

By: Rodriguez  
(Hartnett)

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 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 appraisalment, 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 appraisalment, 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 appraisalment.

16 (b) If, after the filing of an affidavit in lieu of the  
17 inventory and appraisalment, 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 appraisalment stating that all  
22 beneficiaries have received a verified, full, and detailed  
23 supplemental inventory and appraisalment.

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

2 Sec. 32.007. CONCURRENT JURISDICTION WITH DISTRICT COURT.

3 A statutory probate court has concurrent jurisdiction with the  
4 district court in:

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

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

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

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

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

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

21 SECTION 2.04. Subtitle A, Title 2, Estates Code, as  
22 effective January 1, 2014, is amended by adding Chapter 33 to read  
23 as follows:

24 CHAPTER 33. VENUE

25 SUBCHAPTER A. VENUE FOR CERTAIN PROCEEDINGS

26 Sec. 33.001. PROBATE OF WILLS AND GRANTING OF LETTERS  
27 TESTAMENTARY AND OF ADMINISTRATION. Venue for a probate proceeding



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, appraisement, and list of claims;

23 (6-a) affidavit in lieu of the inventory,  
24 appraisement, 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, appraisement, 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, appraisement, and list of claims the representative  
6 shall promptly file with the court clerk a verified, full, and  
7 detailed supplemental inventory, appraisement, and list of claims.

8           (b) If after the filing of the affidavit in lieu of the  
9 inventory, appraisement, 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 appraisement  
12 given to the beneficiaries, the representative shall promptly file  
13 with the court clerk a supplemental affidavit in lieu of the  
14 inventory, appraisement, and list of claims stating that all  
15 beneficiaries have received a verified, full, and detailed  
16 supplemental inventory and appraisement.

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, appraisalment,  
8 and list of claims of the estate have been returned or an affidavit  
9 in lieu of the inventory, appraisalment, 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, appraisalment, 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, appraisalment, 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, appraisalment, 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, appraisalment,  
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.



1 properly performing the independent executor's fiduciary duties  
2 due to a material conflict of interest.

3 (3) In SECTION 1.42 of the bill, between Subsections (d) and  
4 (e) of that section (page 61, between lines 4 and 5), insert the  
5 following:

6 (d-1) The changes in law made by this article to Section  
7 83(a), Texas Probate Code, apply only to an application for the  
8 probate of a will or administration of the estate of a decedent that  
9 is pending or filed on or after the effective date of this Act.

10 (4) Add the following appropriately numbered SECTION to  
11 Article 2 of the bill and renumber subsequent SECTIONS of Article 2  
12 as appropriate:

13 SECTION 2.\_\_\_\_. Section 256.101, Estates Code, as effective  
14 January 1, 2014, is amended to read as follows:

15 Sec. 256.101. PROCEDURE ON FILING OF SECOND APPLICATION  
16 WHEN ORIGINAL APPLICATION HAS NOT BEEN HEARD. (a) If, after an  
17 application for the probate of a decedent's will or the appointment  
18 of a personal representative for the decedent's estate has been  
19 filed but before the application is heard, an application is filed  
20 for the probate of a will of the same decedent that has not  
21 previously been presented for probate, the court shall:

22 (1) hear both applications together; and

23 (2) determine:

24 (A) if both applications are for the probate of a  
25 will, which will should be admitted to probate, if either, or  
26 whether the decedent died intestate; or

27 (B) if only one application is for the probate of

1 a will, whether the will should be admitted to probate or whether  
2 the decedent died intestate.

3 (b) The court may not sever or bifurcate the proceeding on  
4 the applications described in Subsection (a).

5 (5) In SECTION 2.52 of the bill, strike added Sections  
6 404.003(a)(5) and (6), Estates Code (page 121, lines 12 through  
7 18), and substitute the following:

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

11 (6) the independent executor becomes an incapacitated  
12 person, or is sentenced to the penitentiary, or from any other cause  
13 becomes legally incapacitated from properly performing the  
14 independent executor's fiduciary duties; or

15 (7) the independent executor becomes incapable of  
16 properly performing the independent executor's fiduciary duties  
17 due to a material conflict of interest.

18 (6) In SECTION 2.53(b) of the bill, strike Subdivisions (1),  
19 (2), and (3) (page 136, lines 18-23) and substitute the following:

20 (1) Sections 4D, 4H, 48, 49, 59, 64, 67, 83(a), 84,  
21 250, 260, 436, 439, 452, 471, 472, and 473, as amended by Article 1  
22 of this Act; and

23 (2) Sections 6A, 6B, 6C, 6D, 8A, 8B, 145A, 145B, and  
24 145C, as added by Article 1 of this Act.