

By: Rodríguez

S.B. No. 1208

A BILL TO BE ENTITLED

AN ACT

relating to decedents' estates, transfer on death deeds, and matters involving probate courts.

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

SECTION 1. Chapter 111, Estates Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. PROVISION OF CERTAIN INFORMATION ON DEATH

Sec. 111.101. DEFINITIONS. In this subchapter:

(1) "Contracting third party" has the meaning assigned by Section 111.051.

(2) "Deceased party" means a deceased:

(A) party to a multiple-party account governed by Chapter 113;

(B) owner of property subject to a possible nontestamentary transfer as described by Section 111.051(1); or

(C) insured under an insurance contract.

Sec. 111.102. PROVISION OF INFORMATION TO PERSONAL REPRESENTATIVE OF DECEASED PARTY. To the extent not prohibited by federal or other state law, a contracting third party shall, on request, provide to the personal representative of a deceased party's estate all information the contracting third party would have provided to the deceased party as of the date of the deceased party's death, if the deceased party had requested the information, without regard to whether the deceased party's estate has an

1 interest in the multiple-party account, the property subject to a  
2 possible nontestamentary transfer, or the insurance contract.

3 SECTION 2. Section 113.252(c), Estates Code, is amended to  
4 read as follows:

5 (c) Any proceeding by the personal representative of a  
6 deceased party to assert liability under Subsection (b):

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

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

13 SECTION 3. Section 114.102, Estates Code, is amended to  
14 read as follows:

15 Sec. 114.102. EFFECT OF SUBSEQUENT CONVEYANCE ON TRANSFER  
16 ON DEATH DEED. An otherwise valid transfer on death deed is void as  
17 to any interest in real property that is conveyed by the transferor  
18 during the transferor's lifetime after the transfer on death deed  
19 is executed and recorded if:

20 (1) a valid instrument conveying the interest or a  
21 memorandum sufficient to give notice of the conveyance of the  
22 interest is recorded in the deed records in the county clerk's  
23 office of the same county in which the transfer on death deed is  
24 recorded; and

25 (2) the recording of the instrument or memorandum  
26 occurs before the transferor's death.

27 SECTION 4. Section 201.003(c), Estates Code, is amended to

1 read as follows:

2 (c) If the deceased spouse is survived by a child or other  
3 descendant who is not also a child or other descendant of the  
4 surviving spouse, the deceased spouse's undivided one-half  
5 interest in the community estate [~~one-half of the community estate~~  
6 ~~is retained by the surviving spouse and the other one-half~~] passes  
7 to the deceased spouse's children or other descendants. The  
8 descendants inherit only the portion of that estate to which they  
9 would be entitled under Section 201.101. In every case, the  
10 community estate passes charged with the debts against the  
11 community estate.

12 SECTION 5. Section 202.151, Estates Code, is amended by  
13 amending Subsection (b) and adding Subsection (c) to read as  
14 follows:

15 (b) Except as provided by Subsection (c), [Testimony] in a  
16 proceeding to declare heirship, testimony regarding a decedent's  
17 heirs and family history must be taken from two disinterested and  
18 credible witnesses in open court, by deposition in accordance with  
19 Section 51.203, or in accordance with the Texas Rules of Civil  
20 Procedure.

21 (c) If it is shown to the court's satisfaction in a  
22 proceeding to declare heirship that, after a diligent search was  
23 made, only one disinterested and credible witness can be found who  
24 can make the required proof in the proceeding, the testimony of that  
25 witness must be taken in open court, by deposition in accordance  
26 with Section 51.203, or in accordance with the Texas Rules of Civil  
27 Procedure.

