

1-1 By: Thompson of Harris (Senate Sponsor - Rodriguez) H.B. No. 2912
 1-2 (In the Senate - Received from the House May 6, 2013;
 1-3 May 7, 2013, read first time and referred to Committee on
 1-4 Jurisprudence; May 20, 2013, reported favorably, as amended, by
 1-5 the following vote: Yeas 5, Nays 0; May 20, 2013, sent to
 1-6 printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 West	X			
1-9 Rodriguez	X			
1-10 Campbell			X	
1-11 Carona	X			
1-12 Garcia	X			
1-13 Hancock	X			
1-14 Paxton			X	

1-16 COMMITTEE AMENDMENT NO. 1 By: Rodriguez

1-17 Amend H.B. 2912 (house engrossment) as follows:
 1-18 (1) On page 13, lines 8-9, strike "until the applicant files
 1-19 the affidavit required by this section" and substitute "until the
 1-20 affidavit or certificate required by Subsection (a) is filed".
 1-21 (2) On page 46, line 4, strike "405.001(b)".
 1-22 (3) On page 46, line 12, strike "and 403.056(a)" and
 1-23 substitute "403.056(a), and 405.001(b)".

1-24 COMMITTEE AMENDMENT NO. 2 By: Rodriguez

1-25 Amend H.B. 2912 (house engrossment) as follows:
 1-26 (1) Strike SECTION 11 of the bill.
 1-27 (2) On page 46, lines 10 and 11, strike "201.001(f) and
 1-28 (g)",".
 1-29 (3) On page 46, line 13, strike "201.001(i) and (j)",".
 1-30 (4) Renumber SECTIONS of the bill appropriately.

1-31 A BILL TO BE ENTITLED
 1-32 AN ACT

1-33 relating to decedents' estates.
 1-34 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-35 SECTION 1. Section 21.005, Estates Code, as effective
 1-36 January 1, 2014, is amended to conform to Section 2.54, Chapter 1338
 1-37 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011,
 1-38 and is further amended to read as follows:
 1-39 Sec. 21.005. APPLICABILITY OF CERTAIN LAWS. (a)
 1-40 Notwithstanding Section 21.002(b) of this code and Section 311.002,
 1-41 Government Code:
 1-42 (1) Section 311.032(c), Government Code, applies to
 1-43 Subtitle [Subtitles] X [and Y], Title 2, and Subtitles Y and Z,
 1-44 Title 3; and
 1-45 (2) Sections 311.005(4) and 311.012(b) and (c),
 1-46 Government Code, apply to Subtitle [Subtitles] X [and Y], Title 2,
 1-47 and Subtitles Y and Z, Title 3.
 1-48 (b) Chapter 132, Civil Practice and Remedies Code, does not
 1-49 apply to Subchapter C, Chapter 251.
 1-50 SECTION 2. Notwithstanding the transfer of Section 2, Texas
 1-51 Probate Code, to the Estates Code and redesignation as Section 2 of
 1-52 that code effective January 1, 2014, by Section 2, Chapter 680 (H.B.
 1-53 2502), Acts of the 81st Legislature, Regular Session, 2009,
 1-54 Subsection (e), Section 2, Texas Probate Code, is transferred to
 1-55 Chapter 32, Estates Code, redesignated as Subsection (d), Section
 1-56 32.001, Estates Code, and amended to read as follows:
 1-57 (d) [(c) Nature of Proceeding.] The administration of the

2-1 estate of a decedent, from the filing of the application for probate
 2-2 and administration, or for administration, until the decree of
 2-3 final distribution and the discharge of the last personal
 2-4 representative, shall be considered as one proceeding for purposes
 2-5 of jurisdiction. The entire proceeding is a proceeding in rem.

2-6 SECTION 3. Section 32.006, Estates Code, as effective
 2-7 January 1, 2014, is amended to read as follows:

2-8 Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH
 2-9 RESPECT TO TRUSTS AND POWERS OF ATTORNEY. In a county in which
 2-10 there is a statutory probate court, the statutory probate court has
 2-11 jurisdiction of:

- 2-12 (1) an action by or against a trustee;
- 2-13 (2) an action involving an inter vivos trust,
 2-14 testamentary trust, or charitable trust;
- 2-15 (3) an action by or against an agent or former agent
 2-16 under a power of attorney arising out of the agent's performance of
 2-17 the duties of an agent; and
- 2-18 (4) an action to determine the validity of a power of
 2-19 attorney or to determine an agent's rights, powers, or duties under
 2-20 a power of attorney.

2-21 SECTION 4. Section 51.203(c), Estates Code, as effective
 2-22 January 1, 2014, is amended to read as follows:

2-23 (c) At the expiration of the 10-day period prescribed by
 2-24 Subsection (a):

- 2-25 (1) ~~[commission may issue for taking]~~ the depositions
 2-26 for which the notice was posted may be taken; and
- 2-27 (2) the judge may file cross-interrogatories if no
 2-28 person appears.

2-29 SECTION 5. Section 53.104, Estates Code, as effective
 2-30 January 1, 2014, is amended to read as follows:

2-31 Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Except
 2-32 as provided by Section 202.009(b), the judge of a probate court may
 2-33 appoint an attorney ad litem in any probate proceeding to represent
 2-34 the interests of any person, including:

- 2-35 (1) a person who has a legal disability under state or
 2-36 federal law;
- 2-37 (2) a nonresident;
- 2-38 (3) an unborn or unascertained person; ~~[or]~~
- 2-39 (4) an unknown heir;
- 2-40 (5) a missing heir; or
- 2-41 (6) an unknown or missing person for whom cash is
 2-42 deposited into the court's registry under Section 362.011.

2-43 (b) An attorney ad litem appointed under this section is
 2-44 entitled to reasonable compensation for services provided in the
 2-45 amount set by the court. The court shall:

- 2-46 (1) tax the compensation as costs in the probate
 2-47 proceeding and order the compensation to be paid out of the estate
 2-48 or by any party at any time during [, to be taxed as costs in] the
 2-49 proceeding; or
- 2-50 (2) for an attorney ad litem appointed under
 2-51 Subsection (a)(6), order that the compensation be paid from the
 2-52 cash on deposit in the court's registry as provided by Section
 2-53 362.011.

2-54 SECTION 6. Subchapter C, Chapter 53, Estates Code, as
 2-55 effective January 1, 2014, is amended by adding Section 53.107 to
 2-56 read as follows:

2-57 Sec. 53.107. INAPPLICABILITY OF CERTAIN RULES OF CIVIL
 2-58 PROCEDURE. The following do not apply to probate proceedings:

- 2-59 (1) Rules 47(c) and 169, Texas Rules of Civil
 2-60 Procedure; and
- 2-61 (2) the portions of Rule 190.2, Texas Rules of Civil
 2-62 Procedure, concerning expedited actions under Rule 169, Texas Rules
 2-63 of Civil Procedure.

2-64 SECTION 7. Section 54.051, Estates Code, as effective
 2-65 January 1, 2014, is amended to read as follows:

2-66 Sec. 54.051. APPLICABILITY OF CERTAIN RULES RELATING TO
 2-67 WITNESSES AND EVIDENCE. Except as provided by Section 51.203, the
 2-68 Texas Rules of Evidence [rules relating to witnesses and evidence
 2-69 that apply in the district court] apply in a proceeding arising

3-1 under this title to the extent practicable.

3-2 SECTION 8. Section 102.004, Estates Code, as effective
 3-3 January 1, 2014, is amended to read as follows:

3-4 Sec. 102.004. LIABILITY OF HOMESTEAD FOR DEBTS. If the
 3-5 decedent was survived by a spouse or minor child, the [The]
 3-6 homestead is not liable for the payment of any of the debts of the
 3-7 estate, other than:

3-8 (1) purchase money for the homestead;

3-9 (2) taxes due on the homestead;

3-10 (3) work and material used in constructing
 3-11 improvements on the homestead if the requirements of Section
 3-12 50(a)(5), Article XVI, Texas Constitution, are met;

3-13 (4) an owelty of partition imposed against the
 3-14 entirety of the property by a court order or written agreement of
 3-15 the parties to the partition, including a debt of one spouse in
 3-16 favor of the other spouse resulting from a division or an award of a
 3-17 family homestead in a divorce proceeding;

3-18 (5) the refinance of a lien against the homestead,
 3-19 including a federal tax lien resulting from the tax debt of both
 3-20 spouses, if the homestead is a family homestead, or from the tax
 3-21 debt of the decedent;

3-22 (6) an extension of credit on the homestead if the
 3-23 requirements of Section 50(a)(6), Article XVI, Texas Constitution,
 3-24 are met; or

3-25 (7) a reverse mortgage.

