

By: Rodriguez

S.B. No. 1198

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 Subsection (b-1) and amending Subsections (e) and (g) 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.

(e) A statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. A statutory probate court judge assigned to hear only the contested matter in a probate proceeding shall, on [On] resolution of the [a-contested] matter [for which a statutory probate court judge is assigned under this section], including any appeal of the matter, [the statutory probate court judge shall] return the matter to the county court for further proceedings not inconsistent with the orders of the

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

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

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

25 Sec. 4H. CONCURRENT JURISDICTION WITH DISTRICT COURT. A
26 statutory probate court has concurrent jurisdiction with the
27 district court in:

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

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

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

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

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

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

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

19 Sec. 5B. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING
20 RELATED TO PROBATE PROCEEDING.

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

23 Sec. 6. VENUE: [~~FOR~~] PROBATE OF WILLS AND GRANTING OF
24 LETTERS TESTAMENTARY AND OF ADMINISTRATION [~~OF ESTATES OF~~
25 ~~DECEDENTS~~]. Wills shall be admitted to probate, and letters
26 testamentary or of administration shall be granted:

27 (1) in [~~(a) In~~] the county where the decedent

1 ~~[deceased]~~ resided, if the decedent ~~[he]~~ had a domicile or fixed
2 place of residence in this State; ~~[-]~~

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

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

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

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

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

25 SECTION 1.05. Chapter I, Texas Probate Code, is amended by
26 adding Sections 6A, 6B, 6C, and 6D to read as follows:

27 Sec. 6A. VENUE: ACTION RELATED TO PROBATE PROCEEDING IN

1 STATUTORY PROBATE COURT. Except as provided by Section 6B of this
2 code, venue for any cause of action related to a probate proceeding
3 pending in a statutory probate court is proper in the statutory
4 probate court in which the decedent's estate is pending.

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

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

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

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

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

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

23 (b) Notwithstanding Subsection (a) of this section and
24 Section 6 of this code, if there is no administration pending of the
25 estate of a deceased ward who died intestate, venue for a proceeding
26 to determine the deceased ward's heirs is in the probate court in
27 which the guardianship proceedings with respect to the ward's

1 estate were pending on the date of the ward's death. A proceeding
2 described by this subsection may not be brought as part of the
3 guardianship proceedings with respect to the ward's estate, but
4 rather must be filed as a separate cause in which the court may
5 determine the heirs' respective shares and interests in the estate
6 as provided by the laws of this state.

7 Sec. 6D. VENUE: CERTAIN ACTIONS INVOLVING BREACH OF
8 FIDUCIARY DUTY. Notwithstanding any other provision of this
9 chapter, venue for a proceeding brought by the attorney general
10 alleging breach of a fiduciary duty by a charitable entity or a
11 fiduciary or managerial agent of a charitable trust is determined
12 under Section 123.005, Property Code.

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

15 Sec. 8. CONCURRENT VENUE IN PROBATE PROCEEDING ~~[AND~~
16 ~~TRANSFER OF PROCEEDINGS]~~. (a) Concurrent Venue. When two or more
17 courts have concurrent venue of ~~[an estate or]~~ a probate proceeding
18 ~~[to declare heirship under Section 48(a) of this code]~~, the court in
19 which the application for the ~~[a]~~ proceeding ~~[in probate or~~
20 ~~determination of heirship]~~ is first filed shall have and retain
21 jurisdiction of the ~~[estate or heirship]~~ proceeding~~[, as~~
22 ~~appropriate,]~~ to the exclusion of the other court or courts. The
23 proceeding shall be deemed commenced by the filing of an
24 application averring facts sufficient to confer venue; and the
25 proceeding first legally commenced shall extend to all of the
26 property of the decedent or the decedent's estate. Provided,
27 however, that a bona fide purchaser of real property in reliance on

1 any such subsequent proceeding, without knowledge of its
 2 invalidity, shall be protected in such purchase unless before the
 3 purchase the decree admitting the will to probate, determining
 4 heirship, or granting administration in the prior proceeding is
 5 ~~[shall be]~~ recorded in the office of the county clerk of the county
 6 in which such property is located.

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

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

26 Sec. 8A. TRANSFER OF VENUE IN PROBATE PROCEEDING ~~[Transfer~~
 27 ~~of Proceeding]~~. (a) [(1)] Transfer for Want of Venue. If it

1 appears to the court at any time before the final decree in a
 2 probate proceeding that the proceeding was commenced in a court
 3 which did not have priority of venue over such proceeding, the court
 4 shall, on the application of any interested person, transfer the
 5 proceeding to the proper county by transmitting to the proper court
 6 in such county the original file in such case, together with
 7 certified copies of all entries in the judge's probate docket
 8 theretofore made, and the proceeding [~~probate of the will,~~
 9 ~~determination of heirship, or administration of the estate~~] in such
 10 county shall be completed in the same manner as if the proceeding
 11 had originally been instituted therein; but, if the question as to
 12 priority of venue is not raised before final decree in the
 13 proceedings is announced, the finality of such decree shall not be
 14 affected by any error in venue.

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

27 Sec. 8B. VALIDATION OF PRIOR PROCEEDINGS [~~(d) Validation of~~

1 ~~Prior Proceedings~~]. When a probate proceeding is transferred to
2 another county under any provision of [~~this~~] Section 8 or 8A of this
3 Code, all orders entered in connection with the proceeding shall be
4 valid and shall be recognized in the second court, provided such
5 orders were made and entered in conformance with the procedure
6 prescribed by this Code.

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

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

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

20 (1) applications for the probate of wills and for the
21 granting of administration;

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

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

27 (4) bonds and official oaths;

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

2 (5-a) affidavits in lieu of inventories, appraisements,
3 and lists of claims;

4 (6) exhibits and accounts;

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

6 (8) applications for sale or partition of real estate
7 and reports of sale and of commissioners of partition;

8 (9) applications for authority to execute leases for
9 mineral development, or for pooling or unitization of lands,
10 royalty, or other interest in minerals, or to lend or invest money;
11 and

12 (10) reports of lending or investing money.

13 SECTION 1.08. Section 37A, Texas Probate Code, is amended
14 by amending Subsections (h) and (i) and adding Subsections (h-1)
15 and (p) to read as follows:

16 (h) Time for Filing of Disclaimer. Unless the beneficiary
17 is a charitable organization or governmental agency of the state, a
18 written memorandum of disclaimer disclaiming a present interest
19 shall be filed not later than nine months after the death of the
20 decedent and a written memorandum of disclaimer disclaiming a
21 future interest may be filed not later than nine months after the
22 event determining that the taker of the property or interest is
23 finally ascertained and his interest is indefeasibly vested. If
24 the beneficiary is a charitable organization or a governmental
25 agency of the state, a written memorandum of disclaimer disclaiming
26 a present or future interest shall be filed not later than the later
27 of:

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

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

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

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

9 (h-1) Filing of Disclaimer. The written memorandum of
10 disclaimer shall be filed in the probate court in which the
11 decedent's will has been probated or in which proceedings have been
12 commenced for the administration of the decedent's estate or which
13 has before it an application for either of the same; provided,
14 however, if the administration of the decedent's estate is closed,
15 or after the expiration of one year following the date of the
16 issuance of letters testamentary in an independent administration,
17 or if there has been no will of the decedent probated or filed for
18 probate, or if no administration of the decedent's estate has been
19 commenced, or if no application for administration of the
20 decedent's estate has been filed, the written memorandum of
21 disclaimer shall be filed with the county clerk of the county of the
22 decedent's residence, or, if the decedent is not a resident of this
23 state but real property or an interest therein located in this state
24 is disclaimed, a written memorandum of disclaimer shall be filed
25 with the county clerk of the county in which such real property or
26 interest therein is located, and recorded by such county clerk in
27 the deed records of that county.

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

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

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

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

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

22 (p) Extension of Time for Certain Disclaimers.
23 Notwithstanding the periods prescribed by Subsections (h) and (i)
24 of this section, a disclaimer with respect to an interest in
25 property passing by reason of the death of a decedent dying after
26 December 31, 2009, but before December 17, 2010, may be executed and
27 filed, and notice of the disclaimer may be given, not later than

1 nine months after December 17, 2010. A disclaimer filed and for
2 which notice is given during this extended period is valid and shall
3 be treated as if the disclaimer had been filed and notice had been
4 given within the periods prescribed by Subsections (h) and (i) of
5 this section. This subsection does not apply to a disclaimer made
6 by a beneficiary that is a charitable organization or governmental
7 agency of the state.

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

10 Sec. 48. PROCEEDINGS TO DECLARE HEIRSHIP. [~~WHEN AND WHERE~~
11 ~~INSTITUTED.~~]

12 SECTION 1.10. Subsection (a), Section 48, Texas Probate
13 Code, is amended to read as follows:

14 (a) When a person dies intestate owning or entitled to real
15 or personal property in Texas, and there shall have been no
16 administration in this State upon the person's [~~his~~] estate; or
17 when it is necessary for the trustee of a trust holding assets for
18 the benefit of a decedent to determine the heirs of the decedent; or
19 when there has been a will probated in this State or elsewhere, or
20 an administration in this State upon the estate of such decedent,
21 and any real or personal property in this State has been omitted
22 from such will or from such administration, or no final disposition
23 thereof has been made in such administration, the court of the
24 county in which [~~such proceedings were last pending, or in the event~~
25 ~~no will of such decedent has been admitted to probate in this State,~~
26 ~~and no administration has been granted in this State upon the estate~~
27 ~~of such decedent, then the court of the county in which] venue would~~

1 be proper [~~for commencement of an administration of the decedent's~~
2 ~~estate~~] under Section 6C [~~6~~] of this code[~~7~~] may determine and
3 declare in the manner hereinafter provided who are the heirs and
4 only heirs of such decedent, and their respective shares and
5 interests, under the laws of this State, in the estate of such
6 decedent or, if applicable, in the trust, and proceedings therefor
7 shall be known as proceedings to declare heirship.

8 SECTION 1.11. Subsection (a), Section 49, Texas Probate
9 Code, is amended to read as follows:

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

24 (1) the name of the decedent and the time and place of
25 death;

26 (2) the names and residences of the decedent's heirs,
27 the relationship of each heir to the decedent, and the true interest

1 of the applicant and each of the heirs in the estate of the decedent
2 or in the trust, as applicable;

3 (3) all the material facts and circumstances within
4 the knowledge and information of the applicant that might
5 reasonably tend to show the time or place of death or the names or
6 residences of all heirs, if the time or place of death or the names
7 or residences of all the heirs are not definitely known to the
8 applicant;

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

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

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

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

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

23 SECTION 1.12. Section 59, Texas Probate Code, is amended by
24 amending Subsections (a) and (b) and adding Subsection (a-1) to
25 read as follows:

26 (a) Every last will and testament, except where otherwise
27 provided by law, shall be in writing and signed by the testator in

1 person or by another person for him by his direction and in his
 2 presence, and shall, if not wholly in the handwriting of the
 3 testator, be attested by two or more credible witnesses above the
 4 age of fourteen years who shall subscribe their names thereto in
 5 their own handwriting in the presence of the testator. Such a will
 6 or testament may, at the time of its execution or at any subsequent
 7 date during the lifetime of the testator and the witnesses, be made
 8 self-proved, and the testimony of the witnesses in the probate
 9 thereof may be made unnecessary, by the affidavits of the testator
 10 and the attesting witnesses, made before an officer authorized to
 11 administer oaths [~~under the laws of this State~~]. Provided that
 12 nothing shall require an affidavit or certificate of any testator
 13 or testatrix as a prerequisite to self-proof of a will or testament
 14 other than the certificate set out below. The affidavits shall be
 15 evidenced by a certificate, with official seal affixed, of such
 16 officer attached or annexed to such will or testament in form and
 17 contents substantially as follows:

18 THE STATE OF TEXAS

19 COUNTY OF _____

20 Before me, the undersigned authority, on this day personally
 21 appeared _____, _____, and _____,
 22 known to me to be the testator and the witnesses, respectively,
 23 whose names are subscribed to the annexed or foregoing instrument
 24 in their respective capacities, and, all of said persons being by me
 25 duly sworn, the said _____, testator, declared to me and
 26 to the said witnesses in my presence that said instrument is his
 27 last will and testament, and that he had willingly made and executed

1 it as his free act and deed; and the said witnesses, each on his oath
2 stated to me, in the presence and hearing of the said testator, that
3 the said testator had declared to them that said instrument is his
4 last will and testament, and that he executed same as such and
5 wanted each of them to sign it as a witness; and upon their oaths
6 each witness stated further that they did sign the same as witnesses
7 in the presence of the said testator and at his request; that he was
8 at that time eighteen years of age or over (or being under such age,
9 was or had been lawfully married, or was then a member of the armed
10 forces of the United States or of an auxiliary thereof or of the
11 Maritime Service) and was of sound mind; and that each of said
12 witnesses was then at least fourteen years of age.

13 _____

14 Testator

15 _____

16 Witness

17 _____

18 Witness

19 Subscribed and sworn to before me by the said _____,
20 testator, and by the said _____ and _____,
21 witnesses, this _____ day of _____ A.D.
22 _____.

23 (SEAL)

24 (Signed) _____

25 (Official Capacity of Officer)

26 (a-1) As an alternative to the self-proving of a will by the
27 affidavits of the testator and the attesting witnesses under

1 Subsection (a) of this section, a will may be simultaneously
2 executed, attested, and made self-proved before an officer
3 authorized to administer oaths, and the testimony of the witnesses
4 in the probate of the will may be made unnecessary, with the
5 inclusion in the will of the following in form and contents
6 substantially as follows:

7 I, _____, as testator, after being duly
8 sworn, declare to the undersigned witnesses and to the undersigned
9 authority that this instrument is my will, that I have willingly
10 made and executed it in the presence of the undersigned witnesses,
11 all of whom were present at the same time, as my free act and deed,
12 and that I have requested each of the undersigned witnesses to sign
13 this will in my presence and in the presence of each other. I now
14 sign this will in the presence of the attesting witnesses and the
15 undersigned authority on this _____ day of _____,
16 20_____.

17 _____
18 Testator

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

1 States or of an auxiliary thereof or of the Maritime Service), and
2 we believe the testator to be of sound mind. We now sign our names
3 as attesting witnesses in the presence of the testator, each other,
4 and the undersigned authority on this _____ day of _____,
5 20_____.

6 _____
7 Witness

8 _____
9 Witness

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

13 (SEAL)

14 (Signed) _____

15 (Official Capacity of Officer)

16 (b) An affidavit in form and content substantially as
17 provided by Subsection (a) of this section is a "self-proving
18 affidavit." A will with a self-proving affidavit subscribed and
19 sworn to by the testator and witnesses attached or annexed to the
20 will, or a will simultaneously executed, attested, and made
21 self-proved as provided by Subsection (a-1) of this section, is a
22 "self-proved will." Substantial compliance with the form provided
23 by Subsection (a) or (a-1) of this section [~~form of such affidavit~~]
24 shall suffice to cause the will to be self-proved. For this
25 purpose, an affidavit that is subscribed and acknowledged by the
26 testator and subscribed and sworn to by the witnesses would suffice
27 as being in substantial compliance. A signature on a self-proving

1 affidavit as provided by Subsection (a) of this section is
2 considered a signature to the will if necessary to prove that the
3 will was signed by the testator or witnesses, or both, but in that
4 case, the will may not be considered a self-proved will.

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

7 Sec. 64. FORFEITURE CLAUSE. A provision in a will that
8 would cause a forfeiture of [~~a devise~~] or void a devise or provision
9 in favor of a person for bringing any court action, including
10 contesting a will, is unenforceable if:

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

13 (2) the action was brought and maintained in good
14 faith.