1 SECTION 6. The heading to Chapter 254, Estates Code, is  
2 amended to read as follows:

3 CHAPTER 254. ~~[VALIDITY OF]~~ CERTAIN PROVISIONS IN, AND CONTRACTS  
4 RELATING TO, WILLS

5 SECTION 7. Chapter 254, Estates Code, is amended by adding  
6 Section 254.006 to read as follows:

7 Sec. 254.006. DESIGNATION OF ADMINISTRATOR. (a) A  
8 testator in a will may grant to an executor named in the will or to  
9 another person identified by name, office, or function the  
10 authority to designate one or more persons to serve as  
11 administrator of the testator's estate.

12 (b) To be effective, a designation of an administrator of a  
13 testator's estate as authorized by a will under Subsection (a) must  
14 be in writing and acknowledged before an officer authorized to take  
15 acknowledgments and administer oaths.

16 (c) Unless the will provides otherwise, a person designated  
17 to serve as administrator of a testator's estate as provided by  
18 Subsection (a) is qualified to serve only if:

- 19 (1) each executor named in the testator's will:  
20 (A) is deceased;  
21 (B) is disqualified to serve as executor; or  
22 (C) indicates by affidavit filed with the county  
23 clerk of the county in which the application for letters  
24 testamentary is filed or, if an application has not been filed, a  
25 county described by Section 33.001(a)(1) or (2) the executor's  
26 inability or unwillingness to serve as executor;

27 (2) the designation is effective as provided by

1 Subsection (b); and

2 (3) the person is not disqualified from serving under  
3 Section 304.003.

4 (d) Unless the will or designation provides otherwise, a  
5 person designated as administrator of a testator's estate as  
6 provided by this section has the same rights, powers, and duties as  
7 an executor named in the will, including the right to serve as an  
8 independent administrator with the power to sell property without  
9 the need for consent of the distributees under Section 401.002 or  
10 401.006.

11 SECTION 8. Subchapter J, Chapter 255, Estates Code, is  
12 amended by adding Section 255.456 to read as follows:

13 Sec. 255.456. TRANSFER OF PROCEEDING. (a) To the extent  
14 that this section conflicts with other provisions of this title,  
15 this section prevails.

16 (b) In a county in which there is no statutory probate court  
17 or county court at law exercising original probate jurisdiction, if  
18 a personal representative petitions the county court to modify or  
19 reform the terms of a will, the judge of the county court may, on the  
20 judge's own motion, or shall, on the motion of any party to the  
21 proceeding, transfer the proceeding to the district court, which  
22 may then hear the proceeding as if originally filed in the district  
23 court. A district court to which a proceeding is transferred under  
24 this subsection has the jurisdiction and authority granted to a  
25 statutory probate court by Subtitle A.

26 (c) In a county in which there is no statutory probate  
27 court, but in which there is a county court at law exercising

1 original probate jurisdiction, if a personal representative  
2 petitions the county court to modify or reform the terms of a will,  
3 the judge of the county court may, on the judge's own motion, or  
4 shall, on the motion of any party to the proceeding, transfer the  
5 proceeding to the county court at law, which may then hear the  
6 proceeding as if originally filed in the county court at law.

7 (d) The county court shall continue to exercise  
8 jurisdiction over the management of the estate, other than the  
9 modification or reformation proceeding, until final disposition of  
10 the modification or reformation proceeding is made in accordance  
11 with this subchapter.

12 (e) On resolution of the modification or reformation  
13 proceeding, the district court or county court at law to which the  
14 proceeding is transferred under this section shall return the  
15 matter to the county court for further proceedings not inconsistent  
16 with the orders of the district court or county court at law.

17 (f) The clerk of a district court to which a modification or  
18 reformation proceeding is transferred under this section may  
19 perform in relation to the proceeding any function a county clerk  
20 may perform with respect to that type of matter.