3-26 SECTION 9. Section 111.051, Estates Code, as effective
 3-27 January 1, 2014, is amended by amending Subdivision (1) and adding
 3-28 Subdivision (1-a) to read as follows:

3-29 (1) "Contracting third party" means a financial
 3-30 institution, insurance company, plan custodian, plan
 3-31 administrator, or other person who is a party to an account
 3-32 agreement, insurance contract, annuity contract, retirement
 3-33 account, beneficiary designation, or other similar contract the
 3-34 terms of which control whether a nontestamentary transfer has
 3-35 occurred or to whom property passes as a result of a possible
 3-36 nontestamentary transfer. The term does not include a person who
 3-37 is:

3-38 (A) an owner of the property subject to a
 3-39 possible nontestamentary transfer; or

3-40 (B) a possible recipient of the property subject
 3-41 to a possible nontestamentary transfer.

3-42 (1-a) "Employees' trust" means:

3-43 (A) a trust that forms a part of a stock-bonus,
 3-44 pension, or profit-sharing plan under Section 401, Internal Revenue
 3-45 Code of 1954 (26 U.S.C. Section 401 (1986));

3-46 (B) a pension trust under Chapter 111, Property
 3-47 Code; and

3-48 (C) an employer-sponsored benefit plan or
 3-49 program, or any other retirement savings arrangement, including a
 3-50 pension plan created under Section 3, Employee Retirement Income
 3-51 Security Act of 1974 (29 U.S.C. Section 1002 (1986)), regardless of
 3-52 whether the plan, program, or arrangement is funded through a
 3-53 trust.

3-54 SECTION 10. Subchapter B, Chapter 111, Estates Code, is
 3-55 amended by adding Section 111.054 to read as follows:

3-56 Sec. 111.054. APPLICATION OF STATE LAW TO CERTAIN
 3-57 NONTTESTAMENTARY TRANSFERS. (a) This section applies if more than
 3-58 50 percent of the:

3-59 (1) assets in an account at a financial institution,
 3-60 in a retirement account, or in another similar arrangement are
 3-61 owned, immediately before a possible nontestamentary transfer of
 3-62 the assets, by one or more persons domiciled in this state; or

3-63 (2) interests under an insurance contract, annuity
 3-64 contract, beneficiary designation, or other similar arrangement
 3-65 are owned, immediately before a possible nontestamentary transfer
 3-66 of the interests, by one or more persons domiciled in this state.

3-67 (b) Notwithstanding a choice of law or other contractual
 3-68 provision in an agreement prepared or provided by a contracting
 3-69 third party, Texas law applies to determine:

4-1 (1) whether a nontestamentary transfer of assets or
 4-2 interests described by Subsection (a) has occurred; and

4-3 (2) the ownership of the assets or interests following
 4-4 a possible nontestamentary transfer.

4-5 (c) Notwithstanding a choice of law or other contractual
 4-6 provision in an agreement prepared or provided by a contracting
 4-7 third party, any person, including a personal representative, who
 4-8 is asserting an ownership interest in assets or interests described
 4-9 by Subsection (a) subject to a possible nontestamentary transfer
 4-10 shall have access to the courts of this state for a judicial
 4-11 determination of:

4-12 (1) whether a nontestamentary transfer of the assets
 4-13 or interests has occurred; or

4-14 (2) the ownership of the assets or interests following
 4-15 a possible nontestamentary transfer.

4-16 (d) Subsections (a), (b), and (c) do not apply to an
 4-17 obligation:

4-18 (1) owed by a party to the contracting third party; or

4-19 (2) owed by the contracting third party to a party.

4-20 (e) This section applies to a community property
 4-21 survivorship agreement governed by Chapter 112 and a multiple-party
 4-22 account governed by Chapter 113.

4-23 SECTION 11. Section 201.001, Estates Code, as effective
 4-24 January 1, 2014, is amended by amending Subsections (f) and (g) and
 4-25 adding Subsections (i) and (j) to read as follows:

4-26 (f) If none of the kindred described by Subsections (b)-(e)
 4-27 survive the person, but the person is survived by a grandparent or a
 4-28 descendant of a grandparent, the person's estate shall be divided
 4-29 into two moieties, with:

4-30 (1) one moiety passing to the person's paternal
 4-31 kindred as provided by Subsection (g); and

4-32 (2) one moiety passing to the person's maternal
 4-33 kindred as provided by Subsection (h).

4-34 (g) The moiety passing to the person's paternal kindred
 4-35 passes in the following order:

4-36 (1) if both paternal grandparents survive the person,
 4-37 equal portions pass to the person's paternal grandfather and
 4-38 grandmother;

4-39 (2) if only the person's paternal grandfather or
 4-40 grandmother survives the person, the person's estate shall:

4-41 (A) be divided into two equal portions, with:

4-42 (i) one portion passing to the surviving
 4-43 grandparent; and

4-44 (ii) one portion passing to the descendants
 4-45 of the deceased grandparent; or

4-46 (B) pass entirely to the surviving grandparent if
 4-47 no descendant of the deceased grandparent survives the person; and

4-48 (3) if neither the person's paternal grandfather nor
 4-49 grandmother survives the person, the moiety passing to the
 4-50 decedent's paternal kindred passes to the descendants of the
 4-51 person's paternal grandfather and grandmother [~~and so on without~~
 4-52 ~~end, passing~~] in like manner [~~to the nearest lineal ancestors and~~
 4-53 ~~their descendants~~].

4-54 (i) If none of the kindred described by Subsections (b)-(e)
 4-55 survive the person and there is no surviving paternal grandparent
 4-56 or descendant of a paternal grandparent or, in the alternative,
 4-57 there is no surviving maternal grandparent or descendant of a
 4-58 maternal grandparent, the entire estate passes to the decedent's
 4-59 kindred on the side with the surviving grandparent or descendant of
 4-60 a grandparent in the manner provided for a moiety under Subsection
 4-61 (g) or (h).

4-62 (j) If none of the kindred described by Subsections (b)-(i)
 4-63 survive the person, the person's estate escheats under Chapter 71,
 4-64 Property Code.

4-65 SECTION 12. Section 201.051, Estates Code, as effective
 4-66 January 1, 2014, is amended to read as follows:

4-67 Sec. 201.051. MATERNAL INHERITANCE. For purposes of
 4-68 inheritance, a child is the child of the child's biological or
 4-69 adopted mother, and the child and the child's issue shall inherit

5-1 from the child's mother and the child's maternal kindred, both
 5-2 descendants, ascendants, and collateral kindred in all degrees, and
 5-3 they may inherit from the child and the child's issue. However, if a
 5-4 child has intended parents, as defined by Section 160.102, Family
 5-5 Code, under a gestational agreement validated under Subchapter I,
 5-6 Chapter 160, Family Code, the child is the child of the intended
 5-7 mother and not the biological mother or gestational mother unless
 5-8 the biological mother is also the intended mother.

5-9 SECTION 13. Section 201.052, Estates Code, as effective
 5-10 January 1, 2014, is amended by adding Subsection (a-1) and amending
 5-11 Subsection (b) to read as follows:

5-12 (a-1) Notwithstanding Subsection (a), if a child has
 5-13 intended parents, as defined by Section 160.102, Family Code, under
 5-14 a gestational agreement validated under Subchapter I, Chapter 160,
 5-15 Family Code, the child is the child of the intended father and not
 5-16 the biological father unless the biological father is also the
 5-17 intended father.

5-18 (b) A child described by Subsection (a) or (a-1) and the
 5-19 child's issue shall inherit from the child's father and the child's
 5-20 paternal kindred, both descendants, ascendants, and collateral
 5-21 kindred in all degrees, and they may inherit from the child and the
 5-22 child's issue.

5-23 SECTION 14. Subchapter A, Chapter 202, Estates Code, as
 5-24 effective January 1, 2014, is amended by adding Section 202.0025 to
 5-25 read as follows:

5-26 Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH.
 5-27 Notwithstanding Section 16.051, Civil Practice and Remedies Code, a
 5-28 proceeding to declare heirship of a decedent may be brought at any
 5-29 time after the decedent's death.

5-30 SECTION 15. Section 202.004, Estates Code, as effective
 5-31 January 1, 2014, is amended to read as follows:

5-32 Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO
 5-33 DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent
 5-34 may be commenced and maintained under a circumstance specified by
 5-35 Section 202.002 by:

5-36 (1) the personal representative of the decedent's
 5-37 estate;

5-38 (2) a person claiming to be a ~~secured~~ creditor or the
 5-39 owner of all or part of the decedent's estate;

5-40 (3) if the decedent was a ward with respect to whom a
 5-41 guardian of the estate had been appointed, the guardian of the
 5-42 estate, provided that the proceeding is commenced and maintained in
 5-43 the probate court in which the proceedings for the guardianship of
 5-44 the estate were pending at the time of the decedent's death;

5-45 (4) a party seeking the appointment of an independent
 5-46 administrator under Section 401.003; or

5-47 (5) the trustee of a trust holding assets for the
 5-48 benefit of a decedent.