15 SECTION 1.14. Section 67, Texas Probate Code, is amended by
16 amending Subsections (a) and (b) and adding Subsection (e) to read
17 as follows:

18 (a) Whenever a pretermitted child is not mentioned in the
19 testator's will, provided for in the testator's will, or otherwise
20 provided for by the testator, the pretermitted child shall succeed
21 to a portion of the testator's estate as provided by Subsection
22 (a)(1) or (a)(2) of this section, except as limited by Subsection
23 (e) of this section.

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

26 (A) No provision is made therein for any such
27 child, a pretermitted child succeeds to the portion of the

1 testator's separate and community estate to which the pretermitted
2 child would have been entitled pursuant to Section 38(a) of this
3 code had the testator died intestate without a surviving spouse
4 owning only that portion of his estate not devised or bequeathed to
5 the other parent of the pretermitted child.

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

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

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

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

23 (2) If the testator has no child living when he
24 executes his last will, the pretermitted child succeeds to the
25 portion of the testator's separate and community estate to which
26 the pretermitted child would have been entitled pursuant to Section
27 38(a) of this code had the testator died intestate without a

1 surviving spouse owning only that portion of his estate not devised
2 or bequeathed to the other parent of the pretermitted child.

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

12 (e) If a pretermitted child's other parent is not the
13 surviving spouse of the testator, the portion of the testator's
14 estate to which the pretermitted child is entitled under Subsection
15 (a)(1)(A) or (a)(2) of this section may not reduce the portion of
16 the testator's estate passing to the testator's surviving spouse by
17 more than one-half.

18 SECTION 1.15. Subsection (a), Section 81, Texas Probate
19 Code, is amended to read as follows:

20 (a) For Probate of a Written Will. A written will shall, if
21 within the control of the applicant, be filed with the application
22 for its probate, and shall remain in the custody of the county clerk
23 unless removed therefrom by order of a proper court. An application
24 for probate of a written will shall state:

25 (1) The name and domicile of each applicant.

26 (2) The name, age if known, and domicile of the
27 decedent, and the fact, time, and place of death.

1 (3) Facts showing that the court has venue.

2 (4) That the decedent owned real or personal property,
3 or both, describing the same generally, and stating its probable
4 value.

5 (5) The date of the will, the name and residence of the
6 executor named therein, if any, and if none be named, then the name
7 and residence of the person to whom it is desired that letters be
8 issued, and also the names and residences of the subscribing
9 witnesses, if any.

10 (6) Whether a child or children born or adopted after
11 the making of such will survived the decedent, and the name of each
12 such survivor, if any.

13 (7) That such executor or applicant, or other person
14 to whom it is desired that letters be issued, is not disqualified by
15 law from accepting letters.

16 (8) Whether a marriage of the decedent was ever
17 dissolved after the will was made [~~, whether by divorce, annulment,~~
18 ~~or a declaration that the marriage was void,~~] and if so, when and
19 from whom.

20 (9) Whether the state, a governmental agency of the
21 state, or a charitable organization is named by the will as a
22 devisee.

23 The foregoing matters shall be stated and averred in the
24 application to the extent that they are known to the applicant, or
25 can with reasonable diligence be ascertained by him, and if any of
26 such matters is not stated or averred in the application, the
27 application shall set forth the reason why such matter is not so

1 stated and averred.

2 SECTION 1.16. Subsection (a), Section 84, Texas Probate
3 Code, is amended to read as follows:

4 (a) Self-Proved Will. (1) If a will is self-proved as
5 provided in Section 59 of this Code or, if executed in another state
6 or a foreign country, is self-proved in accordance with the laws of
7 the state or foreign country of the testator's domicile at the time
8 of the execution, no further proof of its execution with the
9 formalities and solemnities and under the circumstances required to
10 make it a valid will shall be necessary.

11 (2) For purposes of Subdivision (1) of this
12 subsection, a will is considered self-proved if the will, or an
13 affidavit of the testator and attesting witnesses attached or
14 annexed to the will, provides that:

15 (A) the testator declared that the testator
16 signed the instrument as the testator's will, the testator signed
17 it willingly or willingly directed another to sign for the
18 testator, the testator executed the will as the testator's free and
19 voluntary act for the purposes expressed in the instrument, the
20 testator is of sound mind and under no constraint or undue
21 influence, and the testator is eighteen years of age or over or, if
22 under that age, was or had been lawfully married, or was then a
23 member of the armed forces of the United States, an auxiliary of the
24 armed forces of the United States, or the United States Maritime
25 Service; and

26 (B) the witnesses declared that the testator
27 signed the instrument as the testator's will, the testator signed

1 it willingly or willingly directed another to sign for the
2 testator, each of the witnesses, in the presence and hearing of the
3 testator, signed the will as witness to the testator's signing, and
4 to the best of their knowledge the testator was of sound mind and
5 under no constraint or undue influence, and the testator was
6 eighteen years of age or over or, if under that age, was or had been
7 lawfully married, or was then a member of the armed forces of the
8 United States, an auxiliary of the armed forces of the United
9 States, or the United States Maritime Service.

10 SECTION 1.17. Subsection (a), Section 89A, Texas Probate
11 Code, is amended to read as follows:

12 (a) A written will shall, if within the control of the
13 applicant, be filed with the application for probate as a muniment
14 of title, and shall remain in the custody of the county clerk unless
15 removed from the custody of the clerk by order of a proper court. An
16 application for probate of a will as a muniment of title shall
17 state:

18 (1) The name and domicile of each applicant.

19 (2) The name, age if known, and domicile of the
20 decedent, and the fact, time, and place of death.

21 (3) Facts showing that the court has venue.

22 (4) That the decedent owned real or personal property,
23 or both, describing the property generally, and stating its
24 probable value.

25 (5) The date of the will, the name and residence of the
26 executor named in the will, if any, and the names and residences of
27 the subscribing witnesses, if any.

1 (6) Whether a child or children born or adopted after
2 the making of such will survived the decedent, and the name of each
3 such survivor, if any.

4 (7) That there are no unpaid debts owing by the estate
5 of the testator, excluding debts secured by liens on real estate.

6 (8) Whether a marriage of the decedent was ever
7 dissolved after the will was made [~~whether by divorce, annulment,~~
8 ~~or a declaration that the marriage was void,~~] and if so, when and
9 from whom.

10 (9) Whether the state, a governmental agency of the
11 state, or a charitable organization is named by the will as a
12 devisee.

13 The foregoing matters shall be stated and averred in the
14 application to the extent that they are known to the applicant, or
15 can with reasonable diligence be ascertained by the applicant, and
16 if any of such matters is not stated or averred in the application,
17 the application shall set forth the reason why such matter is not so
18 stated and averred.

19 SECTION 1.18. Section 128A, Texas Probate Code, as amended
20 by Chapters 801 (S.B. 593) and 1170 (H.B. 391), Acts of the 80th
21 Legislature, Regular Session, 2007, is reenacted and amended to
22 read as follows:

23 Sec. 128A. NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF
24 WILL. (a) In this section, "beneficiary" means a person, entity,
25 state, governmental agency of the state, charitable organization,
26 or trustee of a trust entitled to receive [~~real or personal~~]
27 property under the terms of a decedent's will, to be determined for

1 purposes of this section with the assumption that each person who is
2 alive on the date of the decedent's death survives any period
3 required to receive the bequest as specified by the terms of the
4 will. The term does not include a person, entity, state,
5 governmental agency of the state, charitable organization, or
6 trustee of a trust that would be entitled to receive property under
7 the terms of a decedent's will on the occurrence of a contingency
8 that has not occurred as of the date of the decedent's death.

9 (a-1) This section does not apply to the probate of a will as
10 a muniment of title.

11 (b) Except as provided by Subsection (d) of this section,
12 not later than the 60th day after the date of an order admitting a
13 decedent's will to probate, the personal representative of the
14 decedent's estate, including an independent executor or
15 independent administrator, shall give notice that complies with
16 Subsection (e) of this section to each beneficiary named in the will
17 whose identity and address are known to the personal representative
18 or, through reasonable diligence, can be ascertained. If, after
19 the 60th day after the date of the order, the personal
20 representative becomes aware of the identity and address of a
21 beneficiary who was not given notice on or before the 60th day, the
22 personal representative shall give the notice as soon as possible
23 after becoming aware of that information.

24 (c) Notwithstanding the requirement under Subsection (b) of
25 this section that the personal representative give the notice to
26 the beneficiary, the personal representative shall give the notice
27 with respect to a beneficiary described by this subsection as

1 follows:

2 (1) if the beneficiary is a trustee of a trust, to the
3 trustee, unless the personal representative is the trustee, in
4 which case the personal representative shall, except as provided by
5 Subsection (c-1) of this section, give the notice to the person or
6 class of persons first eligible to receive the trust income, to be
7 determined for purposes of this subdivision as if the trust were in
8 existence on the date of the decedent's death;

9 (2) if the beneficiary has a court-appointed guardian
10 or conservator, to that guardian or conservator;

11 (3) if the beneficiary is a minor for whom no guardian
12 or conservator has been appointed, to a parent of the minor; and

13 (4) if the beneficiary is a charity that for any reason
14 cannot be notified, to the attorney general.

15 (c-1) The personal representative is not required to give
16 the notice otherwise required by Subsection (c)(1) of this section
17 to a person eligible to receive trust income at the sole discretion
18 of the trustee of a trust if:

19 (1) the personal representative has given the notice
20 to an ancestor of the person who has a similar interest in the
21 trust; and

22 (2) no apparent conflict exists between the ancestor
23 and the person eligible to receive trust income.

24 (d) A personal representative is not required to give the
25 notice otherwise required by this section to a beneficiary who:

26 (1) has made an appearance in the proceeding with
27 respect to the decedent's estate before the will was admitted to

1 probate; ~~or~~]

2 (2) is entitled to receive aggregate gifts under the
3 will with an estimated value of \$2,000 or less;

4 (3) has received all gifts to which the beneficiary is
5 entitled under the will not later than the 60th day after the date
6 of the order admitting the decedent's will to probate; or

7 (4) has received a copy of the will that was admitted
8 to probate or a written summary of the gifts to the beneficiary
9 under the will and has waived the right to receive the notice in an
10 instrument that:

11 (A) either acknowledges the receipt of the copy
12 of the will or includes the written summary of the gifts to the
13 beneficiary under the will;

14 (B) is signed by the beneficiary; and

15 (C) is filed with the court.

16 (e) The notice required by this section must include:

17 (1) ~~[state:~~

18 ~~[(A)]~~ the name and address of the beneficiary to
19 whom the notice is given or, for a beneficiary described by
20 Subsection (c) of this section, the name and address of the
21 beneficiary for whom the notice is given and of the person to whom
22 the notice is given;

23 (2) [(B)] the decedent's name;

24 (3) a statement ~~[(C)]~~ that the decedent's will has
25 been admitted to probate;

26 (4) a statement ~~[(D)]~~ that the beneficiary to whom or
27 for whom the notice is given is named as a beneficiary in the will;

1 [~~and~~]

2 (5) [~~(E)~~] the personal representative's name and
3 contact information; and

4 (6) either:

5 (A) [~~(2) contain as attachments~~] a copy of the
6 will that was admitted to probate and the order admitting the will
7 to probate; or

8 (B) a summary of the gifts to the beneficiary
9 under the will, the court in which the will was admitted to probate,
10 the docket number assigned to the estate, the date the will was
11 admitted to probate, and, if different, the date the court
12 appointed the personal representative.

13 (f) The notice required by this section must be sent by
14 registered or certified mail, return receipt requested.

15 (g) Not later than the 90th day after the date of an order
16 admitting a will to probate, the personal representative shall file
17 with the clerk of the court in which the decedent's estate is
18 pending a sworn affidavit of the personal representative, or a
19 certificate signed by the personal representative's attorney,
20 stating:

21 (1) for each beneficiary to whom notice was required
22 to be given under this section, the name and address of the
23 beneficiary to whom the personal representative gave the notice or,
24 for a beneficiary described by Subsection (c) of this section, the
25 name and address of the beneficiary and of the person to whom the
26 notice was given;

27 (2) the name and address of each beneficiary to whom

1 notice was not required to be given under Subsection (d)(2), (3), or
2 (4) of this section [~~who filed a waiver of the notice~~];

3 (3) the name of each beneficiary whose identity or
4 address could not be ascertained despite the personal
5 representative's exercise of reasonable diligence; and

6 (4) any other information necessary to explain the
7 personal representative's inability to give the notice to or for
8 any beneficiary as required by this section.

9 (h) The affidavit or certificate required by Subsection (g)
10 of this section may be included with any pleading or other document
11 filed with the clerk of the court, including the inventory,
12 appraisal, and list of claims, an affidavit in lieu of the
13 inventory, appraisal, and list of claims, or an application for
14 an extension of the deadline to file the inventory, appraisal,
15 and list of claims or an affidavit in lieu of the inventory,
16 appraisal, and list of claims, provided that the pleading or
17 other document with which the affidavit or certificate is included
18 is filed not later than the date the affidavit or certificate is
19 required to be filed as provided by Subsection (g) of this section.

20 SECTION 1.19. Section 143, Texas Probate Code, is amended
21 to read as follows:

22 Sec. 143. SUMMARY PROCEEDINGS FOR SMALL ESTATES AFTER
23 PERSONAL REPRESENTATIVE APPOINTED. Whenever, after the inventory,
24 appraisal, and list of claims or the affidavit in lieu of the
25 inventory, appraisal, and list of claims has been filed by a
26 personal representative, it is established that the estate of a
27 decedent, exclusive of the homestead and exempt property and family

1 allowance to the surviving spouse and minor children, does not
2 exceed the amount sufficient to pay the claims of Classes One to
3 Four, inclusive, as claims are hereinafter classified, the personal
4 representative shall, upon order of the court, pay the claims in the
5 order provided and to the extent permitted by the assets of the
6 estate subject to the payment of such claims, and thereafter
7 present his account with an application for the settlement and
8 allowance thereof. Thereupon the court, with or without notice,
9 may adjust, correct, settle, allow or disallow such account, and,
10 if the account is settled and allowed, may decree final
11 distribution, discharge the personal representative, and close the
12 administration.

13 SECTION 1.20. Subsections (g) through (j), Section 145,
14 Texas Probate Code, are amended to read as follows:

15 (g) The court may not appoint an independent administrator
16 to serve in an intestate administration unless and until the
17 parties seeking appointment of the independent administrator have
18 been determined, through a proceeding to declare heirship under
19 Chapter III of this code, to constitute all of the decedent's heirs
20 ~~[In no case shall any independent administrator be appointed by any~~
21 ~~court to serve in any intestate administration until those parties~~
22 ~~seeking the appointment of said independent administrator offer~~
23 ~~clear and convincing evidence to the court that they constitute all~~
24 ~~of the said decedent's heirs].~~

25 (h) When an independent administration has been created,
26 and the order appointing an independent executor has been entered
27 by the county court, and the inventory, appraisement, and list

1 aforesaid has been filed by the executor and approved by the county
2 court or an affidavit in lieu of the inventory, appraisement, and
3 list of claims has been filed by the executor, as long as the estate
4 is represented by an independent executor, further action of any
5 nature shall not be had in the county court except where this Code
6 specifically and explicitly provides for some action in the county
7 court.