21 SECTION 9. Section 256.051(a), Estates Code, is amended to  
22 read as follows:

23 (a) An executor named in a will, an administrator designated  
24 as authorized under Section 254.006, an independent administrator  
25 designated by all of the distributees of the decedent under Section  
26 401.002(b), or an interested person may file an application with  
27 the court for an order admitting a will to probate, whether the will

1 is:

- 2 (1) [~~written or unwritten,~~
- 3 [~~2~~] in the applicant's possession or not;
- 4 (2) [~~3~~] lost;
- 5 (3) [~~4~~] destroyed; or
- 6 (4) [~~5~~] outside of this state.

7 SECTION 10. Section 256.052(a), Estates Code, is amended to  
8 read as follows:

9 (a) An application for the probate of a will must state and  
10 aver the following to the extent each is known to the applicant or  
11 can, with reasonable diligence, be ascertained by the applicant:

- 12 (1) each applicant's name and domicile;
- 13 (1-a) the last three numbers of each applicant's
- 14 driver's license number and social security number, if the
- 15 applicant has been issued one [~~applicable~~];
- 16 (2) the testator's name, domicile, and, if known, age,
- 17 on the date of the testator's death;
- 18 (2-a) the last three numbers of the testator's
- 19 driver's license number and social security number;
- 20 (3) the fact, date, and place of the testator's death;
- 21 (4) facts showing that the court with which the
- 22 application is filed has venue;
- 23 (5) that the testator owned property, including a
- 24 statement generally describing the property and the property's
- 25 probable value;
- 26 (6) the date of the will;
- 27 (7) the name, state of residence, and physical address

1 where service can be had of the executor named in the will or other  
2 person to whom the applicant desires that letters be issued;

3 (8) the name of each subscribing witness to the will,  
4 if any;

5 (9) 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 (10) whether a marriage of the testator was ever  
9 dissolved after the will was made and, if so, when and from whom;

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

13 (12) that the executor named in the will, the  
14 applicant, or another person to whom the applicant desires that  
15 letters be issued is not disqualified by law from accepting the  
16 letters.

17 SECTION 11. Section 256.053(b), Estates Code, is amended to  
18 read as follows:

19 (b) A will filed under Subsection (a) must remain in the  
20 custody of the county clerk unless removed from the clerk's  
21 custody:

22 (1) by a court order under Section 256.202; or

23 (2) by a court order issued under Subchapter C,  
24 Chapter 33, in which case the clerk shall deliver the will directly  
25 to the clerk of the court to which the probate proceeding is  
26 transferred.

27 SECTION 12. Section 256.202, Estates Code, is amended to



1 read as follows:

2           Sec. 256.202. CUSTODY OF PROBATED WILL. An original will  
3 and the probate of the will shall be deposited in the office of the  
4 county clerk of the county in which the will was probated. The will  
5 and probate of the will shall remain in that office except during a  
6 time the will and the probate of the will are removed for inspection  
7 to another place on an order of the court where the will was  
8 probated. If that court orders the original will to be removed to  
9 another place for inspection:

10           (1) the person removing the will shall give a receipt  
11 for the will; ~~and~~

12           (2) the court clerk shall make and retain a copy of the  
13 will; and

14           (3) the person removing the will shall deliver the  
15 will back to the office of the county clerk after the inspection is  
16 completed.

17           SECTION 13. Section 257.051(a), Estates Code, is amended to  
18 read as follows:

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

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

24           (1-a) the last three numbers of each applicant's  
25 driver's license number and social security number, if the  
26 applicant has been issued one ~~[applicable]~~;

27           (2) the testator's name, domicile, and, if known, age,

1 on the date of the testator's death;

2 (2-a) the last three numbers of the testator's  
3 driver's license number and social security number;

4 (3) the fact, date, and place of the testator's death;

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

7 (5) that the testator owned property, including a  
8 statement generally describing the property and the property's  
9 probable value;

10 (6) the date of the will;

11 (7) the name, state of residence, and physical address  
12 where service can be had of the executor named in the will;

13 (8) the name of each subscribing witness to the will,  
14 if any;

15 (9) whether one or more children born to or adopted by  
16 the testator after the testator executed the will survived the  
17 testator and, if so, the name of each of those children;

18 (10) that the testator's estate does not owe an unpaid  
19 debt, other than any debt secured by a lien on real estate, or that  
20 for another reason there is no necessity for administration of the  
21 estate;

22 (11) whether a marriage of the testator was ever  
23 dissolved after the will was made and, if so, when and from whom;  
24 and

25 (12) whether the state, a governmental agency of the  
26 state, or a charitable organization is named in the will as a  
27 devisee.