5-49 SECTION 16. Section 202.009, Estates Code, as effective
 5-50 January 1, 2014, is amended to read as follows:

5-51 Sec. 202.009. ATTORNEY AD LITEM [REPRESENTATION OF
 5-52 INTERESTS OF CERTAIN PERSONS]. (a) The [If it appears to the court
 5-53 in a proceeding to declare heirship that there is or may be a living
 5-54 heir whose name or whereabouts is unknown, or that a defendant is an
 5-55 incapacitated person, the] court shall [may] appoint an attorney ad
 5-56 litem in a proceeding to declare heirship [or guardian ad litem] to
 5-57 represent the interests of heirs whose names or locations are
 5-58 unknown [that person. The court may not appoint an attorney ad
 5-59 litem or guardian ad litem unless the court finds that the
 5-60 appointment is necessary to protect the interests of the living
 5-61 heir or incapacitated person].

5-62 (b) The court may expand the appointment of the [shall
 5-63 appoint an] attorney ad litem appointed under Subsection (a) to
 5-64 include representation of an heir who is an incapacitated person on
 5-65 a finding that the appointment is necessary to protect the
 5-66 interests of the heir [to represent the interests of unknown
 5-67 heirs].

5-68 SECTION 17. Section 202.056, Estates Code, as effective
 5-69 January 1, 2014, is amended to read as follows:

6-1 Sec. 202.056. WAIVER OF SERVICE OF CITATION [~~ON CERTAIN~~
 6-2 ~~PERSONS NOT PERMITTED~~]. A parent, managing conservator, guardian,
 6-3 attorney ad litem, or guardian ad litem of a minor distributee who:
 6-4 (1) is younger than 12 years of age [~~or older, but~~
 6-5 ~~younger than 19 years of age,~~] may [~~not~~] waive citation required by
 6-6 this subchapter to be served on the distributee; and
 6-7 (2) is 12 years of age or older may not waive citation
 6-8 required by this subchapter to be served on the distributee.

6-9 SECTION 18. Subchapter B, Chapter 202, Estates Code, as
 6-10 effective January 1, 2014, is amended by adding Section 202.057 to
 6-11 read as follows:

6-12 Sec. 202.057. AFFIDAVIT OF SERVICE OF CITATION. (a) A
 6-13 person who files an application under Section 202.005 shall file
 6-14 with the court:

6-15 (1) a copy of any citation required by this subchapter
 6-16 and the proof of delivery of service of the citation; and

6-17 (2) an affidavit sworn to by the applicant or a
 6-18 certificate signed by the applicant's attorney stating:

6-19 (A) that the citation was served as required by
 6-20 this subchapter;

6-21 (B) the name of each person to whom the citation
 6-22 was served, if the person's name is not shown on the proof of
 6-23 delivery; and

6-24 (C) the name of each person who waived citation
 6-25 under Section 202.056.

6-26 (b) The court may not enter an order in the proceeding to
 6-27 declare heirship under Subchapter E until the applicant files the
 6-28 affidavit required by this section.

6-29 SECTION 19. Section 202.151, Estates Code, as effective
 6-30 January 1, 2014, is amended to read as follows:

6-31 Sec. 202.151. [WRITTEN] EVIDENCE IN PROCEEDING TO DECLARE
 6-32 HEIRSHIP. (a) The court may require that [all or] any testimony
 6-33 [part of the evidence] admitted as evidence in a proceeding to
 6-34 declare heirship be [+

6-35 [(1)] reduced to writing and subscribed and sworn to
 6-36 by the witnesses, respectively [+ and

6-37 [(2)] filed in the proceeding and recorded in the
 6-38 judge's probate docket].

6-39 (b) Testimony in a proceeding to declare heirship must be
 6-40 taken in open court, by deposition in accordance with Section
 6-41 51.203, or in accordance with the Texas Rules of Civil Procedure.

6-42 SECTION 20. Sections 204.151 and 204.152, Estates Code, as
 6-43 effective January 1, 2014, are amended to read as follows:

6-44 Sec. 204.151. APPLICABILITY OF SUBCHAPTER. This subchapter
 6-45 applies in a proceeding to declare heirship of a decedent only with
 6-46 respect to an individual who [+

6-47 [(1)] petitions the court for a determination of right
 6-48 of inheritance as authorized by Section 201.052(c), and

6-49 [(2)] claims [+

6-50 [(A)] to be a biological child of the decedent or
 6-51 claims[, but with respect to whom a parent-child relationship with
 6-52 the decedent was not established as provided by Section 160.201,
 6-53 Family Code, or

6-54 [(B)] to inherit through a biological child of
 6-55 the decedent[, if a parent-child relationship between the
 6-56 individual through whom the inheritance is claimed and the decedent
 6-57 was not established as provided by Section 160.201, Family Code].

6-58 Sec. 204.152. PRESUMPTION; [REQUIRED FINDINGS IN ABSENCE
 6-59 OF] REBUTTAL [EVIDENCE]. The presumption under Section 160.505,
 6-60 Family Code, that applies in establishing a parent-child
 6-61 relationship also applies in determining heirship in the probate
 6-62 court using the results of genetic testing ordered with respect to
 6-63 an individual described by Section 204.151, and the presumption may
 6-64 be rebutted in the same manner provided by Section 160.505, Family
 6-65 Code. [Unless the results of genetic testing of another individual
 6-66 who is an heir of the decedent who is the subject of a proceeding to
 6-67 declare heirship to which this subchapter applies are admitted as
 6-68 rebuttal evidence, the court shall find that the individual
 6-69 described by Section 204.151:

7-1 ~~[(1) is an heir of the decedent, if the results of~~
7-2 ~~genetic testing ordered under Subchapter B identify a tested~~
7-3 ~~individual who is an heir of the decedent as the ancestor of the~~
7-4 ~~individual described by Section 204.151, or~~

7-5 ~~[(2) is not an heir of the decedent, if the results of~~
7-6 ~~genetic testing ordered under Subchapter B exclude a tested~~
7-7 ~~individual who is an heir of the decedent as the ancestor of the~~
7-8 ~~individual described by Section 204.151.]~~

7-9 SECTION 21. Section 253.001, Estates Code, as effective
7-10 January 1, 2014, is amended by adding Subsection (c) to read as
7-11 follows:

7-12 (c) Any portion of a court order that purports to prohibit a
7-13 person from executing a new will or a codicil to an existing will is
7-14 void and may be disregarded without penalty or sanction of any kind.

7-15 SECTION 22. The heading to Section 256.052, Estates Code,
7-16 as effective January 1, 2014, is amended to read as follows:

7-17 Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF
7-18 ~~[WRITTEN] WILL [GENERALLY].~~

7-19 SECTION 23. Section 256.052(a), Estates Code, as effective
7-20 January 1, 2014, is amended to read as follows:

7-21 (a) An application for the probate of a ~~[written]~~ will must
7-22 state and aver the following to the extent each is known to the
7-23 applicant or can, with reasonable diligence, be ascertained by the
7-24 applicant:

7-25 (1) each applicant's name and domicile;

7-26 (2) the testator's name, domicile, and, if known, age,
7-27 on the date of the testator's death;

7-28 (3) the fact, time, and place of the testator's death;

7-29 (4) facts showing that the court with which the
7-30 application is filed has venue;

7-31 (5) that the testator owned property, including a
7-32 statement generally describing the property and the property's
7-33 probable value;

7-34 (6) the date of the will;

7-35 (7) the name, state of residence, and physical address
7-36 where service can be had ~~[residence]~~ of the ~~[+]~~

7-37 ~~[(A) any]~~ executor named in the will or other ~~[+]~~
7-38 ~~if no executor is named, of the]~~ person to whom the applicant
7-39 desires that letters be issued; ~~[and]~~

7-40 (8) the name of ~~[(B)]~~ each subscribing witness to the
7-41 will, if any;

7-42 (9) ~~[(8)]~~ whether one or more children born to or
7-43 adopted by the testator after the testator executed the will
7-44 survived the testator and, if so, the name of each of those
7-45 children;

7-46 (10) ~~[(9)]~~ whether a marriage of the testator was ever
7-47 dissolved after the will was made and, if so, when and from whom;

7-48 (11) ~~[(10)]~~ whether the state, a governmental agency
7-49 of the state, or a charitable organization is named in the will as a
7-50 devisee; and

7-51 (12) ~~[(11)]~~ that the executor named in the will, the
7-52 applicant, or another person to whom the applicant desires that
7-53 letters be issued is not disqualified by law from accepting the
7-54 letters.

7-55 SECTION 24. The heading to Section 256.053, Estates Code,
7-56 as effective January 1, 2014, is amended to read as follows:

7-57 Sec. 256.053. FILING OF ~~[WRITTEN]~~ WILL WITH APPLICATION FOR
7-58 PROBATE GENERALLY REQUIRED.

7-59 SECTION 25. Section 256.053(a), Estates Code, as effective
7-60 January 1, 2014, is amended to read as follows:

7-61 (a) An applicant for the probate of a ~~[written]~~ will shall
7-62 file the will with the application if the will is in the applicant's
7-63 control.