8 (i) If a distributee described in Subsections (c) through
9 (e) of this section is an incapacitated person, the guardian of the
10 person of the distributee may sign the application on behalf of the
11 distributee. If the county court finds that either the granting of
12 independent administration or the appointment of the person, firm,
13 or corporation designated in the application as independent
14 executor would not be in the best interests of the incapacitated
15 person, then, notwithstanding anything to the contrary in
16 Subsections (c) through (e) of this section, the county court shall
17 not enter an order granting independent administration of the
18 estate. If such distributee who is an incapacitated person has no
19 guardian of the person, the county court may appoint a guardian ad
20 litem to make application on behalf of the incapacitated person if
21 the county court considers such an appointment necessary to protect
22 the interest of the distributees. Alternatively, if the
23 distributee who is an incapacitated person is a minor and has no
24 guardian of the person, the natural guardian or guardians of the
25 minor may consent on the minor's behalf if there is no conflict of
26 interest between the minor and the natural guardian or guardians.

27 (j) If a trust is created in the decedent's will, the person

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

17 SECTION 1.21. Part 4, Chapter VI, Texas Probate Code, is
18 amended by adding Sections 145A, 145B, and 145C to read as follows:

19 Sec. 145A. GRANTING POWER OF SALE BY AGREEMENT. In a
20 situation in which a decedent does not have a will or a decedent's
21 will does not contain language authorizing the personal
22 representative to sell real property or contains language that is
23 not sufficient to grant the representative that authority, the
24 court may include in an order appointing an independent executor
25 under Section 145 of this code any general or specific authority
26 regarding the power of the independent executor to sell real
27 property that may be consented to by the beneficiaries who are to

1 receive any interest in the real property in the application for
2 independent administration or in their consents to the independent
3 administration. The independent executor, in such event, may sell
4 the real property under the authority granted in the court order
5 without the further consent of those beneficiaries.

6 Sec. 145B. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT
7 APPROVAL. Unless this code specifically provides otherwise, any
8 action that a personal representative subject to court supervision
9 may take with or without a court order may be taken by an
10 independent executor without a court order. The other provisions
11 of this part are designed to provide additional guidance regarding
12 independent administrations in specified situations, and are not
13 designed to limit by omission or otherwise the application of the
14 general principles set forth in this part.

15 Sec. 145C. POWER OF SALE OF ESTATE PROPERTY.

16 (a) Definition. In this section, "independent executor" does not
17 include an independent administrator.

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

25 (c) Protection of Person Purchasing Estate Property.

26 (1) A person who is not a devisee or heir is not required to
27 inquire into the power of sale of estate property of the independent

1 executor or independent administrator or the propriety of the
2 exercise of the power of sale if the person deals with the
3 independent executor or independent administrator in good faith
4 and:

5 (A) a power of sale is granted to the independent
6 executor in the will;

7 (B) a power of sale is granted under Section 145A
8 of this code in the court order appointing the independent executor
9 or independent administrator; or

10 (C) the independent executor or independent
11 administrator provides an affidavit, executed and sworn to under
12 oath and recorded in the deed records of the county where the
13 property is located, that the sale is necessary or advisable for any
14 of the purposes described in Section 341(1) of this code.

15 (2) As to acts undertaken in good faith reliance, the
16 affidavit described by Subsection (c)(1)(C) of this section is
17 conclusive proof, as between a purchaser of property from an
18 estate, and the personal representative of the estate or the heirs
19 and distributees of the estate, with respect to the authority of the
20 independent executor or independent administrator to sell the
21 property. The signature or joinder of a devisee or heir who has an
22 interest in the property being sold as described in this section is
23 not necessary for the purchaser to obtain all right, title, and
24 interest of the estate in the property being sold.

25 (3) This section does not relieve the independent
26 executor or independent administrator from any duty owed to a
27 devisee or heir in relation, directly or indirectly, to the sale.

1 (d) No Limitations. This section does not limit the
2 authority of an independent executor or independent administrator
3 to take any other action without court supervision or approval with
4 respect to estate assets that may take place in a supervised
5 administration, for purposes and within the scope otherwise
6 authorized by this code, including the authority to enter into a
7 lease and to borrow money.

8 SECTION 1.22. Section 146, Texas Probate Code, is amended
9 by adding Subsections (a-1) and (b-1) through (b-7) and amending
10 Subsection (b) to read as follows:

11 (a-1) Statement in Notice of Claim. To be effective, the
12 notice provided under Subsection (a)(2) of this section must
13 include, in addition to the other information required by Section
14 294(d) of this code, a statement that a claim may be effectively
15 presented by only one of the methods prescribed by this section.

16 (b) Secured Claims for Money. Within six months after the
17 date letters are granted or within four months after the date notice
18 is received under Section 295 of this code, whichever is later, a
19 creditor with a claim for money secured by real or personal property
20 of the estate must give notice to the independent executor of the
21 creditor's election to have the creditor's claim approved as a
22 matured secured claim to be paid in due course of administration.
23 In addition to giving the notice within this period, a creditor
24 whose claim is secured by real property shall record a notice of the
25 creditor's election under this subsection in the deed records of
26 the county in which the real property is located. If no ~~the~~
27 election to be a matured secured creditor is made, or the election

1 is made, but not within the prescribed period, or is made within the
2 prescribed period but the creditor has a lien against real property
3 and fails to record notice of the claim in the deed records as
4 required within the prescribed period [~~is not made~~], the claim
5 shall be [~~is~~] a preferred debt and lien against the specific
6 property securing the indebtedness and shall be paid according to
7 the terms of the contract that secured the lien, and the claim may
8 not be asserted against other assets of the estate. The independent
9 executor may pay the claim before the claim matures if paying the
10 claim before maturity is in the best interest of the estate.

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

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

20 (B) during the administration of the estate, is
21 not entitled to exercise any contractual collection rights,
22 including the power to foreclose, without either the prior written
23 approval of the independent executor or court approval.

24 (2) Subdivision (1) of this subsection may not be
25 construed to suspend or otherwise prevent a creditor with a matured
26 secured claim from seeking judicial relief of any kind or from
27 executing any judgment against an independent executor. Except

1 with respect to real property, any third party acting in good faith
2 may obtain good title with respect to an estate asset acquired
3 through a secured creditor's extrajudicial collection rights,
4 without regard to whether the creditor had the right to collect the
5 asset or whether the creditor acted improperly in exercising those
6 rights during an estate administration due to having elected
7 matured secured status.

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

16 (b-2) Preferred Debt and Lien Claims. During an independent
17 administration, a secured creditor whose claim is a preferred debt
18 and lien against property securing the indebtedness under
19 Subsection (b) of this section is free to exercise any judicial or
20 extrajudicial collection rights, including the right to
21 foreclosure and execution; provided, however, that the creditor
22 does not have the right to conduct a nonjudicial foreclosure sale
23 within six months after letters are granted.

24 (b-3) Certain Unsecured Claims; Barring of Claims. An
25 unsecured creditor who has a claim for money against an estate and
26 who receives a notice under Section 294(d) of this code shall give
27 to the independent executor notice of the nature and amount of the

1 claim not later than the 120th day after the date the notice is
2 received or the claim is barred.

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

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

10 (2) a pleading filed in a lawsuit with respect to the
11 claim; or

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

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

18 (b-6) Statute of Limitations. Except as otherwise provided
19 by Section 16.062, Civil Practice and Remedies Code, the running of
20 the statute of limitations shall be tolled only by a written
21 approval of a claim signed by an independent executor, a pleading
22 filed in a suit pending at the time of the decedent's death, or a
23 suit brought by the creditor against the independent executor. In
24 particular, the presentation of a statement or claim, or a notice
25 with respect to a claim, to an independent executor does not toll
26 the running of the statute of limitations with respect to that
27 claim.

1 (b-7) Other Claim Procedures of Code Generally Do Not Apply.

2 Except as otherwise provided by this section, the procedural
3 provisions of this code governing creditor claims in supervised
4 administrations do not apply to independent administrations. By
5 way of example, but not as a limitation:

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

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

14 SECTION 1.23. Subsection (a), Section 149B, Texas Probate
15 Code, is amended to read as follows:

16 (a) In addition to or in lieu of the right to an accounting
17 provided by Section 149A of this code, at any time after the
18 expiration of two years from the date the court clerk first issues
19 letters testamentary or of administration to any personal
20 representative of an estate [~~that an independent administration was~~
21 ~~created and the order appointing an independent executor was~~
22 ~~entered~~], a person interested in the estate then subject to
23 independent administration may petition the county court, as that
24 term is defined by Section 3 of this code, for an accounting and
25 distribution. The court may order an accounting to be made with the
26 court by the independent executor at such time as the court deems
27 proper. The accounting shall include the information that the

1 court deems necessary to determine whether any part of the estate
2 should be distributed.

3 SECTION 1.24. Subsection (a), Section 149C, Texas Probate
4 Code, is amended to read as follows:

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

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

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

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

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

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

27 (6) the independent executor becomes an incapacitated

1 person, or is sentenced to the penitentiary, or from any other cause
2 becomes legally incapacitated from properly performing the
3 independent executor's fiduciary duties.

4 SECTION 1.25. Section 151, Texas Probate Code, is amended
5 to read as follows:

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

17 (a-1) Closing Report. An independent executor may file [+

18 (1)] a closing report verified by affidavit that:

19 (1) shows:

20 (A) the [~~(i) The~~] property of the estate which
21 came into the possession [~~hands~~] of the independent executor;

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

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

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

27 (E) the [~~(v) The~~] names and residences of the

1 persons to whom the property of the estate, if any, remaining on
2 hand after payment of debts has been distributed; and

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

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

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

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

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

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

25 (c) Effect of Filing Closing Report or Notice of Closing
26 Estate [the Affidavit]. (1) The independent administration of an
27 estate is considered closed 30 days after the date of the filing of

1 a closing report or notice of closing estate unless an interested
2 person files an objection with the court within that time. If an
3 interested person files an objection within the 30-day period, the
4 independent administration of the estate is closed when the
5 objection has been disposed of or the court signs an order closing
6 the estate.

7 (2) The closing of an [~~filing of such an affidavit and~~
8 ~~proof of delivery, if required, shall terminate the~~] independent
9 administration by filing of a closing report or notice of closing
10 estate terminates [~~and~~] the power and authority of the independent
11 executor, but shall not relieve the independent executor from
12 liability for any mismanagement of the estate or from liability for
13 any false statements contained in the report or notice [~~affidavit~~].

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

22 (4) [~~(2)~~] If the independent executor is required to
23 give bond, the independent executor's filing of the closing report
24 [~~affidavit~~] and proof of delivery, if required, automatically
25 releases the sureties on the bond from all liability for the future
26 acts of the principal. The filing of a notice of closing estate
27 does not release the sureties on the bond of an independent

1 executor.

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

17 (e) [~~(d)~~] Delivery Subject to Receipt or Proof of Delivery.
18 An independent executor may not be required to deliver tangible or
19 intangible personal property to a distributee unless the
20 independent executor receives [~~shall receive~~], at or before the
21 time of delivery of the property, a signed receipt or other proof of
22 delivery of the property to the distributee. An independent
23 executor may [~~shall~~] not require a waiver or release from the
24 distributee as a condition of delivery of property to a
25 distributee.

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

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

16 SECTION 1.27. Section 250, Texas Probate Code, is amended
 17 to read as follows:

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

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

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

3 (b) The representative shall set out in the inventory the
4 representative's [~~his~~] appraisement of the fair market value of
5 each item thereof as of the date of death in the case of grant of
6 letters testamentary or of administration, as the case may be;
7 provided that if the court shall appoint an appraiser or appraisers
8 of the estate, the representative shall determine the fair market
9 value of each item of the inventory with the assistance of such
10 appraiser or appraisers and shall set out in the inventory such
11 appraisement. The inventory shall specify what portion of the
12 property, if any, is separate property and what portion, if any, is
13 community property. [~~If any property is owned in common with~~
14 ~~others, the interest owned by the estate shall be shown, together~~
15 ~~with the names and relationship, if known, of co-owners.] Such
16 inventory, when approved by the court and duly filed with the clerk
17 of court, shall constitute for all purposes the inventory and
18 appraisement of the estate referred to in this Code. The court for
19 good cause shown may require the filing of the inventory and
20 appraisement at a time prior to ninety days after the qualification
21 of the representative.~~

22 (c) Notwithstanding Subsection (a) of this section, if
23 there are no unpaid debts, except for secured debts, taxes, and
24 administration expenses, at the time the inventory is due,
25 including any extensions, an independent executor may file with the
26 court clerk, in lieu of the inventory, appraisement, and list of
27 claims, an affidavit stating that all debts, except for secured

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

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

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

15 (2) as an heir of the decedent.

16 (e) If the independent executor files an affidavit in lieu
17 of filing an inventory, appraisement, and list of claims as
18 authorized under Subsection (c) of this section:

19 (1) any person interested in the estate, including a
20 possible heir of the decedent or a beneficiary under a prior will of
21 the decedent, is entitled to receive a copy of the inventory,
22 appraisement, and list of claims from the independent executor on
23 written request;

24 (2) the independent executor may provide a copy of the
25 inventory, appraisement, and list of claims to any person the
26 independent executor believes in good faith may be a person
27 interested in the estate without liability to the estate or its

1 beneficiaries; and

2 (3) a person interested in the estate may apply to the
3 court for an order compelling compliance with Subdivision (1) of
4 this subsection and the court, in its discretion, may compel the
5 independent executor to provide a copy of the inventory,
6 appraisement, and list of claims to the interested person or may
7 deny the application.

8 SECTION 1.28. Section 256, Texas Probate Code, is amended
9 to read as follows:

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

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

24 SECTION 1.29. Section 260, Texas Probate Code, is amended
25 to read as follows:

26 Sec. 260. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO
27 RETURN AN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT

1 IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. If there be
2 more than one representative qualified as such, any one or more of
3 them, on the neglect of the others, may make and return an inventory
4 and appraisement and list of claims or file an affidavit in lieu of
5 an inventory, appraisement, and list of claims; and the
6 representative so neglecting shall not thereafter interfere with
7 the estate or have any power over same; but the representative so
8 returning the inventory, appraisement, and list of claims or filing
9 the affidavit in lieu of an inventory, appraisement, and list of
10 claims shall have the whole administration, unless, within sixty
11 days after the return or the filing, the delinquent or delinquents
12 shall assign to the court in writing and under oath a reasonable
13 excuse which the court may deem satisfactory; and if no excuse is
14 filed or if the excuse filed is not deemed sufficient, the court
15 shall enter an order removing any and all such delinquents and
16 revoking their letters.

17 SECTION 1.30. Subsections (a) and (b), Section 271, Texas
18 Probate Code, are amended to read as follows:

19 (a) Unless an affidavit is filed under Subsection (b) of
20 this section, immediately after the inventory, appraisement, and
21 list of claims have been approved or after the affidavit in lieu of
22 the inventory, appraisement, and list of claims has been filed, the
23 court shall, by order, set apart:

24 (1) the homestead for the use and benefit of the
25 surviving spouse and minor children; and

26 (2) all other property of the estate that is exempt
27 from execution or forced sale by the constitution and laws of this

1 state for the use and benefit of the surviving spouse and minor
2 children and unmarried children remaining with the family of the
3 deceased.

4 (b) Before the approval of the inventory, appraisalment, and
5 list of claims or, if applicable, before the filing of the affidavit
6 in lieu of the inventory, appraisalment, and list of claims:

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

12 (2) any unmarried children remaining with the family
13 of the deceased may apply to the court to have all exempt property
14 other than the homestead set aside by filing an application and a
15 verified affidavit listing all of the other property that the
16 applicant claims is exempt.

17 SECTION 1.31. Section 286, Texas Probate Code, is amended
18 to read as follows:

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

20 (a) Unless an affidavit is filed under Subsection (b) of this
21 section, immediately after the inventory, appraisalment, and list of
22 claims have been approved or the affidavit in lieu of the inventory,
23 appraisalment, and list of claims has been filed, the court shall fix
24 a family allowance for the support of the surviving spouse and minor
25 children of the deceased.