1 SECTION 14. Chapter 257, Estates Code, is amended by adding  
2 Subchapter D to read as follows:

3 SUBCHAPTER D. SUBSEQUENT ESTATE ADMINISTRATION

4 Sec. 257.151. APPOINTMENT OF PERSONAL REPRESENTATIVE AND  
5 OPENING OF ADMINISTRATION AFTER WILL ADMITTED TO PROBATE AS  
6 MUNIMENT OF TITLE. The issuance of a court order admitting a will  
7 to probate as a muniment of title under this chapter does not  
8 preclude the subsequent appointment of a personal representative  
9 and opening of an administration for the testator's estate if:

10 (1) an application under Chapter 301 is filed not  
11 later than the fourth anniversary of the testator's death; or

12 (2) the administration of the testator's estate is  
13 necessary for a reason provided by Section 301.002(b).

14 Sec. 257.152. COMPUTATION OF CERTAIN PERIODS. If a  
15 personal representative is appointed for a testator's estate after  
16 the testator's will has been admitted to probate as a muniment of  
17 title, the periods prescribed by the following sections begin to  
18 run from the date of qualification of the personal representative  
19 rather than from the date the will is admitted to probate as a  
20 muniment of title:

21 (1) Section 306.001;

22 (2) Section 306.002(a)(2)(B)(ii);

23 (3) Section 308.002; and

24 (4) Section 308.004.

25 SECTION 15. Section 301.051, Estates Code, is amended to  
26 read as follows:

27 Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS. An

1 executor named in a will, an administrator designated as authorized  
2 under Section 254.006, an independent administrator designated by  
3 all of the distributees of the decedent under Section 401.002(b) or  
4 401.003, or an interested person may file an application with the  
5 court for:

6 (1) the appointment of the executor named in the will;  
7 (1-a) the appointment of the designated  
8 administrator; or

9 (2) the appointment of an administrator, if:

10 (A) there is a will, but:

11 (i) no executor is named in the will; ~~or~~

12 (ii) the executor named in the will is  
13 disqualified, refuses to serve, is dead, or resigns;

14 (iii) a person designated to serve as  
15 administrator under Section 254.006 is disqualified, refuses to  
16 serve, or is dead; or

17 (iv) an authorized person other than the  
18 executor has not designated any person to serve as administrator  
19 under Section 254.006 as of the date of the filing of the  
20 application and notifies the court that the person has no intention  
21 of doing so; or

22 (B) there is no will.

23 SECTION 16. Section 301.052(a), Estates Code, is amended to  
24 read as follows:

25 (a) An application for letters of administration when no  
26 will is alleged to exist must state:

27 (1) the applicant's name, domicile, and, if any,

1 relationship to the decedent;

2 (1-a) the last three numbers of:

3 (A) the applicant's driver's license number, if  
4 the applicant has been issued one [~~applicable~~]; and

5 (B) the applicant's social security number, if  
6 the applicant has been issued one [~~applicable~~];

7 (2) the decedent's name and that the decedent died  
8 intestate;

9 (2-a) if known by the applicant at the time the  
10 applicant files the application, the last three numbers of the  
11 decedent's driver's license number and social security number;

12 (3) the fact, date, and place of the decedent's death;

13 (4) facts necessary to show that the court with which  
14 the application is filed has venue;

15 (5) whether the decedent owned property and, if so,  
16 include a statement of the property's probable value;