7-64 SECTION 26. Section 256.054, Estates Code, as effective
7-65 January 1, 2014, is amended to read as follows:

7-66 Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO
7-67 ~~[WRITTEN]~~ WILL IS PRODUCED. In addition to the requirements for an
7-68 application under Section 256.052, if an applicant for the probate
7-69 of a ~~[written]~~ will cannot produce the will in court, the

8-1 application must state:

8-2 (1) the reason the will cannot be produced;

8-3 (2) the contents of the will, as far as known; and

8-4 (3) the name, age, marital status, and address, if
8-5 known, and the relationship to the testator, if any, of:

8-6 (A) each devisee;

8-7 (B) each person who would inherit as an heir of
8-8 the testator in the absence of a valid will; and

8-9 (C) in the case of partial intestacy, each heir
8-10 of the testator.

8-11 SECTION 27. Section 256.152(c), Estates Code, as effective
8-12 January 1, 2014, is amended to read as follows:

8-13 (c) As an alternative to Subsection (b) [For purposes of
8-14 Subsection (b)], a will executed in another state or a foreign
8-15 country is considered self-proved without further evidence of the
8-16 law of the other state or foreign country if the will, or an
8-17 affidavit of the testator and attesting witnesses attached or
8-18 annexed to the will, provides that:

8-19 (1) the testator declared that the testator signed the
8-20 instrument as the testator's will, the testator signed it willingly
8-21 or willingly directed another to sign for the testator, the
8-22 testator executed the will as the testator's free and voluntary act
8-23 for the purposes expressed in the instrument, the testator is of
8-24 sound mind and under no constraint or undue influence, and the
8-25 testator is eighteen years of age or over or, if under that age, was
8-26 or had been lawfully married, or was then a member of the armed
8-27 forces of the United States, an auxiliary of the armed forces of the
8-28 United States, or the United States Maritime Service; and

8-29 (2) the witnesses declared that the testator signed
8-30 the instrument as the testator's will, the testator signed it
8-31 willingly or willingly directed another to sign for the testator,
8-32 each of the witnesses, in the presence and hearing of the testator,
8-33 signed the will as witness to the testator's signing, and to the
8-34 best of their knowledge the testator was of sound mind and under no
8-35 constraint or undue influence, and the testator was eighteen years
8-36 of age or over or, if under that age, was or had been lawfully
8-37 married, or was then a member of the armed forces of the United
8-38 States, an auxiliary of the armed forces of the United States, or
8-39 the United States Maritime Service.

8-40 SECTION 28. Section 256.153, Estates Code, as effective
8-41 January 1, 2014, is amended to read as follows:

8-42 Sec. 256.153. PROOF OF EXECUTION OF [AUTHORIZED METHODS OF
8-43 PROVING] ATTESTED [WRITTEN] WILL. (a) An attested [~~written~~]
8-44 produced in court that is not self-proved as provided by this title
8-45 may be proved in the manner provided by this section.

8-46 (b) A will described by Subsection (a) may be proved by the
8-47 sworn testimony or affidavit of one or more of the subscribing
8-48 witnesses to the will taken in open court.

8-49 (c) If all the witnesses to a will described by Subsection
8-50 (a) are nonresidents of the county or the witnesses who are
8-51 residents of the county are unable to attend court, the will may be
8-52 proved:

8-53 (1) by the sworn testimony of one or more of the
8-54 witnesses by written or oral deposition taken in accordance with
8-55 Section 51.203 or the Texas Rules of Civil Procedure [in the same
8-56 manner and under the same rules as depositions are taken in other
8-57 civil actions];

8-58 (2) if no opposition in writing to the will is filed on
8-59 or before the date set for the hearing on the will, by the sworn
8-60 testimony or affidavit of two witnesses taken in open court, or by
8-61 deposition as provided by Subdivision (1), to the signature or the
8-62 handwriting evidenced by the signature of:

8-63 (A) one or more of the attesting witnesses; or

8-64 (B) the testator, if the testator signed the
8-65 will; or

8-66 (3) if it is shown under oath to the court's
8-67 satisfaction that, after a diligent search was made, only one
8-68 witness can be found who can make the required proof, by the sworn
8-69 testimony or affidavit of that witness taken in open court, or by

9-1 deposition as provided by Subdivision (1), to a signature, or the
9-2 handwriting evidenced by a signature, described by Subdivision (2).

9-3 (d) If none of the witnesses to a will described by
9-4 Subsection (a) are living, or if each of the witnesses is a member
9-5 of the armed forces or the armed forces reserves of the United
9-6 States, an auxiliary of the armed forces or armed forces reserves,
9-7 or the United States Maritime Service and is beyond the court's
9-8 jurisdiction, the will may be proved:

9-9 (1) by two witnesses to the handwriting of one or both
9-10 of the subscribing witnesses to the will or the testator, if the
9-11 testator signed the will, by:

9-12 (A) sworn testimony or affidavit taken in open
9-13 court; or

9-14 (B) written or oral deposition taken in
9-15 accordance with Section 51.203 or the Texas Rules of Civil
9-16 Procedure [in the same manner and under the same rules as
9-17 depositions are taken in other civil actions]; or

9-18 (2) if it is shown under oath to the court's
9-19 satisfaction that, after a diligent search was made, only one
9-20 witness can be found who can make the required proof, by the sworn
9-21 testimony or affidavit of that witness taken in open court, or by
9-22 deposition as provided by Subdivision (1), to a signature or the
9-23 handwriting described by Subdivision (1).

9-24 (e) A witness being deposed for purposes of proving the will
9-25 as provided by Subsection (c) or (d) may testify by referring to a
9-26 certified copy of the will, without the judge requiring the
9-27 original will to be removed from the court's file and shown to the
9-28 witness.

9-29 SECTION 29. Section 256.154, Estates Code, as effective
9-30 January 1, 2014, is amended to read as follows:

9-31 Sec. 256.154. PROOF OF EXECUTION [AUTHORIZED METHODS] OF
9-32 [PROVING] HOLOGRAPHIC WILL. (a) A will wholly in the handwriting of
9-33 the testator that is not self-proved as provided by this title may
9-34 be proved by two witnesses to the testator's handwriting. The
9-35 evidence may be by:

9-36 (1) sworn testimony or affidavit taken in open court;
9-37 or

9-38 (2) if the witnesses are nonresidents of the county or
9-39 are residents who are unable to attend court, written or oral
9-40 deposition taken in accordance with Section 51.203 or the Texas
9-41 Rules of Civil Procedure [in the same manner and under the same
9-42 rules as depositions are taken in other civil actions].

9-43 (b) A witness being deposed for purposes of proving the will
9-44 as provided by Subsection (a)(2) may testify by referring to a
9-45 certified copy of the will, without the judge requiring the
9-46 original will to be removed from the court's file and shown to the
9-47 witness.

9-48 SECTION 30. Section 256.155(a), Estates Code, as effective
9-49 January 1, 2014, is amended to read as follows:

9-50 (a) This section, rather than Sections 256.153(c) and (d)
9-51 and 256.154 regarding the taking of depositions [under the same
9-52 rules as depositions in other civil actions], applies if no contest
9-53 has been filed with respect to an application for the probate of a
9-54 will.

9-55 SECTION 31. Section 256.156, Estates Code, as effective
9-56 January 1, 2014, is amended to read as follows:

9-57 Sec. 256.156. PROOF OF [WRITTEN] WILL NOT PRODUCED IN
9-58 COURT. (a) A [written] will that cannot be produced in court must
9-59 be proved in the same manner as provided in Section 256.153 for an
9-60 attested [written] will or Section 256.154 for a holographic will,
9-61 as applicable. The same amount and character of testimony is
9-62 required to prove the [written] will not produced in court as is
9-63 required to prove a [written] will produced in court.

9-64 (b) In addition to the proof required by Subsection (a):

9-65 (1) the cause of the nonproduction of a [written] will
9-66 not produced in court must be proved, which must be sufficient to
9-67 satisfy the court that the will cannot by any reasonable diligence
9-68 be produced; and

9-69 (2) the contents of the will must be substantially

10-1 proved by the testimony of a credible witness who has read either
 10-2 the original or a copy of the will, has heard the will read, or can
 10-3 identify a copy of the will.

10-4 SECTION 32. Section 256.203, Estates Code, as effective
 10-5 January 1, 2014, is amended to read as follows:

10-6 Sec. 256.203. ESTABLISHING CONTENTS OF WILL NOT IN COURT'S
 10-7 CUSTODY. If for any reason a [~~written~~] will is not in the court's
 10-8 custody, the court shall find the contents of the will by written
 10-9 order. Certified copies of the contents as established by the
 10-10 order may be:

- 10-11 (1) recorded in other counties; and
- 10-12 (2) used in evidence, as certified copies of [~~written~~]
 10-13 wills in the custody of the court may be used.

10-14 SECTION 33. Section 257.052, Estates Code, as effective
 10-15 January 1, 2014, is amended to read as follows:

10-16 Sec. 257.052. FILING OF [~~WRITTEN~~] WILL WITH APPLICATION
 10-17 GENERALLY REQUIRED. (a) An applicant for the probate of a
 10-18 [~~written~~] will as a muniment of title shall file the will with the
 10-19 application if the will is in the applicant's control.