26 (b) Before the approval of the inventory, appraisalment, and
27 list of claims or, if applicable, before the filing of the affidavit

1 in lieu of the inventory, appraisement, and list of claims, a
2 surviving spouse or any person who is authorized to act on behalf of
3 minor children of the deceased may apply to the court to have the
4 court fix the family allowance by filing an application and a
5 verified affidavit describing the amount necessary for the
6 maintenance of the surviving spouse and minor children for one year
7 after the date of the death of the decedent and describing the
8 spouse's separate property and any property that minor children
9 have in their own right. The applicant bears the burden of proof by
10 a preponderance of the evidence at any hearing on the application.
11 The court shall fix a family allowance for the support of the
12 surviving spouse and minor children of the deceased.

13 SECTION 1.32. Section 293, Texas Probate Code, is amended
14 to read as follows:

15 Sec. 293. SALE TO RAISE FUNDS FOR FAMILY ALLOWANCE. If
16 there be no personal property of the deceased that the surviving
17 spouse or guardian is willing to take for such allowance, or not a
18 sufficiency of them, and if there be no funds or not sufficient
19 funds in the hands of such executor or administrator to pay such
20 allowance, or any part thereof, then the court, as soon as the
21 inventory, appraisement, and list of claims are returned and
22 approved or, if applicable, the affidavit in lieu of the inventory,
23 appraisement, and list of claims is filed, shall order a sale of so
24 much of the estate for cash as will be sufficient to raise the
25 amount of such allowance, or a part thereof, as the case requires.

26 SECTION 1.33. The heading to Section 322, Texas Probate
27 Code, is amended to read as follows:

1 Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATE [~~ESTATES~~]
2 OF DECEDENT.

3 SECTION 1.34. Subsection (a), Section 385, Texas Probate
4 Code, is amended to read as follows:

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

13 SECTION 1.35. Section 436, Texas Probate Code, is amended
14 by adding Subdivision (2-a) and amending Subdivisions (7) and (11)
15 to read as follows:

16 (2-a) "Charitable organization" means any
17 corporation, community chest, fund, or foundation that is exempt
18 from federal income tax under Section 501(a) of the Internal
19 Revenue Code of 1986 by being listed as an exempt organization in
20 Section 501(c)(3) of that code.

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

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

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

11 SECTION 1.36. Subsection (a), Section 439, Texas Probate
12 Code, is amended to read as follows:

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

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

7 SECTION 1.37. Section 452, Texas Probate Code, is amended
8 to read as follows:

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

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

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

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

27 SECTION 1.38. Section 471, Texas Probate Code, is amended

1 by amending Subdivision (2) and adding Subdivision (2-a) to read as
2 follows:

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

6 (2-a) "Relative" means an individual who is related to
7 another individual by consanguinity or affinity, as determined
8 under Sections 573.022 and 573.024, Government Code, respectively.

9 SECTION 1.39. Sections 472 and 473, Texas Probate Code, are
10 amended to read as follows:

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

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

25 (2) a provision in a trust instrument executed by a
26 divorced individual before the dissolution of the marriage that
27 confers a general or special power of appointment on the

1 individual's former spouse or any relative of the former spouse who
2 is not a relative of the divorced individual; and

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

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

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

1 satisfaction of an enforceable obligation:

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

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

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

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

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

18 SECTION 1.40. Subsection (i), Section 25.0022, Government
19 Code, is amended to read as follows:

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

24 SECTION 1.41. (a) Subsection (c), Section 48, Section 70,
25 and Subsection (f), Section 251, Texas Probate Code, are repealed.

26 (b) Notwithstanding the transfer of Section 5, Texas
27 Probate Code, to the Estates Code and redesignation as Section 5 of

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

4 SECTION 1.42. (a) The changes in law made by Sections 4D,
5 4H, 6, 8, 48, and 49, Texas Probate Code, as amended by this
6 article, and Sections 6A, 6B, 6C, 6D, 8A, and 8B, Texas Probate
7 Code, as added by this article, apply only to an action filed or
8 other proceeding commenced on or after the effective date of this
9 Act. An action filed or other proceeding commenced before the
10 effective date of this Act is governed by the law in effect on the
11 date the action was filed or the proceeding was commenced, and the
12 former law is continued in effect for that purpose.

13 (b) The changes in law made by Subsection (p), Section 37A,
14 Texas Probate Code, as added by this article, apply to all
15 disclaimers made after December 31, 2009, for decedents dying after
16 December 31, 2009, but before December 17, 2010.

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

26 (d) The changes in law made by this article to Section 59,
27 Texas Probate Code, apply only to a will executed on or after the

1 effective date of this Act. A will executed before the effective
2 date of this Act is governed by the law in effect on the date the
3 will was executed, and the former law is continued in effect for
4 that purpose.

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

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

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

23 (h) The changes in law made by this article to Section 452,
24 Texas Probate Code, apply only to agreements created or existing on
25 or after the effective date of this Act, and are intended to
26 overturn the ruling of the Texas Supreme Court in *Holmes v. Beatty*,
27 290 S.W.3d 852 (Tex. 2009).

1 SECTION 1.43. Subsection (p), Section 37A, Texas Probate
2 Code, as added by this article, takes effect immediately if this Act
3 receives a vote of two-thirds of all the members elected to each
4 house, as provided by Section 39, Article III, Texas Constitution.
5 If this Act does not receive the vote necessary for immediate
6 effect, Subsection (p), Section 37A, Texas Probate Code, as added
7 by this article, takes effect September 1, 2011.

8 ARTICLE 2. CHANGES TO ESTATES CODE

9 SECTION 2.01. The heading to Subtitle A, Title 2, Estates
10 Code, as effective January 1, 2014, is amended to read as follows:

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

12 SECTION 2.02. Section 32.003, Estates Code, as effective
13 January 1, 2014, is amended by adding Subsection (b-1) and amending
14 Subsections (e) and (g) to read as follows:

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

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

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

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

27 SECTION 2.03. Section 32.007, Estates Code, as effective

1 to admit a will to probate or for the granting of letters
2 testamentary or of administration is:

3 (1) in the county in which the decedent resided, if the
4 decedent had a domicile or fixed place of residence in this state;
5 or

6 (2) with respect to a decedent who did not have a
7 domicile or fixed place of residence in this state:

8 (A) if the decedent died in this state, in the
9 county in which:

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

12 (ii) the decedent died; or

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

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

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

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

24 Sec. 33.003. CERTAIN ACTIONS INVOLVING PERSONAL
25 REPRESENTATIVE. Notwithstanding any other provision of this
26 chapter, the proper venue for an action by or against a personal
27 representative for personal injury, death, or property damages is

1 determined under Section 15.007, Civil Practice and Remedies Code.

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

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

7 (2) the court of the county in which venue would be
8 proper for commencement of an administration of the decedent's
9 estate under Section 33.001 if:

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

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

15 (b) Notwithstanding Subsection (a) and Section 33.001, if
16 there is no administration pending of the estate of a deceased ward
17 who died intestate, venue for a proceeding to determine the
18 deceased ward's heirs is in the probate court in which the
19 guardianship proceedings with respect to the ward's estate were
20 pending on the date of the ward's death. A proceeding described by
21 this subsection may not be brought as part of the guardianship
22 proceedings with respect to the ward's estate, but rather must be
23 filed as a separate cause in which the court may determine the
24 heirs' respective shares and interests in the estate as provided by
25 the laws of this state.

26 Sec. 33.005. CERTAIN ACTIONS INVOLVING BREACH OF FIDUCIARY
27 DUTY. Notwithstanding any other provision of this chapter, venue

1 for a proceeding brought by the attorney general alleging breach of
2 a fiduciary duty by a charitable entity or a fiduciary or managerial
3 agent of a charitable trust is determined under Section 123.005,
4 Property Code.

5 [Sections 33.006-33.050 reserved for expansion]

6 SUBCHAPTER B. DETERMINATION OF VENUE

7 Sec. 33.051. COMMENCEMENT OF PROCEEDING. For purposes of
8 this subchapter, a probate proceeding is considered commenced on
9 the filing of an application for the proceeding that avers facts
10 sufficient to confer venue on the court in which the application is
11 filed.

12 Sec. 33.052. CONCURRENT VENUE. (a) If applications for
13 probate proceedings involving the same estate are filed in two or
14 more courts having concurrent venue, the court in which a
15 proceeding involving the estate was first commenced has and retains
16 jurisdiction of the proceeding to the exclusion of the other court
17 or courts in which a proceeding involving the same estate was
18 commenced.

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

21 Sec. 33.053. PROBATE PROCEEDINGS IN MORE THAN ONE COUNTY.
22 If probate proceedings involving the same estate are commenced in
23 more than one county, each proceeding commenced in a county other
24 than the county in which a proceeding was first commenced is stayed
25 until the court in which the proceeding was first commenced makes a
26 final determination of venue.

27 Sec. 33.054. JURISDICTION TO DETERMINE VENUE. (a) Subject

1 to Sections 33.052 and 33.053, a court in which an application for a
2 probate proceeding is filed has jurisdiction to determine venue for
3 the proceeding and for any matter related to the proceeding.

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

6 Sec. 33.055. PROTECTION FOR CERTAIN PURCHASERS.

7 Notwithstanding Section 33.052, a bona fide purchaser of real
8 property who relied on a probate proceeding that was not the first
9 commenced proceeding, without knowledge that the proceeding was not
10 the first commenced proceeding, shall be protected with respect to
11 the purchase unless before the purchase an order rendered in the
12 first commenced proceeding admitting the decedent's will to
13 probate, determining the decedent's heirs, or granting
14 administration of the decedent's estate was recorded in the office
15 of the county clerk of the county in which the purchased property is
16 located.

17 [Sections 33.056-33.100 reserved for expansion]

18 SUBCHAPTER C. TRANSFER OF PROBATE PROCEEDING

19 Sec. 33.101. TRANSFER TO OTHER COUNTY IN WHICH VENUE IS
20 PROPER. If probate proceedings involving the same estate are
21 commenced in more than one county and the court making a
22 determination of venue as provided by Section 33.053 determines
23 that venue is proper in another county, the court clerk shall make
24 and retain a copy of the entire file in the case and transmit the
25 original file to the court in the county in which venue is proper.
26 The court to which the file is transmitted shall conduct the
27 proceeding in the same manner as if the proceeding had originally

1 been commenced in that county.

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

8 (1) the original file in the case; and

9 (2) certified copies of all entries that have been
10 made in the judge's probate docket in the proceeding.

11 (b) The court of the county to which a probate proceeding is
12 transferred under Subsection (a) shall complete the proceeding in
13 the same manner as if the proceeding had originally been commenced
14 in that county.

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

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

23 (1) the estate; or

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

26 (b) The clerk of the court from which the probate proceeding
27 described by Subsection (a) is transferred shall transmit to the

1 court to which the proceeding is transferred:

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

3 (2) a certified copy of the index.

4 Sec. 33.104. VALIDATION OF PREVIOUS PROCEEDINGS. All
5 orders entered in connection with a probate proceeding that is
6 transferred to another county under a provision of this subchapter
7 are valid and shall be recognized in the court to which the
8 proceeding is transferred if the orders were made and entered in
9 conformance with the procedure prescribed by this code.

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

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

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

16 (2) application for the granting of administration;

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

19 (4) will and the testimony on which the will is
20 admitted to probate;

21 (5) bond and official oath;

22 (6) inventory, appraisalment, and list of claims;

23 (6-a) affidavit in lieu of the inventory,
24 appraisalment, and list of claims;

25 (7) exhibit and account;

26 (8) report of renting;

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

- 1 (10) report of sale;
- 2 (11) report of the commissioners of partition;
- 3 (12) application for authority to execute a lease 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 (13) report of lending or investing money.

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

11 (d) A survivorship agreement may not be inferred from the
12 mere fact that an account is a joint account or that an account is
13 designated as JT TEN, Joint Tenancy, or joint, or with other similar
14 language.

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

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

23 (5) "P.O.D. payee" means a person or charitable
24 organization designated on a P.O.D. account as a person to whom the
25 account is payable on request after the death of one or more
26 persons.

27 SECTION 2.08. Subsection (b), Section 113.002, Estates

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

2 (b) A P.O.D. payee, including a charitable organization, or
3 beneficiary of a trust account is a party only after the account
4 becomes payable to the P.O.D. payee or beneficiary by reason of the
5 P.O.D. payee or beneficiary surviving the original payee or
6 trustee.

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

9 (c) A survivorship agreement may not be inferred from the
10 mere fact that the account is a joint account or that the account is
11 designated as JT TEN, Joint Tenancy, or joint, or with other similar
12 language.

13 SECTION 2.10. Subsection (c), Section 122.055, Estates
14 Code, as effective January 1, 2014, is amended to read as follows:

15 (c) If the beneficiary is a charitable organization or a
16 governmental agency of the state, a written memorandum of
17 disclaimer of a present or future interest must be filed not later
18 than the later of:

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

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

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

25 (B) the affidavit in lieu of the inventory,
26 appraisement, and list of claims.

27 SECTION 2.11. Subsection (b), Section 122.056, Estates

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

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

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

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

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

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

13 SECTION 2.12. Subchapter B, Chapter 122, Estates Code, as
14 effective January 1, 2014, is amended by adding Section 122.057 to
15 read as follows:

16 Sec. 122.057. EXTENSION OF TIME FOR CERTAIN DISCLAIMERS.

17 (a) This section does not apply to a disclaimer made by a
18 beneficiary that is a charitable organization or governmental
19 agency of the state.

20 (b) Notwithstanding the periods prescribed by Sections
21 122.055 and 122.056, a disclaimer with respect to an interest in
22 property passing by reason of the death of a decedent dying after
23 December 31, 2009, but before December 17, 2010, may be executed and
24 filed, and notice of the disclaimer may be given, not later than
25 nine months after December 17, 2010.

26 (c) A disclaimer filed and for which notice is given during
27 the extended period described by Subsection (b) is valid and shall

1 be treated as if the disclaimer had been filed and notice had been
2 given within the periods prescribed by Sections 122.055 and
3 122.056.

4 SECTION 2.13. Section 123.051, Estates Code, as effective
5 January 1, 2014, is amended by amending Subdivision (2) and adding
6 Subdivision (2-a) to read as follows:

7 (2) "Divorced individual" means an individual whose
8 marriage has been dissolved by divorce, ~~or~~ annulment, or a
9 declaration that the marriage is void.

10 (2-a) "Relative" means an individual who is related to
11 another individual by consanguinity or affinity, as determined
12 under Sections 573.022 and 573.024, Government Code, respectively.

13 SECTION 2.14. Subsection (a), Section 123.052, Estates
14 Code, as effective January 1, 2014, is amended to read as follows:

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

18 (1) is a revocable disposition or appointment of
19 property made to the divorced individual's former spouse or any
20 relative of the former spouse who is not a relative of the divorced
21 individual;

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

25 (3) nominates the divorced individual's former spouse
26 or any relative of the former spouse who is not a relative of the
27 divorced individual to serve:

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

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

5 SECTION 2.15. Section 123.053, Estates Code, as effective
6 January 1, 2014, is amended to read as follows:

7 Sec. 123.053. EFFECT OF REVOCATION. (a) An interest
8 granted in a provision of a trust instrument that is revoked under
9 Section 123.052(a)(1) or (2) passes as if the former spouse of the
10 divorced individual who executed the trust instrument and each
11 relative of the former spouse who is not a relative of the divorced
12 individual disclaimed the interest granted in the provision.