17 (6) the name and address, if known, whether the heir is  
18 an adult or minor, and the relationship to the decedent of each of  
19 the decedent's heirs;

20 (7) if known by the applicant at the time the applicant  
21 files the application, whether one or more children were born to or  
22 adopted by the decedent and, if so, the name, birth date, and place  
23 of birth of each child;

24 (8) if known by the applicant at the time the applicant  
25 files the application, whether the decedent was ever divorced and,  
26 if so, when and from whom;

27 (9) that a necessity exists for administration of the

1 decedent's estate and an allegation of the facts that show that  
2 necessity; and

3 (10) that the applicant is not disqualified by law  
4 from acting as administrator.

5 SECTION 17. Section 301.151, Estates Code, as amended by  
6 Chapters 576 (H.B. 3160) and 949 (S.B. 995), Acts of the 84th  
7 Legislature, Regular Session, 2015, is reenacted and amended to  
8 read as follows:

9 Sec. 301.151. GENERAL PROOF REQUIREMENTS. An applicant  
10 for the issuance of letters testamentary or of administration of an  
11 estate must prove to the court's satisfaction that:

12 (1) the person whose estate is the subject of the  
13 application is dead;

14 (2) except as provided by Sections 301.002(b)(1) and  
15 (2) [Section 301.002(b)] with respect to administration necessary  
16 to receive or recover property or to prevent real property of the  
17 estate from becoming a danger [due a decedent's estate], and  
18 Section 501.006 with respect to a foreign will, ~~except as provided~~  
19 ~~by Section 301.002(b)(2),~~ four years have not elapsed since the  
20 date of the decedent's death and before the application;

21 (3) the court has jurisdiction and venue over the  
22 estate;

23 (4) citation has been served and returned in the  
24 manner and for the period required by this title; and

25 (5) the person for whom letters testamentary or of  
26 administration are sought is entitled by law to the letters and is  
27 not disqualified.

1 SECTION 18. Section 304.001(a), Estates Code, is amended to  
2 read as follows:

3 (a) The court shall grant letters testamentary or of  
4 administration to persons qualified to act, in the following order:

5 (1) the person named as executor in the decedent's  
6 will;

7 (1-a) the person designated as administrator as  
8 authorized under Section 254.006;

9 (2) the decedent's surviving spouse;

10 (3) the principal devisee of the decedent;

11 (4) any devisee of the decedent;

12 (5) the next of kin of the decedent;

13 (6) a creditor of the decedent;

14 (7) any person of good character residing in the  
15 county who applies for the letters;

16 (8) any other person who is not disqualified under  
17 Section 304.003; and

18 (9) any appointed public probate administrator.

19 SECTION 19. Subchapter C, Chapter 351, Estates Code, is  
20 amended by adding Section 351.106 to read as follows:

21 Sec. 351.106. DIGITAL ASSETS. A personal representative  
22 of a decedent's estate may apply for and obtain a court order,  
23 either at the time the personal representative is appointed or at  
24 any time before the administration of the estate is closed, that:

25 (1) directs disclosure of the content of electronic  
26 communications of the decedent to the personal representative as  
27 provided by Section 2001.101 and that contains any court finding

1 described by Section 2001.101(b)(3);

2 (2) with respect to a catalog of electronic  
3 communications sent or received by the decedent and other digital  
4 assets of the decedent, other than the content of an electronic  
5 communication, contains any court finding described by Section  
6 2001.102(b)(4); or

7 (3) directs under Section 2001.231 a custodian to  
8 comply with a request to disclose digital assets under Chapter  
9 2001.

10 SECTION 20. Sections 351.152(a) and (b), Estates Code, are  
11 amended to read as follows:

12 (a) A ~~[Except as provided by Subsection (b) and subject only~~  
13 ~~to the approval of the court in which the estate is being~~  
14 ~~administered, a]~~ personal representative may, without court  
15 approval, convey or enter into a contract to convey for attorney  
16 services a contingent interest in any property sought to be  
17 recovered, not to exceed a one-third interest in the property.