10-20 (b) A will filed under Subsection (a) must remain in the
 10-21 custody of the county clerk unless removed from the clerk's custody
 10-22 by court order.

10-23 SECTION 34. Section 257.053, Estates Code, as effective
 10-24 January 1, 2014, is amended to read as follows:

10-25 Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO
 10-26 [~~WRITTEN~~] WILL IS PRODUCED. In addition to the requirements for an
 10-27 application under Section 257.051, if an applicant for the probate
 10-28 of a [~~written~~] will as a muniment of title cannot produce the will
 10-29 in court, the application must state:

- 10-30 (1) the reason the will cannot be produced;
- 10-31 (2) the contents of the will, to the extent known; and
- 10-32 (3) the name, age, marital status, and address, if
 10-33 known, and the relationship to the testator, if any, of:
 - 10-34 (A) each devisee;
 - 10-35 (B) each person who would inherit as an heir of
 10-36 the testator in the absence of a valid will; and
 - 10-37 (C) in the case of partial intestacy, each heir
 10-38 of the testator.

10-39 SECTION 35. Subchapter D, Chapter 301, Estates Code, as
 10-40 effective January 1, 2014, is amended by adding Section 301.155 to
 10-41 read as follows:

10-42 Sec. 301.155. AUTHORIZED METHODS OF PROOF. A fact
 10-43 contained in an application for issuance of letters testamentary or
 10-44 of administration or any other fact required to be proved by this
 10-45 subchapter may be proved by the sworn testimony of a witness with
 10-46 personal knowledge of the fact that is:

- 10-47 (1) taken in open court; or
- 10-48 (2) if proved under oath to the satisfaction of the
 10-49 court that the witness is unavailable, taken by deposition on
 10-50 written questions in accordance with Section 51.203 or the Texas
 10-51 Rules of Civil Procedure.

10-52 SECTION 36. Section 304.001(c), Estates Code, as effective
 10-53 January 1, 2014, is amended to read as follows:

10-54 (c) If persons [~~applicants for letters testamentary or of~~
 10-55 ~~administration~~] are equally entitled to letters testamentary or of
 10-56 administration [~~the letters~~], the court:

- 10-57 (1) shall grant the letters to the person [~~applicant~~]
 10-58 who, in the judgment of the court, is most likely to administer the
 10-59 estate advantageously; or
- 10-60 (2) may grant the letters to two or more of those
 10-61 persons [~~applicants~~].

10-62 SECTION 37. Section 305.002(a), Estates Code, as effective
 10-63 January 1, 2014, is amended to read as follows:

10-64 (a) A personal representative, other than an executor
 10-65 described by Subsection (b), is considered to have qualified when
 10-66 the representative has:

- 10-67 (1) taken and filed the oath prescribed by Subchapter
 10-68 B;
- 10-69 (2) filed [~~given~~] the required bond with the clerk;

11-1 and

11-2 (3) obtained the judge's approval of the bond [~~and~~
11-3 [~~(4) filed the bond with the clerk~~].

11-4 SECTION 38. Section 305.003, Estates Code, as effective
11-5 January 1, 2014, is amended to read as follows:

11-6 Sec. 305.003. PERIOD FOR TAKING OATH [~~AND GIVING BOND~~]. An
11-7 oath may be taken and subscribed [~~and a bond may be given and~~
11-8 ~~approved~~] at any time before:

11-9 (1) the 21st day after the date of the order granting
11-10 letters testamentary or of administration, as applicable; or

11-11 (2) the letters testamentary or of administration, as
11-12 applicable, are revoked for a failure to qualify within the period
11-13 allowed.

11-14 SECTION 39. Subchapter A, Chapter 305, Estates Code, as
11-15 effective January 1, 2014, is amended by adding Section 305.004 to
11-16 read as follows:

11-17 Sec. 305.004. PERIOD FOR GIVING BOND. (a) A bond may be
11-18 filed with the clerk at any time before:

11-19 (1) the 21st day after:

11-20 (A) the date of the order granting letters
11-21 testamentary or of administration, as applicable; or

11-22 (B) the date of any order modifying the bond
11-23 requirement; or

11-24 (2) the date letters testamentary or of
11-25 administration, as applicable, are revoked for a failure to qualify
11-26 within the period allowed.

11-27 (b) The court shall act promptly to review a bond filed as
11-28 provided by Subsection (a) and, if acceptable, shall approve the
11-29 bond.

11-30 (c) If no action has been taken by the court on the bond
11-31 before the 21st day after the date the bond is filed, the person
11-32 appointed personal representative may file a motion requiring the
11-33 judge of the court in which the bond was filed to specify on the
11-34 record the reason or reasons for the judge's failure to act on the
11-35 bond. The hearing on the motion must be held before the 11th day
11-36 after the date the motion is filed.

11-37 SECTION 40. Section 308.054(b), Estates Code, as effective
11-38 January 1, 2014, is amended to read as follows:

11-39 (b) Notice given under Subsection (a) must:

11-40 (1) expressly state that the creditor must present the
11-41 claim before the 121st day [~~within four months~~] after the date of
11-42 the receipt of the notice or the claim is barred, if the claim is not
11-43 barred by the general statutes of limitation; and

11-44 (2) include:

11-45 (A) the date the letters testamentary or of
11-46 administration held by the personal representative were issued to
11-47 the representative;

11-48 (B) the address to which the claim may be
11-49 presented; and

11-50 (C) an instruction of the representative's
11-51 choice that the claim be addressed in care of:

11-52 (i) the representative;

11-53 (ii) the representative's attorney; or

11-54 (iii) "Representative, Estate of _____"

11-55 (naming the estate).

11-56 SECTION 41. Section 309.051(a), Estates Code, as effective
11-57 January 1, 2014, is amended to read as follows:

11-58 (a) Except as provided by Subsection (c) or Section 309.056
11-59 or unless a longer period is granted by the court, before the 91st
11-60 day after the date the personal representative qualifies, the
11-61 representative shall prepare and file with the court clerk a single
11-62 written instrument that contains a verified, full, and detailed
11-63 inventory of all estate property that has come into the
11-64 representative's possession or of which the representative has
11-65 knowledge. The inventory must:

11-66 (1) include:

11-67 (A) all estate real property located in this
11-68 state; and

11-69 (B) all estate personal property regardless of

12-1 where the property is located; and

12-2 (2) specify which portion of the property, if any, is
12-3 separate property and which, if any, is community property.

12-4 SECTION 42. Section 309.056, Estates Code, as effective
12-5 January 1, 2014, is amended by amending Subsection (b) and adding
12-6 Subsection (d) to read as follows:

12-7 (b) Notwithstanding Sections 309.051 and 309.052, or any
12-8 contrary provision in a decedent's will that does not specifically
12-9 prohibit the filing of an affidavit described by this subsection,
12-10 if there are no unpaid debts, except for secured debts, taxes, and
12-11 administration expenses, at the time the inventory is due,
12-12 including any extensions, an independent executor may file with the
12-13 court clerk, in lieu of the inventory, appraisalment, and list of
12-14 claims, an affidavit stating that all debts, except for secured
12-15 debts, taxes, and administration expenses, are paid and that all
12-16 beneficiaries have received a verified, full, and detailed
12-17 inventory and appraisalment. The affidavit in lieu of the
12-18 inventory, appraisalment, and list of claims must be filed within
12-19 the 90-day period prescribed by Section 309.051(a), unless the
12-20 court grants an extension.

12-21 (d) An independent executor is not liable for choosing to
12-22 file:

12-23 (1) an affidavit under this section in lieu of filing
12-24 an inventory, appraisalment, and list of claims, if permitted by
12-25 law; or

12-26 (2) an inventory, appraisalment, and list of claims in
12-27 lieu of filing an affidavit under this section.

12-28 SECTION 43. Subchapter B, Chapter 309, Estates Code, as
12-29 effective January 1, 2014, is amended by adding Section 309.057 to
12-30 read as follows:

12-31 Sec. 309.057. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY,
12-32 APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This
12-33 section applies only to a personal representative, including an
12-34 independent executor or administrator, who does not file an
12-35 inventory, appraisalment, and list of claims or affidavit in lieu of
12-36 the inventory, appraisalment, and list of claims, as applicable,
12-37 within the period prescribed by Section 309.051 or any extension
12-38 granted by the court.

12-39 (b) Any person interested in the estate on written
12-40 complaint, or the court on the court's own motion, may have a
12-41 personal representative to whom this section applies cited to file
12-42 the inventory, appraisalment, and list of claims or affidavit in
12-43 lieu of the inventory, appraisalment, and list of claims, as
12-44 applicable, and show cause for the failure to timely file.

12-45 (c) If the personal representative does not file the
12-46 inventory, appraisalment, and list of claims or affidavit in lieu of
12-47 the inventory, appraisalment, and list of claims, as applicable,
12-48 after being cited or does not show good cause for the failure to
12-49 timely file, the court on hearing may fine the representative in an
12-50 amount not to exceed \$1,000.