13 (b) An interest granted in a provision of a trust instrument
14 that is revoked under Section 123.052(a)(3) passes as if the former
15 spouse and each relative of the former spouse who is not a relative
16 of the divorced individual died immediately before the dissolution
17 of the marriage.

18 SECTION 2.16. Section 123.054, Estates Code, as effective
19 January 1, 2014, is amended to read as follows:

20 Sec. 123.054. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS
21 OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A bona fide purchaser
22 of property from a divorced individual's former spouse or any
23 relative of the former spouse who is not a relative of the divorced
24 individual or a person who receives from the former spouse or any
25 relative of the former spouse who is not a relative of the divorced
26 individual a payment, benefit, or property in partial or full
27 satisfaction of an enforceable obligation:

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

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

5 SECTION 2.17. Section 123.055, Estates Code, as effective
6 January 1, 2014, is amended to read as follows:

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

14 (1) shall return the payment, benefit, or property to
15 the person who is entitled to the payment, benefit, or property
16 under this subchapter; or

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

20 SECTION 2.18. Section 202.001, Estates Code, as effective
21 January 1, 2014, is amended to read as follows:

22 Sec. 202.001. GENERAL AUTHORIZATION FOR AND NATURE OF
23 PROCEEDING TO DECLARE HEIRSHIP. In the manner provided by this
24 chapter, a court may determine through a proceeding to declare
25 heirship:

26 (1) the persons who are a decedent's heirs and only
27 heirs; and

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

4 SECTION 2.19. Section 202.002, Estates Code, as effective
5 January 1, 2014, is amended to read as follows:

6 Sec. 202.002. CIRCUMSTANCES UNDER WHICH PROCEEDING TO
7 DECLARE HEIRSHIP IS AUTHORIZED. A court may conduct a proceeding to
8 declare heirship when:

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

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

15 (A) property in this state was omitted from the
16 will or administration; or

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

19 (3) it is necessary for the trustee of a trust holding
20 assets for the benefit of a decedent to determine the heirs of the
21 decedent.

22 SECTION 2.20. Section 202.004, Estates Code, as effective
23 January 1, 2014, is amended to read as follows:

24 Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO
25 DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent
26 may be commenced and maintained under a circumstance specified by
27 Section 202.002 by:

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

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

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

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

12 (5) the trustee of a trust holding assets for the
13 benefit of a decedent.

14 SECTION 2.21. Section 202.005, Estates Code, as effective
15 January 1, 2014, is amended to read as follows:

16 Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE
17 HEIRSHIP. A person authorized by Section 202.004 to commence a
18 proceeding to declare heirship must file an application in a court
19 specified by Section 33.004 ~~[202.003]~~ to commence the proceeding.
20 The application must state:

21 (1) the decedent's name and time and place of 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 decedent's estate or
25 in the trust, as applicable;

26 (3) if the time or place of the decedent's death or the
27 name or residence of an heir is not definitely known to the

1 applicant, all the material facts and circumstances with respect to
2 which the applicant has knowledge and information that might
3 reasonably tend to show the time or place of the decedent's death or
4 the name or residence of the heir;

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

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

9 (A) the date of the marriage;

10 (B) the name of the spouse;

11 (C) the date and place of termination if the
12 marriage was terminated; and

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

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

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

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

22 SECTION 2.22. Section 251.101, Estates Code, as effective
23 January 1, 2014, is amended to read as follows:

24 Sec. 251.101. SELF-PROVED WILL. A self-proved will is a
25 will:

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

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

4 SECTION 2.23. Subsection (a), Section 251.102, Estates
5 Code, as effective January 1, 2014, is amended to read as follows:

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

8 (1) the testator and witnesses execute a self-proving
9 affidavit; or

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

12 SECTION 2.24. Subsection (b), Section 251.104, Estates
13 Code, as effective January 1, 2014, is amended to read as follows:

14 (b) A self-proving affidavit must be made by the testator
15 and by the attesting witnesses before an officer authorized to
16 administer oaths [~~under the laws of this state~~]. The officer shall
17 affix the officer's official seal to the self-proving affidavit.

18 SECTION 2.25. Subchapter C, Chapter 251, Estates Code, as
19 effective January 1, 2014, is amended by adding Section 251.1045 to
20 read as follows:

21 Sec. 251.1045. SIMULTANEOUS EXECUTION, ATTESTATION, AND
22 SELF-PROVING. (a) As an alternative to the self-proving of a will
23 by the affidavits of the testator and the attesting witnesses as
24 provided by Section 251.104, a will may be simultaneously executed,
25 attested, and made self-proved before an officer authorized to
26 administer oaths, and the testimony of the witnesses in the probate
27 of the will may be made unnecessary, with the inclusion in the will

1 of the following in form and contents substantially as follows:

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

12 _____
13 Testator

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

14 SECTION 2.26. Chapter 254, Estates Code, as effective
15 January 1, 2014, is amended by adding Section 254.005 to read as
16 follows:

17 Sec. 254.005. FORFEITURE CLAUSE. A provision in a will that
18 would cause a forfeiture of or void a devise or provision in favor
19 of a person for bringing any court action, including contesting a
20 will, is unenforceable if:

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

24 SECTION 2.27. Subsection (a), Section 255.053, Estates
25 Code, as effective January 1, 2014, is amended to read as follows:

26 (a) If no provision is made in the testator's last will for
27 any child of the testator who is living when the testator executes

1 the will, a pretermitted child succeeds to the portion of the
2 testator's separate and community estate, other than any portion of
3 the estate devised to the pretermitted child's other parent, to
4 which the pretermitted child would have been entitled under Section
5 201.001 if the testator had died intestate without a surviving
6 spouse, except as limited by Section 255.056.

7 SECTION 2.28. Section 255.054, Estates Code, as effective
8 January 1, 2014, is amended to read as follows:

9 Sec. 255.054. SUCCESSION BY PRETERMITTED CHILD IF TESTATOR
10 HAS NO LIVING CHILD AT WILL'S EXECUTION. If a testator has no child
11 living when the testator executes the testator's last will, a
12 pretermitted child succeeds to the portion of the testator's
13 separate and community estate, other than any portion of the estate
14 devised to the pretermitted child's other parent, to which the
15 pretermitted child would have been entitled under Section 201.001
16 if the testator had died intestate without a surviving spouse,
17 except as limited by Section 255.056.

18 SECTION 2.29. Subchapter B, Chapter 255, Estates Code, as
19 effective January 1, 2014, is amended by adding Section 255.056 to
20 read as follows:

21 Sec. 255.056. LIMITATION ON REDUCTION OF ESTATE PASSING TO
22 SURVIVING SPOUSE. If a pretermitted child's other parent is not the
23 surviving spouse of the testator, the portion of the testator's
24 estate to which the pretermitted child is entitled under Section
25 255.053(a) or 255.054 may not reduce the portion of the testator's
26 estate passing to the testator's surviving spouse by more than
27 one-half.

1 SECTION 2.30. (a) Subsection (a), Section 256.052,
2 Estates Code, as effective January 1, 2014, is amended to read as
3 follows:

4 (a) An application for the probate of a written will must
5 state and aver the following to the extent each is known to the
6 applicant or can, with reasonable diligence, be ascertained by the
7 applicant:

8 (1) each applicant's name and domicile;

9 (2) the testator's name, domicile, and, if known, age,
10 on the date of the testator's death;

11 (3) the fact, time, and place of the testator's death;

12 (4) facts showing that the court with which the
13 application is filed has venue;

14 (5) that the testator owned property, including a
15 statement generally describing the property and the property's
16 probable value;

17 (6) the date of the will;

18 (7) the name and residence of:

19 (A) any executor named in the will or, if no
20 executor is named, of the person to whom the applicant desires that
21 letters be issued; and

22 (B) each subscribing witness to the will, if any;

23 (8) whether one or more children born to or adopted by
24 the testator after the testator executed the will survived the
25 testator and, if so, the name of each of those children;

26 (9) whether a marriage of the testator was ever
27 dissolved after the will was made [~~divorced~~] and, if so, when and

1 from whom;

2 (10) whether the state, a governmental agency of the
3 state, or a charitable organization is named in the will as a
4 devisee; and

5 (11) that the executor named in the will, the
6 applicant, or another person to whom the applicant desires that
7 letters be issued is not disqualified by law from accepting the
8 letters.

9 (b) If the amendment to Section 256.052(a), Estates Code,
10 made by this section conflicts with an amendment to Section
11 256.052(a), Estates Code, made by another Act of the 82nd
12 Legislature, Regular Session, 2011, relating to nonsubstantive
13 additions to and corrections in enacted codes, the amendment made
14 by this section controls, and the amendment made by the other Act
15 has no effect.

16 SECTION 2.31. Section 256.152, Estates Code, as effective
17 January 1, 2014, is amended to read as follows:

18 Sec. 256.152. ADDITIONAL PROOF REQUIRED FOR PROBATE OF
19 WILL. (a) An applicant for the probate of a will must prove the
20 following to the court's satisfaction, in addition to the proof
21 required by Section 256.151, to obtain the probate:

22 (1) the testator did not revoke the will; and

23 (2) if the will is not self-proved [~~as provided by this~~
24 ~~title~~], the testator:

25 (A) executed the will with the formalities and
26 solemnities and under the circumstances required by law to make the
27 will valid; and

1 (B) at the time of executing the will, was of
2 sound mind and:

- 3 (i) was 18 years of age or older;
4 (ii) was or had been married; or
5 (iii) was a member of the armed forces of
6 the United States, an auxiliary of the armed forces of the United
7 States, or the United States Maritime Service.

8 (b) A will that is self-proved as provided by Subchapter C,
9 Chapter 251, or, if executed in another state or a foreign country,
10 is self-proved in accordance with the laws of the state or foreign
11 country of the testator's domicile at the time of the execution
12 [~~this title~~] is not required to have any additional proof that the
13 will was executed with the formalities and solemnities and under
14 the circumstances required to make the will valid.

15 (c) For purposes of Subsection (b), a will is considered
16 self-proved if the will, or an affidavit of the testator and
17 attesting witnesses attached or annexed to the will, provides that:

18 (1) the testator declared that the testator signed the
19 instrument as the testator's will, the testator signed it willingly
20 or willingly directed another to sign for the testator, the
21 testator executed the will as the testator's free and voluntary act
22 for the purposes expressed in the instrument, the testator is of
23 sound mind and under no constraint or undue influence, and the
24 testator is eighteen years of age or over or, if under that age, was
25 or had been lawfully married, or was then a member of the armed
26 forces of the United States, an auxiliary of the armed forces of the
27 United States, or the United States Maritime Service; and

1 (2) the witnesses declared that the testator signed
2 the instrument as the testator's will, the testator signed it
3 willingly or willingly directed another to sign for the testator,
4 each of the witnesses, in the presence and hearing of the testator,
5 signed the will as witness to the testator's signing, and to the
6 best of their knowledge the testator was of sound mind and under no
7 constraint or undue influence, and the testator was eighteen years
8 of age or over or, if under that age, was or had been lawfully
9 married, or was then a member of the armed forces of the United
10 States, an auxiliary of the armed forces of the United States, or
11 the United States Maritime Service.

12 SECTION 2.32. (a) Subsection (a), Section 257.051,
13 Estates Code, as effective January 1, 2014, is amended to read as
14 follows:

15 (a) An application for the probate of a will as a muniment of
16 title must state and aver the following to the extent each is known
17 to the applicant or can, with reasonable diligence, be ascertained
18 by the applicant:

19 (1) each applicant's name and domicile;

20 (2) the testator's name, domicile, and, if known, age,
21 on the date of the testator's death;

22 (3) the fact, time, and place of the testator's death;

23 (4) facts showing that the court with which the
24 application is filed has venue;

25 (5) that the testator owned property, including a
26 statement generally describing the property and the property's
27 probable value;

- 1 (6) the date of the will;
- 2 (7) the name and residence of:
- 3 (A) any executor named in the will; and
- 4 (B) each subscribing witness to the will, if any;
- 5 (8) whether one or more children born to or adopted by
- 6 the testator after the testator executed the will survived the
- 7 testator and, if so, the name of each of those children;
- 8 (9) that the testator's estate does not owe an unpaid
- 9 debt, other than any debt secured by a lien on real estate;
- 10 (10) whether a marriage of the testator was ever
- 11 dissolved after the will was made [~~divorced~~] and, if so, when and
- 12 from whom; and
- 13 (11) whether the state, a governmental agency of the
- 14 state, or a charitable organization is named in the will as a
- 15 devisee.
- 16 (b) If the amendment to Section 257.051(a), Estates Code,
- 17 made by this section conflicts with an amendment to Section
- 18 257.051(a), Estates Code, made by another Act of the 82nd
- 19 Legislature, Regular Session, 2011, relating to nonsubstantive
- 20 additions to and corrections in enacted codes, the amendment made
- 21 by this section controls, and the amendment made by the other Act
- 22 has no effect.
- 23 SECTION 2.33. Section 308.001, Estates Code, as effective
- 24 January 1, 2014, is amended to read as follows:
- 25 Sec. 308.001. DEFINITION. In this subchapter,
- 26 "beneficiary" means a person, entity, state, governmental agency of
- 27 the state, charitable organization, or trustee of a trust entitled

1 to receive property under the terms of a decedent's will, to be
2 determined for purposes of this subchapter with the assumption that
3 each person who is alive on the date of the decedent's death
4 survives any period required to receive the bequest as specified by
5 the terms of the will. The term does not include a person, entity,
6 state, governmental agency of the state, charitable organization,
7 or trustee of a trust that would be entitled to receive property
8 under the terms of a decedent's will on the occurrence of a
9 contingency that has not occurred as of the date of the decedent's
10 death.

11 SECTION 2.34. Subchapter A, Chapter 308, Estates Code, as
12 effective January 1, 2014, is amended by adding Section 308.0015 to
13 read as follows:

14 Sec. 308.0015. APPLICATION. This subchapter does not apply
15 to the probate of a will as a muniment of title.

16 SECTION 2.35. Section 308.002, Estates Code, as effective
17 January 1, 2014, is amended by amending Subsections (b) and (c) and
18 adding Subsection (b-1) to read as follows:

19 (b) Notwithstanding the requirement under Subsection (a)
20 that the personal representative give the notice to the
21 beneficiary, the representative shall give the notice with respect
22 to a beneficiary described by this subsection as follows:

23 (1) if the beneficiary is a trustee of a trust, to the
24 trustee, unless the representative is the trustee, in which case
25 the representative shall, except as provided by Subsection (b-1),
26 give the notice to the person or class of persons first eligible to
27 receive the trust income, to be determined for purposes of this

1 subdivision as if the trust were in existence on the date of the
2 decedent's death;

3 (2) if the beneficiary has a court-appointed guardian
4 or conservator, to that guardian or conservator;

5 (3) if the beneficiary is a minor for whom no guardian
6 or conservator has been appointed, to a parent of the minor; and

7 (4) if the beneficiary is a charity that for any reason
8 cannot be notified, to the attorney general.

9 (b-1) The personal representative is not required to give
10 the notice otherwise required by Subsection (b)(1) to a person
11 eligible to receive trust income at the sole discretion of the
12 trustee of a trust if:

13 (1) the representative has given the notice to an
14 ancestor of the person who has a similar interest in the trust; and

15 (2) no apparent conflict exists between the ancestor
16 and the person eligible to receive trust income.