18 (b) A personal representative, including an independent  
19 executor or independent administrator, may convey or enter into a  
20 contract to convey for attorney services a contingent interest in  
21 any property sought to be recovered under this subchapter in an  
22 amount that exceeds a one-third interest in the property only on the  
23 approval of the court in which the estate is being administered.  
24 The court must approve a contract ~~[entered into]~~ or conveyance  
25 described by ~~[made under]~~ this subsection ~~[section]~~ before an  
26 attorney performs any legal services. A contract entered into or a  
27 conveyance made in violation of this subsection ~~[section]~~ is void



1 unless the court ratifies or reforms the contract or documents  
2 relating to the conveyance to the extent necessary to make the  
3 contract or conveyance meet the requirements of this subsection  
4 [~~section~~].

5 SECTION 21. The heading to Section 352.052, Estates Code,  
6 is amended to read as follows:

7 Sec. 352.052. ALLOWANCE FOR DEFENSE OR SUCCESSFUL CONTEST  
8 OF WILL.

9 SECTION 22. Section 352.052, Estates Code, is amended by  
10 adding Subsection (c) to read as follows:

11 (c) In this subsection, "interested person" does not  
12 include a creditor or any other having a claim against the estate.  
13 An interested person who, in good faith and with just cause,  
14 successfully prosecutes a proceeding to contest the validity of a  
15 will or alleged will offered for or admitted to probate may be  
16 allowed out of the estate the person's necessary expenses and  
17 disbursements in that proceeding, including reasonable attorney's  
18 fees.

19 SECTION 23. Sections 355.102(b) and (c), Estates Code, are  
20 amended to read as follows:

21 (b) Class 1 claims are composed of funeral expenses and  
22 expenses of the decedent's last illness, including claims for  
23 reimbursement of those expenses, for a reasonable amount approved  
24 by the court, not to exceed [~~a total of~~] \$15,000 for funeral  
25 expenses and \$15,000 for expenses of the decedent's last  
26 illness. Any excess shall be classified and paid as other  
27 unsecured claims.

1 (c) Class 2 claims are composed of:

2 (1) expenses of administration;

3 (2) ~~and~~ expenses incurred in preserving, safekeeping,  
4 and managing the estate, including fees and expenses awarded under  
5 Section 352.052;

6 (3) ~~and~~ unpaid expenses of administration awarded  
7 in a guardianship of the decedent; and

8 (4) for an estate with respect to which a public  
9 probate administrator has taken any action under Chapter 455, court  
10 costs and commissions to which the administrator is entitled under  
11 Subchapter A, Chapter 352.

12 SECTION 24. Section 355.103, Estates Code, is amended to  
13 read as follows:

14 Sec. 355.103. PRIORITY OF CERTAIN PAYMENTS. When a  
15 personal representative has estate funds in the representative's  
16 possession, the representative shall pay in the following order:

17 (1) funeral expenses in an amount not to exceed  
18 \$15,000 and expenses of the decedent's last illness~~and~~ in an amount  
19 not to exceed \$15,000;

20 (2) allowances made to the decedent's surviving spouse  
21 and children, or to either the surviving spouse or children;

22 (3) expenses of administration and expenses incurred  
23 in preserving, safekeeping, and managing the estate; and

24 (4) other claims against the estate in the order of the  
25 claims' classifications.

26 SECTION 25. Sections 355.1551(a) and (b), Estates Code, are  
27 amended to read as follows:

1 (a) A [~~claim~~] holder of a claim allowed and approved under  
2 Section 355.151(a)(2) who elects to take possession or sell the  
3 property securing the debt before final maturity in satisfaction of  
4 the [~~claim~~] holder's claim must do so within a reasonable time, as  
5 determined by the court.