12-51 (d) The personal representative and the representative's
12-52 sureties, if any, are liable for any fine imposed under this section
12-53 and for all damages and costs sustained by the representative's
12-54 failure. The fine, damages, and costs may be recovered in any court
12-55 of competent jurisdiction.

12-56 SECTION 44. Sections 309.103(a) and (b), Estates Code, as
12-57 effective January 1, 2014, are amended to read as follows:

12-58 (a) Any interested person who considers an inventory,
12-59 appraisalment, or list of claims or an affidavit in lieu of the
12-60 inventory, appraisalment, and list of claims [~~filed for the estate~~]
12-61 to be erroneous or unjust in any particular may:

12-62 (1) file a written complaint setting forth the alleged
12-63 erroneous or unjust item; and

12-64 (2) have the personal representative cited to appear
12-65 before the court and show cause why the item should not be
12-66 corrected.

12-67 (b) On the hearing of the complaint, if the court is
12-68 satisfied from the evidence that the inventory, appraisalment, or
12-69 list of claims or an affidavit in lieu of the inventory,

13-1 appraisement, and list of claims is erroneous or unjust as alleged
 13-2 in the complaint, the court shall enter an order:

13-3 (1) specifying the erroneous or unjust item and the
 13-4 corrections to be made; and

13-5 (2) if the complaint relates to an inventory,
 13-6 appraisement, or list of claims, appointing appraisers to make a
 13-7 new appraisement correcting the erroneous or unjust item and
 13-8 requiring the filing of the new appraisement before the 21st day
 13-9 after the date of the order.

13-10 SECTION 45. Section 353.101(d), Estates Code, as effective
 13-11 January 1, 2014, is amended to read as follows:

13-12 (d) A family allowance may not be made for:

13-13 (1) the decedent's surviving spouse, if the surviving
 13-14 spouse has separate property adequate for the surviving spouse's
 13-15 maintenance;

13-16 (2) the decedent's minor children, if the minor
 13-17 children have property in their own right adequate for the
 13-18 children's maintenance; or

13-19 (3) any of the decedent's adult incapacitated
 13-20 children, if:

13-21 (A) the adult incapacitated child has property in
 13-22 the person's own right adequate for the person's maintenance; or

13-23 (B) at the time of the decedent's death, the
 13-24 decedent was not supporting the adult incapacitated child.

13-25 SECTION 46. Section 355.060, Estates Code, as effective
 13-26 January 1, 2014, is amended to read as follows:

13-27 Sec. 355.060. UNSECURED CLAIMS BARRED UNDER CERTAIN
 13-28 CIRCUMSTANCES. If a personal representative gives a notice
 13-29 permitted by Section 308.054 to an unsecured creditor for money and
 13-30 the creditor's claim is not presented before the 121st day [~~within~~
 13-31 ~~four months~~] after the date of receipt of the notice, the claim is
 13-32 barred.

13-33 SECTION 47. Section 361.155, Estates Code, as effective
 13-34 January 1, 2014, is amended by amending Subsection (b) and adding
 13-35 Subsection (c) to read as follows:

13-36 (b) Except as otherwise provided by this subsection, an
 13-37 appointee who files an inventory, appraisement, and list of claims
 13-38 under Subsection (a) shall set out in the inventory the appointee's
 13-39 appraisement of the fair market value of each item in the inventory
 13-40 on the date of the appointee's qualification. If an inventory,
 13-41 appraisement, and list of claims has not been filed by any former
 13-42 personal representative, the appointee shall set out the inventory
 13-43 as provided by Sections 309.051 and 309.052.

13-44 (c) On the application of any person interested in the
 13-45 estate, the court shall, in an order appointing a successor
 13-46 representative of an estate, appoint appraisers as in an original
 13-47 appointment.

13-48 SECTION 48. Section 362.005, Estates Code, as effective
 13-49 January 1, 2014, is amended to read as follows:

13-50 Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF
 13-51 ACCOUNT. (a) On the presentation of an account for final settlement
 13-52 by a temporary or permanent personal representative, the county
 13-53 clerk shall issue citation to the persons and in the manner provided
 13-54 by Subsection (b) [~~Subsections (c) and (d)~~].

13-55 (b) Citation issued under Subsection (a) must:

13-56 (1) contain:

13-57 (A) [~~(1)~~] a statement that an account for final
 13-58 settlement has been presented;

13-59 (B) [~~(2)~~] the time and place the court will
 13-60 consider the account; and

13-61 (C) [~~(3)~~] a statement requiring the person cited
 13-62 to appear and contest the account, if the person wishes to contest
 13-63 the account; and

13-64 (2) be given[-

13-65 [~~(c) The personal representative shall give notice~~] to each
 13-66 heir or beneficiary of the decedent by certified mail, return
 13-67 receipt requested, unless the court by written order directs
 13-68 another method of service [~~type of notice~~] to be given[~~. The notice~~
 13-69 ~~must include a copy of the account for final settlement~~].

14-1 (c) The personal representative shall also provide to each
 14-2 person entitled to citation under Subsection (b) a copy of the
 14-3 account for final settlement either by:

- 14-4 (1) certified mail, return receipt requested; or
- 14-5 (2) electronic delivery, including facsimile or
- 14-6 e-mail.

14-7 (d) The court by written order shall require additional
 14-8 notice if the court considers the additional notice necessary.

14-9 (e) The court may allow the waiver of citation [~~notice~~] of
 14-10 an account for final settlement in a proceeding concerning a
 14-11 decedent's estate.

14-12 (f) The personal representative shall file an affidavit
 14-13 sworn to by the personal representative or a certificate signed by
 14-14 the personal representative's attorney stating:

- 14-15 (1) that the citation was given as required by this
- 14-16 section;
- 14-17 (2) the name of each person to whom the citation was
- 14-18 given, if the person's name is not shown on the proof of delivery;
- 14-19 (3) the name of each person executing a waiver of
- 14-20 citation; and
- 14-21 (4) that each person entitled to citation was provided
- 14-22 a copy of the account for final settlement, indicating the method of
- 14-23 delivery for each person.

14-24 SECTION 49. Section 362.011, Estates Code, as effective
 14-25 January 1, 2014, is amended to read as follows:

14-26 Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT
 14-27 IN COURT'S REGISTRY. (a) If, on final settlement of an estate, any
 14-28 of the estate remains in the personal representative's possession,
 14-29 the court shall order that a partition and distribution be made
 14-30 among the persons entitled to receive that part of the estate.

14-31 (b) The court shall order the personal representative to
 14-32 convert into money any remaining nonmonetary assets to which a
 14-33 person who is unknown or missing is entitled. The procedures in
 14-34 Chapter 356 apply to the conversion of nonmonetary assets under
 14-35 this subsection.

14-36 (c) The court shall order the personal representative to
 14-37 deposit in an account in the court's registry all money, including
 14-38 the proceeds of any conversion under Subsection (b), to which a
 14-39 person who is unknown or missing is entitled. The court shall hold
 14-40 money deposited in an account under this subsection until the court
 14-41 renders:

- 14-42 (1) an order requiring money in the account to be paid
- 14-43 to the previously unknown or missing person who is entitled to the
- 14-44 money; or
- 14-45 (2) another order regarding the disposition of the
- 14-46 money.

14-47 SECTION 50. Section 362.013, Estates Code, as effective
 14-48 January 1, 2014, is amended to read as follows:

14-49 Sec. 362.013. DISCHARGE OF PERSONAL REPRESENTATIVE WHEN
 14-50 ESTATE FULLY ADMINISTERED. The court shall enter an order
 14-51 discharging a personal representative from the representative's
 14-52 trust and declaring the estate closed when:

14-53 (1) the representative has fully administered the
 14-54 estate in accordance with this title and the court's orders;

14-55 (2) the representative's account for final settlement
 14-56 has been approved; and

14-57 (3) the representative has:
 14-58 (A) delivered all of the estate remaining in the
 14-59 representative's possession to the person or persons entitled to
 14-60 receive that part of the estate; and
 14-61 (B) with respect to the portion of the estate
 14-62 distributable to an unknown or missing person, complied with an
 14-63 order of the court under Section 362.011.

14-64 SECTION 51. Section 401.001(a), Estates Code, as effective
 14-65 January 1, 2014, is amended to read as follows:

14-66 (a) Any person capable of making a will may provide in the
 14-67 person's will that no other action shall be had in the probate court
 14-68 in relation to the settlement of the person's estate than the
 14-69 probating and recording of the will and the return of any required

15-1 [~~an~~] inventory, appraisal, and list of claims of the person's
15-2 estate.