17 (c) A personal representative is not required to give the
18 notice otherwise required by this section to a beneficiary who:

19 (1) has made an appearance in the proceeding with
20 respect to the decedent's estate before the will was admitted to
21 probate; ~~or~~

22 (2) is entitled to receive aggregate gifts under the
23 will with an estimated value of \$2,000 or less;

24 (3) has received all gifts to which the beneficiary is
25 entitled under the will not later than the 60th day after the date
26 of the order admitting the decedent's will to probate; or

27 (4) has received a copy of the will that was admitted

1 to probate or a written summary of the gifts to the beneficiary
2 under the will and has waived the right to receive the notice in an
3 instrument that:

4 (A) either acknowledges the receipt of the copy
5 of the will or includes the written summary of the gifts to the
6 beneficiary under the will;

7 (B) is signed by the beneficiary; and

8 (C) is filed with the court.

9 SECTION 2.36. Section 308.003, Estates Code, as effective
10 January 1, 2014, is amended to read as follows:

11 Sec. 308.003. CONTENTS OF NOTICE. The notice required by
12 Section 308.002 must include:

13 (1) [~~state~~;

14 [~~(A)~~] the name and address of the beneficiary to
15 whom the notice is given or, for a beneficiary described by Section
16 308.002(b), the name and address of the beneficiary for whom the
17 notice is given and of the person to whom the notice is given;

18 (2) [~~(B)~~] the decedent's name;

19 (3) a statement [~~(C)~~] that the decedent's will has been
20 admitted to probate;

21 (4) a statement [~~(D)~~] that the beneficiary to whom or
22 for whom the notice is given is named as a beneficiary in the will;

23 [~~and~~]

24 (5) [~~(E)~~] the personal representative's name and
25 contact information; and

26 (6) either:

27 (A) [~~(2) contain as attachments~~] a copy of the

1 will that was admitted to probate and of the order admitting the
2 will to probate; or

3 (B) a summary of the gifts to the beneficiary
4 under the will, the court in which the will was admitted to probate,
5 the docket number assigned to the estate, the date the will was
6 admitted to probate, and, if different, the date the court
7 appointed the personal representative.

8 SECTION 2.37. Section 308.004, Estates Code, as effective
9 January 1, 2014, is amended to read as follows:

10 Sec. 308.004. AFFIDAVIT OR CERTIFICATE. (a) Not later
11 than the 90th day after the date of an order admitting a will to
12 probate, the personal representative shall file with the clerk of
13 the court in which the decedent's estate is pending a sworn
14 affidavit of the representative or a certificate signed by the
15 representative's attorney stating:

16 (1) for each beneficiary to whom notice was required
17 to be given under this subchapter, the name and address of the
18 beneficiary to whom the representative gave the notice or, for a
19 beneficiary described by Section 308.002(b), the name and address
20 of the beneficiary and of the person to whom the notice was given;

21 (2) the name and address of each beneficiary to whom
22 notice was not required to be given under Section 308.002(c)(2),
23 (3), or (4) [who filed a waiver of the notice];

24 (3) the name of each beneficiary whose identity or
25 address could not be ascertained despite the representative's
26 exercise of reasonable diligence; and

27 (4) any other information necessary to explain the

1 representative's inability to give the notice to or for any
2 beneficiary as required by this subchapter.

3 (b) The affidavit or certificate required by Subsection (a)
4 may be included with any pleading or other document filed with the
5 court clerk, including the inventory, appraisement, and list of
6 claims, an affidavit in lieu of the inventory, appraisement, and
7 list of claims, or an application for an extension of the deadline
8 to file the inventory, appraisement, and list of claims or an
9 affidavit in lieu of the inventory, appraisement, and list of
10 claims, provided that the pleading or other document is filed not
11 later than the date the affidavit or certificate is required to be
12 filed under Subsection (a).

13 SECTION 2.38. The heading to Subchapter B, Chapter 309,
14 Estates Code, as effective January 1, 2014, is amended to read as
15 follows:

16 SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST
17 OF CLAIMS; AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST
18 OF CLAIMS

19 SECTION 2.39. Subsection (a), Section 309.051, Estates
20 Code, as effective January 1, 2014, is amended to read as follows:

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

- 1 (1) include:
- 2 (A) all estate real property located in this
- 3 state; and
- 4 (B) all estate personal property regardless of
- 5 where the property is located; and
- 6 (2) specify~~[-~~
- 7 ~~[(A)]~~ which portion of the property, if any, is
- 8 separate property and which, if any, is community property~~[-, and~~
- 9 ~~[(B) if estate property is owned in common with~~
- 10 ~~others, the interest of the estate in that property and the names~~
- 11 ~~and relationship, if known, of the co-owners].~~

12 SECTION 2.40. Section 309.052, Estates Code, as effective

13 January 1, 2014, is amended to read as follows:

14 Sec. 309.052. LIST OF CLAIMS. A complete list of claims due

15 or owing to the estate must be attached to the inventory and

16 appraisal required by Section 309.051. The list of claims must

17 state:

- 18 (1) the name and, if known, address of each person
- 19 indebted to the estate; and
- 20 (2) regarding each claim:
- 21 (A) the nature of the debt, whether by note,
- 22 bill, bond, or other written obligation, or by account or verbal
- 23 contract;
- 24 (B) the date the debt was incurred;
- 25 (C) the date the debt was or is due;
- 26 (D) the amount of the claim, the rate of interest
- 27 on the claim, and the period for which the claim bears interest; and

1 (E) whether the claim is separate property or
2 community property[, and

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

6 SECTION 2.41. Section 309.055, Estates Code, as effective
7 January 1, 2014, is amended to read as follows:

8 Sec. 309.055. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO
9 FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN
10 LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) If more
11 than one personal representative qualifies to serve, any one or
12 more of the representatives, on the neglect of the other
13 representatives, may make and file an inventory, appraisalment, and
14 list of claims or an affidavit in lieu of an inventory,
15 appraisalment, and list of claims.

16 (b) A personal representative who neglects to make or file
17 an inventory, appraisalment, and list of claims or an affidavit in
18 lieu of an inventory, appraisalment, and list of claims may not
19 interfere with and does not have any power over the estate after
20 another representative makes and files an inventory, appraisalment,
21 and list of claims or an affidavit in lieu of an inventory,
22 appraisalment, and list of claims.

23 (c) The personal representative who files the inventory,
24 appraisalment, and list of claims or the affidavit in lieu of an
25 inventory, appraisalment, and list of claims is entitled to the
26 whole administration unless, before the 61st day after the date the
27 representative files the inventory, appraisalment, and list of

1 claims or the affidavit in lieu of an inventory, appraisement, and
2 list of claims, one or more delinquent representatives file with
3 the court a written, sworn, and reasonable excuse that the court
4 considers satisfactory. The court shall enter an order removing
5 one or more delinquent representatives and revoking those
6 representatives' letters if:

- 7 (1) an excuse is not filed; or
8 (2) the court does not consider the filed excuse
9 sufficient.

10 SECTION 2.42. Subchapter B, Chapter 309, Estates Code, as
11 effective January 1, 2014, is amended by adding Section 309.056 to
12 read as follows:

13 Sec. 309.056. AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT,
14 AND LIST OF CLAIMS. (a) In this section, "beneficiary" means a
15 person, entity, state, governmental agency of the state, charitable
16 organization, or trust entitled to receive property:

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

22 (2) as an heir of the decedent.

23 (b) Notwithstanding Sections 309.051 and 309.052, if there
24 are no unpaid debts, except for secured debts, taxes, and
25 administration expenses, at the time the inventory is due,
26 including any extensions, an independent executor may file with the
27 court clerk, in lieu of the inventory, appraisement, and list of

1 claims, an affidavit stating that all debts, except for secured
2 debts, taxes, and administration expenses, are paid and that all
3 beneficiaries have received a verified, full, and detailed
4 inventory and appraisalment. The affidavit in lieu of the
5 inventory, appraisalment, 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 (c) If the independent executor files an affidavit in lieu
9 of the inventory, appraisalment, and list of claims as authorized
10 under Subsection (b):

11 (1) any person interested in the estate, including a
12 possible heir of the decedent or a beneficiary under a prior will of
13 the decedent, is entitled to receive a copy of the inventory,
14 appraisalment, and list of claims from the independent executor on
15 written request;

16 (2) the independent executor may provide a copy of the
17 inventory, appraisalment, and list of claims to any person the
18 independent executor believes in good faith may be a person
19 interested in the estate without liability to the estate or its
20 beneficiaries; and

21 (3) a person interested in the estate may apply to the
22 court for an order compelling compliance with Subdivision (1), and
23 the court, in its discretion, may compel the independent executor
24 to provide a copy of the inventory, appraisalment, and list of claims
25 to the interested person or may deny the application.

26 SECTION 2.43. Section 309.101, Estates Code, as effective
27 January 1, 2014, is amended to read as follows:

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

2 (a) If after the filing of the inventory, appraisalment, and list
3 of claims the personal representative acquires possession or
4 knowledge of property or claims of the estate not included in the
5 inventory, appraisalment, and list of claims the representative
6 shall promptly file with the court clerk a verified, full, and
7 detailed supplemental inventory, appraisalment, and list of claims.

8 (b) If after the filing of the affidavit in lieu of the
9 inventory, appraisalment, and list of claims the personal
10 representative acquires possession or knowledge of property or
11 claims of the estate not included in the inventory and appraisalment
12 given to the beneficiaries, the representative shall promptly file
13 with the court clerk a supplemental affidavit in lieu of the
14 inventory, appraisalment, and list of claims stating that all
15 beneficiaries have received a verified, full, and detailed
16 supplemental inventory and appraisalment.

17 SECTION 2.44. Section 352.004, Estates Code, as effective
18 January 1, 2014, is amended to read as follows:

19 Sec. 352.004. DENIAL OF COMPENSATION. The court may, on
20 application of an interested person or on the court's own motion,
21 wholly or partly deny a commission allowed by this subchapter 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 Subchapter B, Chapter 361.

26 SECTION 2.45. Subsections (a) and (b), Section 353.051,
27 Estates Code, as effective January 1, 2014, are amended to read as

1 follows:

2 (a) Unless an application and verified affidavit are filed
3 as provided by Subsection (b), immediately after the inventory,
4 appraisement, and list of claims of an estate are approved or after
5 the affidavit in lieu of the inventory, appraisement, and list of
6 claims is filed, the court by order shall set aside:

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

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

12 (A) surviving spouse and minor children; and

13 (B) unmarried children remaining with the
14 decedent's family.

15 (b) Before the inventory, appraisement, and list of claims
16 of an estate are approved or, if applicable, before the affidavit in
17 lieu of the inventory, appraisement, and list of claims is filed:

18 (1) the decedent's surviving spouse or any other
19 person authorized to act on behalf of the decedent's minor children
20 may apply to the court to have exempt property, including the
21 homestead, set aside by filing an application and a verified
22 affidavit listing all property that the applicant claims is exempt;
23 and

24 (2) any of the decedent's unmarried children remaining
25 with the decedent's family may apply to the court to have all exempt
26 property, other than the homestead, set aside by filing an
27 application and a verified affidavit listing all property, other

1 than the homestead, that the applicant claims is exempt.

2 SECTION 2.46. Subsections (a) and (b), Section 353.101,
3 Estates Code, as effective January 1, 2014, are amended to read as
4 follows:

5 (a) Unless an application and verified affidavit are filed
6 as provided by Subsection (b), immediately after the inventory,
7 appraisement, and list of claims of an estate are approved or after
8 the affidavit in lieu of the inventory, appraisement, and list of
9 claims is filed, the court shall fix a family allowance for the
10 support of the decedent's surviving spouse and minor children.

11 (b) Before the inventory, appraisement, and list of claims
12 of an estate are approved or, if applicable, before the affidavit in
13 lieu of the inventory, appraisement, and list of claims is filed,
14 the decedent's surviving spouse or any other person authorized to
15 act on behalf of the decedent's minor children may apply to the
16 court to have the court fix the family allowance by filing an
17 application and a verified affidavit describing:

18 (1) the amount necessary for the maintenance of the
19 surviving spouse and the decedent's minor children for one year
20 after the date of the decedent's death; and

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

24 SECTION 2.47. Subsection (a), Section 353.107, Estates
25 Code, as effective January 1, 2014, is amended to read as follows:

26 (a) The court shall, as soon as the inventory, appraisement,
27 and list of claims are returned and approved or the affidavit in

1 lieu of the inventory, appraisalment, and list of claims is filed,
2 order the sale of estate property for cash in an amount that will be
3 sufficient to raise the amount of the family allowance, or a portion
4 of that amount, as necessary, if:

5 (1) the decedent had no personal property that the
6 surviving spouse or the guardian of the decedent's minor children
7 is willing to take for the family allowance or the decedent had
8 insufficient personal property; and

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

12 SECTION 2.48. Subsection (a), Section 354.001, Estates
13 Code, as effective January 1, 2014, is amended to read as follows:

14 (a) If, after a personal representative of an estate has
15 filed the inventory, appraisalment, and list of claims or the
16 affidavit in lieu of the inventory, appraisalment, and list of
17 claims as provided [~~required~~] by Chapter 309, it is established
18 that the decedent's estate, excluding any homestead, exempt
19 property, and family allowance to the decedent's surviving spouse
20 and minor children, does not exceed the amount sufficient to pay the
21 claims against the estate classified as Classes 1 through 4 under
22 Section 355.102, the representative shall:

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

26 (2) after paying the claims in accordance with
27 Subdivision (1), present to the court the representative's account

1 with an application for the settlement and allowance of the
2 account.

3 SECTION 2.49. Subsection (a), Section 360.253, Estates
4 Code, as effective January 1, 2014, is amended to read as follows:

5 (a) If a spouse dies leaving community property, the
6 surviving spouse, at any time after letters testamentary or of
7 administration have been granted and an inventory, appraisement,
8 and list of claims of the estate have been returned or an affidavit
9 in lieu of the inventory, appraisement, and list of claims has been
10 filed, may apply in writing to the court that granted the letters
11 for a partition of the community property.

12 SECTION 2.50. The heading to Section 361.155, Estates Code,
13 as effective January 1, 2014, is amended to read as follows:

14 Sec. 361.155. SUCCESSOR REPRESENTATIVE TO RETURN
15 INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF
16 INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.

17 SECTION 2.51. Subsection (a), Section 361.155, Estates
18 Code, as effective January 1, 2014, is amended to read as follows:

19 (a) An appointee who has qualified to succeed a former
20 personal representative, before the 91st day after the date the
21 personal representative qualifies, shall make and return to the
22 court an inventory, appraisement, and list of claims of the estate
23 or, if the appointee is an independent executor, shall make and
24 return to the court that document or file an affidavit in lieu of
25 the inventory, appraisement, and list of claims [~~before the 91st~~
26 ~~day after the date the personal representative qualifies~~], in the
27 manner provided for [~~required of~~] an original appointee, and shall

1 also return additional inventories, appraisements, and lists of
2 claims and additional affidavits in the manner provided for
3 ~~[required of]~~ an original appointee.

4 SECTION 2.52. Subtitle I, Title 2, Estates Code, as
5 effective January 1, 2014, is amended by adding Chapters 401, 402,
6 403, 404, and 405 to read as follows:

7 CHAPTER 401. CREATION

8 Sec. 401.001. EXPRESSION OF TESTATOR'S INTENT IN WILL.

9 (a) Any person capable of making a will may provide in the person's
10 will that no other action shall be had in the probate court in
11 relation to the settlement of the person's estate than the
12 probating and recording of the will and the return of an inventory,
13 appraisement, and list of claims of the person's estate.

14 (b) Any person capable of making a will may provide in the
15 person's will that no independent administration of his or her
16 estate may be allowed. In such case the person's estate, if
17 administered, shall be administered and settled under the direction
18 of the probate court as other estates are required to be settled and
19 not as an independent administration.

20 Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT.

