4H, 48, 49, 59, 64, 67, 84, 222, 241,
15 250, 260, 436, 439, 452, 471, 472, and 473, as amended by Article 1
16 of this Act; and

17 (2) Sections 6A, 6B, 6C, 8A, 8B, 145A, 145B, and 145C,
18 as added by Article 1 of this Act.

19 (c) Notwithstanding the transfer of Sections 6 and 8, Texas
20 Probate Code, to the Estates Code and redesignation as Sections 6
21 and 8 of that code effective January 1, 2014, by Section 2, Chapter
22 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session,
23 2009, Sections 6 and 8, Texas Probate Code, as amended by Article 1
24 of this Act, are repealed.

25 (d) Notwithstanding the transfer of Sections 145 through
26 154A, Texas Probate Code, to the Estates Code and redesignation as
27 Sections 145 through 154A of that code effective January 1, 2014, by

1 Section 3, Chapter 680 (H.B. 2502), Acts of the 81st Legislature,
2 Regular Session, 2009, the following sections are repealed:

3 (1) Sections 145, 146, 149B, and 151, Texas Probate
4 Code, as amended by Article 1 of this Act; and

5 (2) Sections 147, 148, 149, 149A, 149C, 149D, 149E,
6 149F, 149G, 150, 152, 153, 154, and 154A, Texas Probate Code.

7 SECTION 2.52. This article takes effect January 1, 2014.

8 ARTICLE 3. EFFECTIVE DATE

9 SECTION 3.01. Except as otherwise provided by this Act,
10 this Act takes effect September 1, 2011.