15-3 SECTION 52. Section 401.004(d), Estates Code, as effective
15-4 January 1, 2014, is amended to read as follows:

15-5 (d) If a trust is created in the decedent's will or if the
15-6 decedent's will devises property to a trustee as described by
15-7 Section 254.001, the person or class of persons entitled to receive
15-8 property outright from the trust on the decedent's death and those
15-9 first eligible to receive the income from the trust, when
15-10 determined as if the trust were to be in existence on the date of the
15-11 decedent's death, shall, for the purposes of Section 401.002, be
15-12 considered to be the distributee or distributees on behalf of the
15-13 trust, and any other trust or trusts coming into existence on the
15-14 termination of the trust, and are authorized to apply for
15-15 independent administration on behalf of the trusts without the
15-16 consent or agreement of the trustee or any other beneficiary of the
15-17 trust, or the trustee or any beneficiary of any other trust which
15-18 may come into existence on the termination of the trust. If a trust
15-19 beneficiary who is considered to be a distributee under this
15-20 subsection is an incapacitated person, the trustee or cotrustee may
15-21 file the application or give the consent, provided that the trustee
15-22 or cotrustee is not the person proposed to serve as the independent
15-23 executor.

15-24 SECTION 53. Section 401.006, Estates Code, as effective
15-25 January 1, 2014, is amended to read as follows:

15-26 Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a
15-27 situation in which a decedent does not have a will, or a decedent's
15-28 will does not contain language authorizing the personal
15-29 representative to sell [~~real~~] property or contains language that is
15-30 not sufficient to grant the representative that authority, the
15-31 court may include in an order appointing an independent executor
15-32 under Section 401.002 or 401.003 any general or specific authority
15-33 regarding the power of the independent executor to sell [~~real~~]
15-34 property that may be consented to by the beneficiaries who are to
15-35 receive any interest in the [~~real~~] property in the application for
15-36 independent administration or in their consents to the independent
15-37 administration. The independent executor, in such event, may sell
15-38 the [~~real~~] property under the authority granted in the court order
15-39 without the further consent of those beneficiaries.

15-40 SECTION 54. Section 403.055, Estates Code, as effective
15-41 January 1, 2014, is amended to read as follows:

15-42 Sec. 403.055. CERTAIN UNSECURED CLAIMS; BARRING OF CLAIMS.
15-43 An unsecured creditor who has a claim for money against an estate
15-44 and who receives a notice under Section 308.054 shall give to the
15-45 independent executor notice of the nature and amount of the claim
15-46 before the 121st [~~not later than the 120th~~] day after the date the
15-47 notice is received or the claim is barred.

15-48 SECTION 55. Section 403.056(a), Estates Code, as effective
15-49 January 1, 2014, is amended to read as follows:

15-50 (a) Notice to the independent executor required by Sections
15-51 403.052 and 403.055 must be contained in:

15-52 (1) a written instrument that complies with Section
15-53 355.004 and is hand-delivered with proof of receipt, or mailed by
15-54 certified mail, return receipt requested with proof of receipt, to
15-55 the independent executor or the executor's attorney;

15-56 (2) a pleading filed in a lawsuit with respect to the
15-57 claim; or

15-58 (3) a written instrument that complies with Section
15-59 355.004 or a pleading filed in the court in which the administration
15-60 of the estate is pending.

15-61 SECTION 56. Section 404.001(a), Estates Code, as effective
15-62 January 1, 2014, is amended to read as follows:

15-63 (a) At any time after the expiration of 15 months after the
15-64 date that the court clerk first issues letters testamentary or of
15-65 administration to any personal representative of an estate [~~an~~
15-66 ~~independent administration was created and the order appointing an~~
15-67 ~~independent executor was entered by the probate court~~], any person
15-68 interested in the estate may demand an accounting from the
15-69 independent executor. The independent executor shall furnish to

16-1 the person or persons making the demand an exhibit in writing, sworn
 16-2 and subscribed by the independent executor, setting forth in
 16-3 detail:

16-4 (1) the property belonging to the estate that has come
 16-5 into the executor's possession as executor;

16-6 (2) the disposition that has been made of the property
 16-7 described by Subdivision (1);

16-8 (3) the debts that have been paid;

16-9 (4) the debts and expenses, if any, still owing by the
 16-10 estate;

16-11 (5) the property of the estate, if any, still
 16-12 remaining in the executor's possession;

16-13 (6) other facts as may be necessary to a full and
 16-14 definite understanding of the exact condition of the estate; and

16-15 (7) the facts, if any, that show why the
 16-16 administration should not be closed and the estate distributed.

16-17 SECTION 57. Chapter 404, Estates Code, as effective January
 16-18 1, 2014, is amended by amending Section 404.003 and adding Sections
 16-19 404.0035, 404.0036, and 404.0037 to read as follows:

16-20 Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR WITHOUT
 16-21 NOTICE. The probate court, on the court's own motion or on the
 16-22 motion of any interested person, and without notice, may remove an
 16-23 independent executor appointed under this subtitle when:

16-24 (1) the independent executor cannot be served with
 16-25 notice or other processes because:

16-26 (A) the independent executor's whereabouts are
 16-27 unknown;

16-28 (B) the independent executor is eluding service;

16-29 or

16-30 (C) the independent executor is a nonresident of
 16-31 this state without a designated resident agent; or

16-32 (2) sufficient grounds appear to support a belief that
 16-33 the independent executor has misapplied or embezzled, or is about
 16-34 to misapply or embezzle, all or part of the property committed to
 16-35 the independent executor's care.

16-36 Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.

16-37 (a) The probate court, on the court's own motion, may remove an
 16-38 independent executor appointed under this subtitle after providing
 16-39 30 days' written notice of the court's intent to remove the
 16-40 independent executor, by certified mail, return receipt requested,
 16-41 to the independent executor's last known address and to the last
 16-42 known address of the independent executor's attorney of record, if
 16-43 the independent executor:

16-44 (1) neglects to qualify in the manner and time
 16-45 required by law; or

16-46 (2) fails to return, before the 91st day after the date
 16-47 the independent executor qualifies, either an inventory of the
 16-48 estate property and a list of claims that have come to the
 16-49 independent executor's knowledge or an affidavit in lieu of the
 16-50 inventory, appraisal, and list of claims, unless that deadline
 16-51 is extended by court order.

16-52 (b) The probate court, on its own motion or on motion of any
 16-53 interested person, after the independent executor has been cited by
 16-54 personal service to answer at a time and place fixed in the notice,
 16-55 may remove an independent executor when:

16-56 (1) ~~the independent executor fails to return within~~
 16-57 ~~90 days after qualification, unless such time is extended by order~~
 16-58 ~~of the court, either an inventory of the property of the estate and~~
 16-59 ~~list of claims that have come to the independent executor's~~
 16-60 ~~knowledge or an affidavit in lieu of the inventory, appraisal,~~
 16-61 ~~and list of claims,~~

16-62 ~~(2) sufficient grounds appear to support belief that~~
 16-63 ~~the independent executor has misapplied or embezzled, or that the~~
 16-64 ~~independent executor is about to misapply or embezzle, all or any~~
 16-65 ~~part of the property committed to the independent executor's care,~~

16-66 ~~(3) the independent executor fails to make an~~
 16-67 ~~accounting which is required by law to be made;~~

16-68 ~~(4) the independent executor fails to timely~~
 16-69 ~~file the affidavit or certificate required by Section 308.004;~~

17-1 (3) [~~4~~] the independent executor is proved to have
17-2 been guilty of gross misconduct or gross mismanagement in the
17-3 performance of the independent executor's duties;

17-4 (4) [~~6~~] the independent executor becomes an
17-5 incapacitated person, or is sentenced to the penitentiary, or from
17-6 any other cause becomes legally incapacitated from properly
17-7 performing the independent executor's fiduciary duties; or

17-8 (5) [~~7~~] the independent executor becomes incapable
17-9 of properly performing the independent executor's fiduciary duties
17-10 due to a material conflict of interest.

17-11 Sec. 404.0036. REMOVAL ORDER. (a) [~~b~~] The order of
17-12 removal of an independent executor shall state the cause of removal
17-13 and shall direct by order the disposition of the assets remaining in
17-14 the name or under the control of the removed independent
17-15 executor. The order of removal shall require that letters issued
17-16 to the removed independent executor shall be surrendered and that
17-17 all letters shall be canceled of record.

17-18 (b) If an independent executor is removed by the court under
17-19 Section 404.003 or 404.0035 [~~this section~~], the court may, on
17-20 application, appoint a successor independent executor as provided
17-21 by Section 404.005.

17-22 Sec. 404.0037. COSTS AND EXPENSES RELATED TO REMOVAL OF
17-23 INDEPENDENT EXECUTOR. (a) [~~c~~] An independent executor who
17-24 defends an action for the independent executor's removal in good
17-25 faith, whether successful or not, shall be allowed out of the estate
17-26 the independent executor's necessary expenses and disbursements,
17-27 including reasonable attorney's fees, in the removal proceedings.

17-28 (b) [~~d~~] Costs and expenses incurred by the party seeking
17-29 removal that are incident to removal of an independent executor
17-30 appointed without bond, including reasonable attorney's fees and
17-31 expenses, may be paid out of the estate.