21 (a) Except as provided in Section 401.001(b), if a decedent's will
22 names an executor but the will does not provide for independent
23 administration as provided in Section 401.001(a), all of the
24 distributees of the decedent may agree on the advisability of
25 having an independent administration and collectively designate in
26 the application for probate of the decedent's will the executor
27 named in the will to serve as independent executor and request in

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

10 (b) Except as provided in Section 401.001(b), in situations
11 where no executor is named in the decedent's will, or in situations
12 where each executor named in the will is deceased or is disqualified
13 to serve as executor or indicates by affidavit filed with the
14 application for administration of the decedent's estate the
15 executor's inability or unwillingness to serve as executor, all of
16 the distributees of the decedent may agree on the advisability of
17 having an independent administration and collectively designate in
18 the application for probate of the decedent's will a qualified
19 person, firm, or corporation to serve as independent administrator
20 and request in the application that no other action shall be had in
21 the probate court in relation to the settlement of the decedent's
22 estate other than the probating and recording of the decedent's
23 will and the return of an inventory, appraisement, and list of
24 claims of the decedent's estate. In such case the probate court
25 shall enter an order granting independent administration and
26 appointing the person, firm, or corporation designated in the
27 application as independent administrator, unless the court finds

1 that it would not be in the best interest of the estate to do so.

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

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

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

21 Sec. 401.004. MEANS OF ESTABLISHING DISTRIBUTEES CONSENT.

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

24 (b) All distributees shall be served with citation and
25 notice of the application for independent administration unless the
26 distributee waives the issuance or service of citation or enters an
27 appearance in court.

1 (c) If a distributee is an incapacitated person, the
2 guardian of the person of the distributee may sign the application
3 on behalf of the distributee. If the probate court finds that
4 either the granting of independent administration or the
5 appointment of the person, firm, or corporation designated in the
6 application as independent executor would not be in the best
7 interest of the incapacitated person, then, notwithstanding
8 anything to the contrary in Section 401.002 or 401.003, the court
9 may not enter an order granting independent administration of the
10 estate. If a distributee who is an incapacitated person has no
11 guardian of the person, the probate court may appoint a guardian ad
12 litem to make application on behalf of the incapacitated person if
13 the court considers such an appointment necessary to protect the
14 interest of the distributees. Alternatively, if the distributee
15 who is an incapacitated person is a minor and has no guardian of the
16 person, the natural guardian or guardians of the minor may consent
17 on the minor's behalf if there is no conflict of interest between
18 the minor and the natural guardian or guardians.

19 (d) If a trust is created in the decedent's will, the person
20 or class of persons first eligible to receive the income from the
21 trust, when determined as if the trust were to be in existence on
22 the date of the decedent's death, shall, for the purposes of Section
23 401.002, be considered to be the distributee or distributees on
24 behalf of the trust, and any other trust or trusts coming into
25 existence on the termination of the trust, and are authorized to
26 apply for independent administration on behalf of the trusts
27 without the consent or agreement of the trustee or any other

1 beneficiary of the trust, or the trustee or any beneficiary of any
2 other trust which may come into existence on the termination of the
3 trust. If a trust beneficiary who is considered to be a distributee
4 under this subsection is an incapacitated person, the trustee or
5 cotrustee may file the application or give the consent, provided
6 that the trustee or cotrustee is not the person proposed to serve as
7 the independent executor.

8 (e) If a life estate is created either in the decedent's
9 will or by law, the life tenant or life tenants, when determined as
10 if the life estate were to commence on the date of the decedent's
11 death, shall, for the purposes of Section 401.002 or 401.003, be
12 considered to be the distributee or distributees on behalf of the
13 entire estate created, and are authorized to apply for independent
14 administration on behalf of the estate without the consent or
15 approval of any remainderman.

16 (f) If a decedent's will contains a provision that a
17 distributee must survive the decedent by a prescribed period of
18 time in order to take under the decedent's will, then, for the
19 purposes of determining who shall be the distributee under Section
20 401.002 and under Subsection (c), it shall be presumed that the
21 distributees living at the time of the filing of the application for
22 probate of the decedent's will survived the decedent by the
23 prescribed period.

24 (g) In the case of all decedents, whether dying testate or
25 intestate, for the purposes of determining who shall be the
26 distributees under Section 401.002 or 401.003 and under Subsection
27 (c), it shall be presumed that no distributee living at the time the

1 application for independent administration is filed shall
2 subsequently disclaim any portion of the distributee's interest in
3 the decedent's estate.

4 (h) If a distributee of a decedent's estate dies and if by
5 virtue of the distributee's death the distributee's share of the
6 decedent's estate becomes payable to the distributee's estate, the
7 deceased distributee's personal representative may sign the
8 application for independent administration of the decedent's
9 estate under Section 401.002 or 401.003 and under Subsection (c).

10 Sec. 401.005. BOND; WAIVER OF BOND. (a) If an independent
11 administration of a decedent's estate is created under Section
12 401.002 or 401.003, then, unless the probate court waives bond on
13 application for waiver, the independent executor shall be required
14 to enter into bond payable to and to be approved by the judge and the
15 judge's successors in a sum that is found by the judge to be
16 adequate under all circumstances, or a bond with one surety in a sum
17 that is found by the judge to be adequate under all circumstances,
18 if the surety is an authorized corporate surety.

19 (b) This section does not repeal any other section of this
20 title.

21 Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a
22 situation in which a decedent does not have a will, or a decedent's
23 will does not contain language authorizing the personal
24 representative to sell real property or contains language that is
25 not sufficient to grant the representative that authority, the
26 court may include in an order appointing an independent executor
27 under Section 401.002 or 401.003 any general or specific authority

1 regarding the power of the independent executor to sell real
2 property that may be consented to by the beneficiaries who are to
3 receive any interest in the real property in the application for
4 independent administration or in their consents to the independent
5 administration. The independent executor, in such event, may sell
6 the real property under the authority granted in the court order
7 without the further consent of those beneficiaries.

8 Sec. 401.007. NO LIABILITY OF JUDGE. Absent proof of fraud
9 or collusion on the part of a judge, no judge may be held civilly
10 liable for the commission of misdeeds or the omission of any
11 required act of any person, firm, or corporation designated as an
12 independent executor under Section 401.002 or 401.003. Section
13 351.354 does not apply to the appointment of an independent
14 executor under Section 401.002 or 401.003.

15 Sec. 401.008. PERSON DECLINING TO SERVE. A person who
16 declines to serve or resigns as independent executor of a
17 decedent's estate may be appointed an executor or administrator of
18 the estate if the estate will be administered and settled under the
19 direction of the court.

20 CHAPTER 402. ADMINISTRATION

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 402.001. GENERAL SCOPE AND EXERCISE OF POWERS. When an
23 independent administration has been created, and the order
24 appointing an independent executor has been entered by the probate
25 court, and the inventory, appraisement, and list of claims has been
26 filed by the independent executor and approved by the court or an
27 affidavit in lieu of the inventory, appraisement, and list of

1 claims has been filed by the independent executor, as long as the
2 estate is represented by an independent executor, further action of
3 any nature may not be had in the probate court except where this
4 title specifically and explicitly provides for some action in the
5 court.

6 Sec. 402.002. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT
7 APPROVAL. Unless this title specifically provides otherwise, any
8 action that a personal representative subject to court supervision
9 may take with or without a court order may be taken by an
10 independent executor without a court order. The other provisions
11 of this subtitle are designed to provide additional guidance
12 regarding independent administrations in specified situations, and
13 are not designed to limit by omission or otherwise the application
14 of the general principles set forth in this chapter.

15 [Sections 402.003-402.050 reserved for expansion]

16 SUBCHAPTER B. POWER OF SALE

17 Sec. 402.051. DEFINITION OF INDEPENDENT EXECUTOR. In this
18 subchapter, "independent executor" does not include an independent
19 administrator.

20 Sec. 402.052. POWER OF SALE OF ESTATE PROPERTY GENERALLY.
21 Unless limited by the terms of a will, an independent executor, in
22 addition to any power of sale of estate property given in the will,
23 and an independent administrator have the same power of sale for the
24 same purposes as a personal representative has in a supervised
25 administration, but without the requirement of court approval. The
26 procedural requirements applicable to a supervised administration
27 do not apply.

1 Sec. 402.053. PROTECTION OF PERSON PURCHASING ESTATE
2 PROPERTY. (a) A person who is not a devisee or heir is not
3 required to inquire into the power of sale of estate property of the
4 independent executor or independent administrator or the propriety
5 of the exercise of the power of sale if the person deals with the
6 independent executor or independent administrator in good faith
7 and:

8 (1) a power of sale is granted to the independent
9 executor in the will;

10 (2) a power of sale is granted under Section 401.006 in
11 the court order appointing the independent executor or independent
12 administrator; or

13 (3) the independent executor or independent
14 administrator provides an affidavit, executed and sworn to under
15 oath and recorded in the deed records of the county where the
16 property is located, that the sale is necessary or advisable for any
17 of the purposes described in Section 356.251(1).

18 (b) As to acts undertaken in good faith reliance, the
19 affidavit described by Subsection (a)(3) is conclusive proof, as
20 between a purchaser of property from the estate, and the personal
21 representative of an estate or the heirs and distributees of the
22 estate, with respect to the authority of the independent executor
23 or independent administrator to sell the property. The signature
24 or joinder of a devisee or heir who has an interest in the property
25 being sold as described in this section is not necessary for the
26 purchaser to obtain all right, title, and interest of the estate in
27 the property being sold.

1 (c) This subchapter does not relieve the independent
2 executor or independent administrator from any duty owed to a
3 devisee or heir in relation, directly or indirectly, to the sale.

4 Sec. 402.054. NO LIMITATION ON OTHER ACTION. This
5 subchapter does not limit the authority of an independent executor
6 to take any other action without court supervision or approval with
7 respect to estate assets that may take place in a supervised
8 administration, for purposes and within the scope otherwise
9 authorized by this title, including the authority to enter into a
10 lease and to borrow money.

11 CHAPTER 403. EXEMPTIONS AND ALLOWANCES; CLAIMS

12 SUBCHAPTER A. EXEMPTIONS AND ALLOWANCES

13 Sec. 403.001. SETTING ASIDE EXEMPT PROPERTY AND ALLOWANCES.
14 The independent executor shall set aside and deliver to those
15 entitled exempt property and allowances for support, and allowances
16 in lieu of exempt property, as prescribed in this title, to the same
17 extent and result as if the independent executor's actions had been
18 accomplished in, and under orders of, the court.

19 [Sections 403.002-403.050 reserved for expansion]

20 SUBCHAPTER B. CLAIMS

21 Sec. 403.051. DUTY OF INDEPENDENT EXECUTOR. (a) An
22 independent executor, in the administration of an estate,
23 independently of and without application to, or any action in or by
24 the court:

25 (1) shall give the notices required under Sections
26 308.051 and 308.053;

27 (2) may give the notice to an unsecured creditor with a

1 claim for money permitted under Section 308.054 and bar a claim
2 under Section 403.055; and

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

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

11 Sec. 403.052. SECURED CLAIMS FOR MONEY. Within six months
12 after the date letters are granted or within four months after the
13 date notice is received under Section 308.053, whichever is later,
14 a creditor with a claim for money secured by property of the estate
15 must give notice to the independent executor of the creditor's
16 election to have the creditor's claim approved as a matured secured
17 claim to be paid in due course of administration. In addition to
18 giving the notice within this period, a creditor whose claim is
19 secured by real property shall record a notice of the creditor's
20 election under this section in the deed records of the county in
21 which the real property is located. If no election to be a matured
22 secured creditor is made, or the election is made, but not within
23 the prescribed period, or is made within the prescribed period but
24 the creditor has a lien against real property and fails to record
25 notice of the claim in the deed records as required within the
26 prescribed period, the claim shall be a preferred debt and lien
27 against the specific property securing the indebtedness and shall

1 be paid according to the terms of the contract that secured the
2 lien, and the claim may not be asserted against other assets of the
3 estate. The independent executor may pay the claim before maturity
4 if it is determined to be in the best interest of the estate to do
5 so.

6 Sec. 403.053. MATURED SECURED CLAIMS. (a) A claim
7 approved as a matured secured claim under Section 403.052 remains
8 secured by any lien or security interest against the specific
9 property securing payment of the claim but subordinated to the
10 payment from the property of claims having a higher classification
11 under Section 355.102. However, the secured creditor:

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

15 (2) during the administration of the estate, is not
16 entitled to exercise any contractual collection rights, including
17 the power to foreclose, without either the prior written approval
18 of the independent executor or court approval.

19 (b) Subsection (a) may not be construed to suspend or
20 otherwise prevent a creditor with a matured secured claim from
21 seeking judicial relief of any kind or from executing any judgment
22 against an independent executor. Except with respect to real
23 property, any third party acting in good faith may obtain good title
24 with respect to an estate asset acquired through a secured
25 creditor's extrajudicial collection rights, without regard to
26 whether the creditor had the right to collect the asset or whether
27 the creditor acted improperly in exercising those rights during an

1 estate administration due to having elected matured secured status.

2 (c) If a claim approved or established by suit as a matured
3 secured claim is secured by property passing to one or more devisees
4 in accordance with Subchapter G, Chapter 255, the independent
5 executor shall collect from the devisees the amount of the debt and
6 pay that amount to the claimant or shall sell the property and pay
7 out of the sale proceeds the claim and associated expenses of sale
8 consistent with the provisions of Sections 355.153(b), (c), (d),
9 and (e) applicable to court supervised administrations.

10 Sec. 403.054. PREFERRED DEBT AND LIEN CLAIMS. During an
11 independent administration, a secured creditor whose claim is a
12 preferred debt and lien against property securing the indebtedness
13 under Section 403.052 is free to exercise any judicial or
14 extrajudicial collection rights, including the right to
15 foreclosure and execution; provided, however, that the creditor
16 does not have the right to conduct a nonjudicial foreclosure sale
17 within six months after letters are granted.

18 Sec. 403.055. CERTAIN UNSECURED CLAIMS; BARRING OF CLAIMS.
19 An unsecured creditor who has a claim for money against an estate
20 and who receives a notice under Section 308.054 shall give to the
21 independent executor notice of the nature and amount of the claim
22 not later than the 120th day after the date the notice is received
23 or the claim is barred.

24 Sec. 403.056. NOTICES REQUIRED BY CREDITORS. (a) Notice
25 to the independent executor required by Sections 403.052 and
26 403.055 must be contained in:

27 (1) a written instrument that is hand-delivered with

1 proof of receipt, or mailed by certified mail, return receipt
2 requested with proof of receipt, to the independent executor or the
3 executor's attorney;

4 (2) a pleading filed in a lawsuit with respect to the
5 claim; or

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

8 (b) This section does not exempt a creditor who elects
9 matured secured status from the filing requirements of Section
10 403.052, to the extent those requirements are applicable.

11 Sec. 403.057. STATUTE OF LIMITATIONS. Except as otherwise
12 provided by Section 16.062, Civil Practice and Remedies Code, the
13 running of the statute of limitations shall be tolled only by a
14 written approval of a claim signed by an independent executor, a
15 pleading filed in a suit pending at the time of the decedent's
16 death, or a suit brought by the creditor against the independent
17 executor. In particular, the presentation of a statement or claim,
18 or a notice with respect to a claim, to an independent executor does
19 not toll the running of the statute of limitations with respect to
20 that claim.

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

26 (1) Sections 355.064 and 355.066 do not apply to
27 independent administrations, and consequently a creditor's claim

1 may not be barred solely because the creditor failed to file a suit
2 not later than the 90th day after the date an independent executor
3 rejected the claim or with respect to a claim for which the
4 independent executor takes no action; and

5 (2) Sections 355.156, 355.157, 355.158, 355.159, and
6 355.160 do not apply to independent administrations.