6 (b) If the claim holder fails to take possession or sell  
7 secured property within the [~~a reasonable~~] time determined by the  
8 court under Subsection (a), on application by the personal  
9 representative, the court may require the sale of the property free  
10 of the lien and apply the proceeds to the payment of the whole debt  
11 in full satisfaction of the claim.

12 SECTION 26. Sections 356.105(a) and (b), Estates Code, are  
13 amended to read as follows:

14 (a) A sale of estate personal property shall be reported to  
15 the court. The laws regulating the approval [~~confirmation~~] or  
16 disapproval of a sale of real estate apply to the sale, except that  
17 a conveyance is not required.

18 (b) The court's order approving [~~confirming~~] the sale of  
19 estate personal property:

20 (1) vests the right and title of the intestate's estate  
21 in the purchaser who has complied with the terms of the sale; and

22 (2) is prima facie evidence that all requirements of  
23 the law in making the sale have been met.

24 SECTION 27. Subchapters I and J, Chapter 356, Estates Code,  
25 are amended to read as follows:

26 SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC AUCTION [~~SALE~~]

27 Sec. 356.401. METHOD OF SALE; REQUIRED NOTICE. (a) A

1 public sale of real estate of an estate shall be made at public  
2 auction. Except as otherwise provided by Section 356.403(c), the  
3 personal representative of an estate shall advertise a public  
4 auction [~~sale~~] of real estate of the estate by a notice published in  
5 the county in which the real estate is located and in which the  
6 auction is to be held [~~estate is pending~~], as provided by this title  
7 for publication of notices or citations. The notice must:

- 8 (1) include a reference to the order of sale;
- 9 (2) include the time, place, and required terms of  
10 sale; and
- 11 (3) briefly describe the real estate to be sold.

12 (b) The notice required by Subsection (a) is not required to  
13 contain field notes, but if the real estate to be sold is rural  
14 property, the notice must include:

- 15 (1) the name of the original survey of the real estate;
- 16 (2) the number of acres comprising the real estate;
- 17 (3) the location of the real estate in the county; and
- 18 (4) any name by which the real estate is generally  
19 known.

20 Sec. 356.402. COMPLETION [~~METHOD~~] OF AUCTION [~~SALE~~]. A  
21 public auction [~~sale~~] of real estate of an estate shall be completed  
22 on the bid of [~~made at public auction to~~] the highest bidder.

23 Sec. 356.403. TIME AND PLACE OF AUCTION [~~SALE~~]. (a) Except  
24 as provided by Subsection (c), a public auction [~~sale~~] of real  
25 estate of an estate shall be held [~~made~~] at:

- 26 (1) the courthouse door in the county in which the real  
27 estate is located, or if the real estate is located in more than one

1 county, the courthouse door in any county in which the real estate  
2 is located [~~proceedings are pending~~]; or

3 (2) another place in a [~~that~~] county described by  
4 Subdivision (1) at which auctions [~~sales~~] of real estate are  
5 specifically authorized to be held as designated by the  
6 commissioners court of the county under Section 51.002(a), Property  
7 Code [~~made~~].

8 (b) Except as otherwise provided by this subsection, the  
9 auction [~~The sale~~] must occur between 10 a.m. and 4 p.m. on the  
10 first Tuesday of the month after publication of notice has been  
11 completed. If the first Tuesday of the month occurs on January 1 or  
12 July 4, the auction must occur between 10 a.m. and 4 p.m. on the  
13 first Wednesday of the month.

14 (c) If the court considers it advisable, the court may order  
15 the auction [~~sale~~] to be held [~~made~~] in the county in which the  
16 proceedings are pending [~~real estate is located~~], in which event  
17 notice shall be published both in that county and in the county in  
18 which the real estate is located [~~proceedings are pending~~].

19 Sec. 356.404. CONTINUANCE OF AUCTION [~~SALE~~]. (a) A public  
20 auction [~~sale~~] of real estate of an estate that is not completed on  
21 the day advertised may be continued from day to day by an oral  
22 public announcement of the continuance made at the conclusion of  
23 the auction [~~sale~~] each day.