17-32 SECTION 58. Sections 404.005(b) and (c), Estates Code, as
17-33 effective January 1, 2014, are amended to read as follows:

17-34 (b) Except as otherwise provided by this subsection, if [~~f~~]
17-35 a distributee described in this section is an incapacitated person,
17-36 the guardian of the person of the distributee may sign the
17-37 application on behalf of the distributee. If the probate court
17-38 finds that either the continuing of independent administration or
17-39 the appointment of the person, firm, or corporation designated in
17-40 the application as successor independent executor would not be in
17-41 the best interest of the incapacitated person, then,
17-42 notwithstanding Subsection (a), the court may not enter an order
17-43 continuing independent administration of the estate. If the
17-44 distributee is an incapacitated person and has no guardian of the
17-45 person, the court may appoint a guardian ad litem to make
17-46 application on behalf of the incapacitated person if the probate
17-47 court considers such an appointment necessary to protect the
17-48 interest of that distributee. If a distributee described in this
17-49 section is a minor and has no guardian of the person, a natural
17-50 guardian of the minor may sign the application for the order
17-51 continuing independent administration on the minor's behalf unless
17-52 a conflict of interest exists between the minor and the natural
17-53 guardian.

17-54 (c) Except as otherwise provided by this subsection, if [~~f~~]
17-55 a trust is created in the decedent's will or if the decedent's will
17-56 devises property to a trustee as described by Section 254.001, the
17-57 person or class of persons entitled to receive property outright
17-58 from the trust on the decedent's death and those first eligible to
17-59 receive the income from the trust, determined as if the trust were
17-60 to be in existence on the date of the filing of the application for
17-61 an order continuing independent administration, shall, for the
17-62 purposes of this section, be considered to be the distributee or
17-63 distributees on behalf of the trust, and any other trust or trusts
17-64 coming into existence on the termination of the trust, and are
17-65 authorized to apply for an order continuing independent
17-66 administration on behalf of the trust without the consent or
17-67 agreement of the trustee or any other beneficiary of the trust, or
17-68 the trustee or any beneficiary of any other trust which may come
17-69 into existence on the termination of the trust. If a person

18-1 considered to be a distributee under this subsection is an
 18-2 incapacitated person, the trustee or cotrustee may apply for the
 18-3 order continuing independent administration or sign the
 18-4 application on the incapacitated person's behalf if the trustee or
 18-5 cotrustee is not the person proposed to serve as the independent
 18-6 executor.

18-7 SECTION 59. Section 405.001(b), Estates Code, as effective
 18-8 January 1, 2014, is amended to read as follows:

18-9 (b) On receipt of the accounting and, after notice to the
 18-10 independent executor and a hearing, unless the court finds a
 18-11 continued necessity for administration of the estate, the court
 18-12 shall order its distribution by the independent executor to the
 18-13 distributees entitled to the property. If the court finds there is
 18-14 a continued necessity for administration of the estate, the court
 18-15 shall order the distribution of any portion of the estate that the
 18-16 court finds should not be subject to further administration by the
 18-17 independent executor. If any portion of the estate that is ordered
 18-18 to be distributed is incapable of distribution without prior
 18-19 partition or sale, the court may:

18-20 (1) [shall] order partition and distribution, or sale,
 18-21 in the manner provided for the partition and distribution of
 18-22 property incapable of division in supervised estates; or

18-23 (2) order distribution of that portion of the estate
 18-24 incapable of distribution without prior partition or sale in
 18-25 undivided interests.

18-26 SECTION 60. Section 551.001(a), Estates Code, as effective
 18-27 January 1, 2014, is amended to read as follows:

18-28 (a) The court, by written order, shall require the executor
 18-29 or administrator of an estate to pay to the comptroller as provided
 18-30 by this subchapter the share of that estate of a person entitled to
 18-31 that share who does not demand the share, including any portion
 18-32 deposited in an account in the court's registry under Section
 18-33 362.011(c), from the executor or administrator within six months
 18-34 after the date of, as applicable:

18-35 (1) a court order approving the report of the
 18-36 commissioners of partition made under Section 360.154; or

18-37 (2) the settlement of the final account of the
 18-38 executor or administrator.

18-39 SECTION 61. Section 122.057, Estates Code, as effective
 18-40 January 1, 2014, is repealed.

18-41 SECTION 62. (a) The changes in law made by Section 111.051,
 18-42 Estates Code, as amended by this Act, and Section 111.054, Estates
 18-43 Code, as added by this Act, represent the fundamental policy of this
 18-44 state for the protection of its residents and are intended to
 18-45 prevail over the laws of another state or jurisdiction, to the
 18-46 extent those laws are in conflict with Texas law.

18-47 (b) The changes in law made by Section 111.051, Estates
 18-48 Code, as amended by this Act, and Section 111.054, Estates Code, as
 18-49 added by this Act, apply to an account at a financial institution,
 18-50 an insurance contract, an annuity contract, a retirement account, a
 18-51 beneficiary designation, or another similar arrangement of a person
 18-52 who dies on or after the effective date of this Act.

18-53 SECTION 63. (a) Section 21.005(b), Estates Code, as added
 18-54 by this Act, applies only to a will executed on or after the
 18-55 effective date of this Act. A will executed before the effective
 18-56 date of this Act is governed by the law in effect on the date the
 18-57 will was executed, and the former law is continued in effect for
 18-58 that purpose.

18-59 (b) The changes in law made by this Act to Sections 204.151
 18-60 and 204.152, Estates Code, apply only to a proceeding to declare
 18-61 heirship commenced on or after January 1, 2014. A proceeding to
 18-62 declare heirship commenced before that date is governed by the law
 18-63 in effect on the date the proceeding was commenced, and the former
 18-64 law is continued in effect for that purpose.

18-65 (c) The changes in law made by this Act to Section
 18-66 304.001(c), Estates Code, apply only to an application for the
 18-67 grant of letters testamentary or of administration of a decedent's
 18-68 estate filed on or after January 1, 2014. An application for the
 18-69 grant of letters testamentary or of administration of a decedent's

19-1 estate filed before that date is governed by the law in effect on
 19-2 the date the application was filed, and the former law is continued
 19-3 in effect for that purpose.

19-4 (d) The changes in law made by Sections 32.006, 256.052,
 19-5 256.053, 256.054, 256.152(c), 256.153, 256.154, 256.155(a),
 19-6 256.156, 256.203, 257.052, 257.053, 401.001(a), 401.004(d), and
 19-7 401.006, Estates Code, as amended by this Act, and Section 53.107,
 19-8 Estates Code, as added by this Act, apply only to an action filed or
 19-9 other proceeding commenced on or after the effective date of this
 19-10 Act. An action filed or other proceeding commenced before the
 19-11 effective date of this Act is governed by the law in effect on the
 19-12 date the action was filed or the proceeding was commenced, and the
 19-13 former law is continued in effect for that purpose.

19-14 (e) The changes in law made by Sections 51.203(c), 53.104,
 19-15 305.002(a), 305.003, 308.054(b), 309.051(a), 309.056, 309.103(a),
 19-16 and (b), 355.060, 361.155(b), 362.005, 362.011, 362.013,
 19-17 404.001(a), 404.003, 404.005(b) and (c), 405.001(b), and
 19-18 551.001(a), Estates Code, as amended by this Act, and Sections
 19-19 253.001(c), 301.155, 305.004, 309.057, 361.155(c), 404.0035,
 19-20 404.0036, and 404.0037, Estates Code, as added by this Act, apply to
 19-21 the administration of the estate of a decedent that is pending or
 19-22 commenced on or after the effective date of this Act.

19-23 (f) The changes in law made by Sections 102.004, 201.001(f)
 19-24 and (g), 201.051, 201.052(b), 202.004, 202.009, 202.056, 202.151,
 19-25 353.101(d), 403.055, and 403.056(a), Estates Code, as amended by
 19-26 this Act, and Sections 201.001(i) and (j), 201.052(a-1), 202.0025,
 19-27 and 202.057, Estates Code, as added by this Act, apply only to the
 19-28 estate of a decedent who dies on or after the effective date of this
 19-29 Act. The estate of a decedent who dies before the effective date of
 19-30 this Act is governed by the law in effect on the date of the
 19-31 decedent's death, and the former law is continued in effect for that
 19-32 purpose.

19-33 (g) Section 202.0025, Estates Code, as added by this Act, is
 19-34 intended to clarify current law in regard to the commencement of
 19-35 proceedings to declare heirship, and an inference may not be made
 19-36 regarding the statute of limitations for a proceeding to declare
 19-37 heirship filed before the effective date of this Act.

19-38 (h) An inference may not be made from the changes in law made
 19-39 by this Act to Section 401.006, Estates Code, as to whether an
 19-40 independent executor had the authority to sell personal property of
 19-41 the estate in a probate proceeding filed before the effective date
 19-42 of this Act.

19-43 SECTION 64. To the extent of any conflict, this Act prevails
 19-44 over another Act of the 83rd Legislature, Regular Session, 2013,
 19-45 relating to nonsubstantive additions to and corrections in enacted
 19-46 codes.

19-47 SECTION 65. This Act takes effect January 1, 2014.

19-48

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