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

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

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

16 Sec. 403.059. ENFORCEMENT OF CLAIMS BY SUIT. Any person
17 having a debt or claim against the estate may enforce the payment of
18 the same by suit against the independent executor; and, when
19 judgment is recovered against the independent executor, the
20 execution shall run against the estate of the decedent in the
21 possession of the independent executor that is subject to the debt.
22 The independent executor shall not be required to plead to any suit
23 brought against the executor for money until after six months after
24 the date that an independent administration was created and the
25 order appointing the executor was entered by the probate court.

26 Sec. 403.060. REQUIRING HEIRS TO GIVE BOND. When an
27 independent administration is created and the order appointing an

1 independent executor is entered by the probate court, any person
2 having a debt against the estate may, by written complaint filed in
3 the probate court in which the order was entered, cause all
4 distributees of the estate, heirs at law, and other persons
5 entitled to any portion of the estate under the will, if any, to be
6 cited by personal service to appear before the court and execute a
7 bond for an amount equal to the amount of the creditor's claim or
8 the full value of the estate, as shown by the inventory and list of
9 claims, whichever is smaller. The bond must be payable to the
10 judge, and the judge's successors, and be approved by the judge, and
11 conditioned that all obligors shall pay all debts that shall be
12 established against the estate in the manner provided by law. On
13 the return of the citation served, unless a person so entitled to
14 any portion of the estate, or some of them, or some other person for
15 them, shall execute the bond to the satisfaction of the probate
16 court, the estate shall be administered and settled under the
17 direction of the probate court as other estates are required to be
18 settled. If the bond is executed and approved, the independent
19 administration shall proceed. Creditors of the estate may sue on
20 the bond, and shall be entitled to judgment on the bond for the
21 amount of their debt, or they may have their action against those in
22 possession of the estate.

23 CHAPTER 404. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

24 Sec. 404.001. ACCOUNTING. (a) At any time after the
25 expiration of 15 months after the date that an independent
26 administration was created and the order appointing an independent
27 executor was entered by the probate court, any person interested in

1 the estate may demand an accounting from the independent executor.
2 The independent executor shall furnish to the person or persons
3 making the demand an exhibit in writing, sworn and subscribed by the
4 independent executor, setting forth in detail:

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

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

9 (3) the debts that have been paid;

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

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

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

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

18 (a-1) Any other interested person shall, on demand, be
19 entitled to a copy of any exhibit or accounting that has been made
20 by an independent executor in compliance with this section.

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

27 (c) After an initial accounting has been given by an

1 independent executor, any person interested in an estate may demand
2 subsequent periodic accountings at intervals of not less than 12
3 months, and such subsequent demands may be enforced in the same
4 manner as an initial demand.

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

8 Sec. 404.002. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND.

9 When it has been provided by will, regularly probated, that an
10 independent executor appointed by the will shall not be required to
11 give bond for the management of the estate devised by the will, or
12 the independent executor is not required to give bond because bond
13 has been waived by court order as authorized under Section 401.005,
14 then the independent executor may be required to give bond, on
15 proper proceedings had for that purpose as in the case of personal
16 representatives in a supervised administration, if it be made to
17 appear at any time that the independent executor is mismanaging the
18 property, or has betrayed or is about to betray the independent
19 executor's trust, or has in some other way become disqualified.

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

25 (1) the independent executor fails to return within 90
26 days after qualification, unless such time is extended by order of
27 the court, either an inventory of the property of the estate and

1 list of claims that have come to the independent executor's
2 knowledge or an affidavit in lieu of the inventory, appraisement,
3 and list of claims;

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

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

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

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

15 (6) the independent executor becomes an incapacitated
16 person, or is sentenced to the penitentiary, or from any other cause
17 becomes legally incapacitated from properly performing the
18 independent executor's fiduciary duties.

19 (b) The order of removal shall state the cause of removal
20 and shall direct by order the disposition of the assets remaining in
21 the name or under the control of the removed executor. The order of
22 removal shall require that letters issued to the removed executor
23 shall be surrendered and that all letters shall be canceled of
24 record. If an independent executor is removed by the court under
25 this section, the court may, on application, appoint a successor
26 independent executor as provided by Section 404.005.

27 (c) An independent executor who defends an action for the

1 independent executor's removal in good faith, whether successful or
2 not, shall be allowed out of the estate the independent executor's
3 necessary expenses and disbursements, including reasonable
4 attorney's fees, in the removal proceedings.

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

9 Sec. 404.004. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN
10 INDEPENDENT EXECUTOR. (a) Whenever a person has died, or shall
11 die, testate, owning property in this state, and the person's will
12 has been or shall be admitted to probate by the court, and the
13 probated will names an independent executor or executors, or
14 trustees acting in the capacity of independent executors, to
15 execute the terms and provisions of that will, and the will grants
16 to the independent executor, or executors, or trustees acting in
17 the capacity of independent executors, the power to raise or borrow
18 money and to mortgage, and the independent executor, or executors,
19 or trustees, have died or shall die, resign, fail to qualify, or be
20 removed from office, leaving unexecuted parts or portions of the
21 will of the testator, and an administrator with the will annexed is
22 appointed by the probate court, and an administrator's bond is
23 filed and approved by the court, then in all such cases, the court
24 may, in addition to the powers conferred on the administrator under
25 other provisions of the laws of this state, authorize, direct, and
26 empower the administrator to do and perform the acts and deeds,
27 clothed with the rights, powers, authorities, and privileges, and

1 subject to the limitations, set forth in the subsequent provisions
2 of this section.

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

17 (c) The court may order and authorize the administrator to
18 have and exercise the powers and privileges set forth in Subsection
19 (a) or (b) only to the extent that same are granted to or possessed
20 by the independent executor, or executors, or trustees acting in
21 the capacity of independent executors, under the terms of the
22 probated will of the decedent, and then only in such cases as it
23 appears, at the hearing of the application, that at the time of the
24 appointment of the administrator, there are outstanding and unpaid
25 obligations and debts of the estate, or of the independent
26 executor, or executors, or trustees, chargeable against the estate,
27 or unpaid expenses of administration, or when the court appointing

1 the administrator orders the business of the estate to be carried on
2 and it becomes necessary, from time to time, under orders of the
3 court, for the administrator to borrow money and incur obligations
4 and indebtedness in order to protect and preserve the estate.

5 (d) The court, in addition, may, on application, citation,
6 and hearing, order, authorize, and empower the administrator to
7 assume, exercise, and discharge, under the orders and directions of
8 the court, made from time to time, all or such part of the rights,
9 powers, and authorities vested in and delegated to, or possessed
10 by, the independent executor, or executors, or trustees acting in
11 the capacity of independent executors, under the terms of the will
12 of the decedent, as the court finds to be in the best interests of
13 the estate and shall, from time to time, order and direct.

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

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

26 (g) The court shall hear the application and evidence on the
27 application, on or after the return day named in the citation, and,

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

5 Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT
6 EXECUTOR. (a) If the will of a person who dies testate names an
7 independent executor who, having qualified, fails for any reason to
8 continue to serve, or is removed for cause by the court, and the
9 will does not name a successor independent executor or if each
10 successor executor named in the will fails for any reason to qualify
11 as executor or indicates by affidavit filed with the application
12 for an order continuing independent administration the successor
13 executor's inability or unwillingness to serve as successor
14 independent executor, all of the distributees of the decedent as of
15 the filing of the application for an order continuing independent
16 administration may apply to the probate court for the appointment
17 of a qualified person, firm, or corporation to serve as successor
18 independent executor. If the probate court finds that continued
19 administration of the estate is necessary, the court shall enter an
20 order continuing independent administration and appointing the
21 person, firm, or corporation designated in the application as
22 successor independent executor, unless the probate court finds that
23 it would not be in the best interest of the estate to do so. The
24 successor independent executor shall serve with all of the powers
25 and privileges granted to the successor's predecessor independent
26 executor.

27 (b) If a distributee described in this section is an

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

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

27 (d) If a life estate is created either in the decedent's

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

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

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

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

1 estate, then the deceased distributee's personal representative
2 may sign the application for an order continuing independent
3 administration of the decedent's estate under this section.

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

12 (i) Absent proof of fraud or collusion on the part of a
13 judge, the judge may not be held civilly liable for the commission
14 of misdeeds or the omission of any required act of any person, firm,
15 or corporation designated as a successor independent executor under
16 this section. Section 351.354 does not apply to an appointment of a
17 successor independent executor under this section.

18 CHAPTER 405. CLOSING AND DISTRIBUTIONS

19 Sec. 405.001. ACCOUNTING AND DISTRIBUTION. (a) In
20 addition to or in lieu of the right to an accounting provided by
21 Section 404.001, at any time after the expiration of two years after
22 the date the court clerk first issues letters testamentary or of
23 administration to any personal representative of an estate, a
24 person interested in the estate then subject to independent
25 administration may petition the court for an accounting and
26 distribution. The court may order an accounting to be made with the
27 court by the independent executor at such time as the court

1 considers proper. The accounting shall include the information
2 that the court considers necessary to determine whether any part of
3 the estate should be distributed.

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

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

24 Sec. 405.002. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY
25 INDEPENDENT EXECUTOR. (a) An independent executor may not be
26 required to deliver tangible or intangible personal property to a
27 distributee unless the independent executor receives, at or before

1 the time of delivery of the property, a signed receipt or other
2 proof of delivery of the property to the distributee.

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

6 Sec. 405.003. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR.

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

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

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

24 (d) On or before filing an action under this section, the
25 independent executor must distribute to the beneficiaries of the
26 estate any of the remaining assets or property of the estate that
27 remains in the independent executor's possession after all of the

1 estate's debts have been paid, except for a reasonable reserve of
2 assets that the independent executor may retain in a fiduciary
3 capacity pending court approval of the final account. The court may
4 review the amount of assets on reserve and may order the independent
5 executor to make further distributions under this section.

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

13 Sec. 405.004. CLOSING INDEPENDENT ADMINISTRATION BY
14 CLOSING REPORT OR NOTICE OF CLOSING ESTATE. When all of the debts
15 known to exist against the estate have been paid, or when they have
16 been paid so far as the assets in the independent executor's
17 possession will permit, when there is no pending litigation, and
18 when the independent executor has distributed to the distributees
19 entitled to the estate all assets of the estate, if any, remaining
20 after payment of debts, the independent executor may file with the
21 court a closing report or a notice of closing of the estate.

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

24 (1) shows:

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

27 (B) the debts that have been paid;

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

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

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

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

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

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

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

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

23 (b) Before filing the notice, the independent executor
24 shall provide to each distributee of the estate a copy of the notice
25 of closing estate. The notice of closing estate filed by the
26 independent executor must include signed receipts or other proof
27 that all distributees have received a copy of the notice of closing

1 estate.

2 Sec. 405.007. EFFECT OF FILING CLOSING REPORT OR NOTICE OF
3 CLOSING ESTATE. (a) The independent administration of an estate
4 is considered closed 30 days after the date of the filing of a
5 closing report or notice of closing estate unless an interested
6 person files an objection with the court within that time. If an
7 interested person files an objection within the 30-day period, the
8 independent administration of the estate is closed when the
9 objection has been disposed of or the court signs an order closing
10 the estate.

11 (b) The closing of an independent administration by filing
12 of a closing report or notice of closing estate terminates the power
13 and authority of the independent executor, but does not relieve the
14 independent executor from liability for any mismanagement of the
15 estate or from liability for any false statements contained in the
16 report or notice.

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

25 (d) If the independent executor is required to give bond,
26 the independent executor's filing of the closing report and proof
27 of delivery, if required, automatically releases the sureties on

1 the bond from all liability for the future acts of the principal.
2 The filing of a notice of closing estate does not release the
3 sureties on the bond of an independent executor.

4 (e) An independent executor's closing report or notice of
5 closing estate shall constitute sufficient legal authority to all
6 persons owing any money, having custody of any property, or acting
7 as registrar or transfer agent or trustee of any evidence of
8 interest, indebtedness, property, or right that belongs to the
9 estate, for payment or transfer without additional administration
10 to the distributees described in the will as entitled to receive the
11 particular asset or who as heirs at law are entitled to receive the
12 asset. The distributees described in the will as entitled to
13 receive the particular asset or the heirs at law entitled to receive
14 the asset may enforce their right to the payment or transfer by
15 suit.

16 Sec. 405.008. PARTITION AND DISTRIBUTION OR SALE OF
17 PROPERTY INCAPABLE OF DIVISION. If the will does not distribute the
18 entire estate of the testator or provide a means for partition of
19 the estate, or if no will was probated, the independent executor
20 may, but may not be required to, petition the probate court for
21 either a partition and distribution of the estate or an order of
22 sale of any portion of the estate alleged by the independent
23 executor and found by the court to be incapable of a fair and equal
24 partition and distribution, or both. The estate or portion of the
25 estate shall either be partitioned and distributed or sold, or
26 both, in the manner provided for the partition and distribution of
27 property and the sale of property incapable of division in

1 supervised estates.

2 Sec. 405.009. CLOSING INDEPENDENT ADMINISTRATION ON
3 APPLICATION BY DISTRIBUTEES. (a) At any time after an estate has
4 been fully administered and there is no further need for an
5 independent administration of the estate, any distributee may file
6 an application to close the administration; and, after citation on
7 the independent executor, and on hearing, the court may enter an
8 order:

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

11 (2) closing the administration;

12 (3) terminating the power of the independent executor
13 to act as independent executor; and

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

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

1 suit.

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

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

10 Sec. 405.012. CLOSING PROCEDURES NOT REQUIRED. An
11 independent executor is not required to close the independent
12 administration of an estate under Section 405.003 or Sections
13 405.004 through 405.007.

14 SECTION 2.53. (a) Sections 202.003 and 352.003, Estates
15 Code, as effective January 1, 2014, are repealed.

16 (b) The following sections of the Texas Probate Code are
17 repealed:

18 (1) Sections 4D, 4H, 48, 49, 59, 64, 67, 84, 250, 260,
19 436, 439, 452, 471, 472, and 473, as amended by Article 1 of this
20 Act;

21 (2) Sections 6A, 6B, 6C, 6D, 8A, 8B, 145A, 145B, and
22 145C, as added by Article 1 of this Act; and

23 (3) Sections 222 and 241.

24 (c) Notwithstanding the transfer of Sections 6 and 8, Texas
25 Probate Code, to the Estates Code and redesignation as Sections 6
26 and 8 of that code effective January 1, 2014, by Section 2, Chapter
27 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session,

1 2009, Sections 6 and 8, Texas Probate Code, as amended by Article 1
2 of this Act, are repealed.

3 (d) Notwithstanding the transfer of Sections 145 through
4 154A, Texas Probate Code, to the Estates Code and redesignation as
5 Sections 145 through 154A of that code effective January 1, 2014, by
6 Section 3, Chapter 680 (H.B. 2502), Acts of the 81st Legislature,
7 Regular Session, 2009, the following sections are repealed:

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

10 (2) Sections 147, 148, 149, 149A, 149D, 149E, 149F,
11 149G, 150, 152, 153, 154, and 154A, Texas Probate Code.

12 SECTION 2.54. This article takes effect January 1, 2014.

13 ARTICLE 3. CONFLICTS; EFFECTIVE DATE

14 SECTION 3.01. To the extent of any conflict, this Act
15 prevails over another Act of the 82nd Legislature, Regular Session,
16 2011, relating to nonsubstantive additions to and corrections in
17 enacted codes.

18 SECTION 3.02. Except as otherwise provided by this Act,
19 this Act takes effect September 1, 2011.