24 (b) A continued auction [~~sale~~] must occur within the hours  
25 prescribed by Section 356.403(b).

26 (c) The continuance of an auction [~~a sale~~] under this  
27 section shall be shown in the report [~~of the sale~~] made to the court

1 under Section 356.551.

2           Sec. 356.405. FAILURE OF BIDDER TO COMPLY. (a) If a person  
3 bids off real estate of the estate offered [~~for sale~~] at public  
4 auction and fails to comply with the terms of the bid [~~sale~~], the  
5 property shall be readvertised and auctioned [~~sold~~] without any  
6 further order.

7           (b) The person defaulting on a bid as described by  
8 Subsection (a) is liable for payment to the personal representative  
9 of the estate, for the estate's benefit, of:

10                   (1) 10 percent of the amount of the bid; and

11                   (2) the amount of any deficiency in price on the second  
12 auction [~~sale~~].

13           (c) The personal representative may recover the amounts  
14 under Subsection (b) by suit in any court in the county in which the  
15 auction [~~sale~~] was made that has jurisdiction of the amount  
16 claimed.

17           SUBCHAPTER J. SALE OF REAL ESTATE: CONTRACT FOR PRIVATE SALE

18           Sec. 356.451. TERMS OF [~~MANNER OF~~] SALE. The personal  
19 representative of an estate may enter into a contract for the [~~A~~]  
20 private sale of real estate of the estate [~~shall be~~] made in the  
21 manner the court directs in the order of sale. Unless the court  
22 directs otherwise, additional advertising, notice, or citation  
23 concerning the sale is not required.

24           SECTION 28. Section 356.502, Estates Code, is amended to  
25 read as follows:

26           Sec. 356.502. PROCEDURE. The procedure for the sale of an  
27 easement or right-of-way authorized under Section 356.501 is the

1 same as the procedure provided by law for a private sale of estate  
2 real property by contract [~~at private sale~~].

3 SECTION 29. The heading to Subchapter L, Chapter 356,  
4 Estates Code, is amended to read as follows:

5 SUBCHAPTER L. APPROVAL [~~CONFIRMATION~~] OF SALE OF REAL PROPERTY AND  
6 TRANSFER OF TITLE

7 SECTION 30. Section 356.551, Estates Code, is amended to  
8 read as follows:

9 Sec. 356.551. REPORT. A successful bid or contract for the  
10 sale of estate real property shall be reported to the court ordering  
11 the sale not later than the 30th day after the date the bid [~~sale~~] is  
12 made or the property is placed under contract. The report must:

- 13 (1) be sworn to, in writing, and filed with the clerk;
- 14 (2) include:
- 15 (A) the date of the order of sale;
- 16 (B) a description of the property being sold;
- 17 (C) the time and place of the auction or date the  
18 property is placed under contract [~~sale~~];
- 19 (D) the purchaser's name;
- 20 (E) the amount of the successful bid or the  
21 purchase price for [~~which~~] each parcel of property or interest in  
22 property auctioned or placed under contract [~~was sold~~];
- 23 (F) the terms of the sale;
- 24 (G) whether the sale of the property is to be  
25 [~~was~~] made at public auction or by contract [~~privately~~]; and
- 26 (H) whether the purchaser is ready to comply with  
27 the order of sale; and

1           (3) be noted on the probate docket.

2           SECTION 31. Section 356.552, Estates Code, is amended to  
3 read as follows:

4           Sec. 356.552. ACTION OF COURT ON REPORT [~~OF SALE~~]. After  
5 the expiration of five days from the date a report [~~of sale~~] is  
6 filed under Section 356.551, the court shall:

7           (1) inquire into the manner in which the auction or  
8 contract described in the report [~~sale~~] was made;

9           (2) hear evidence in support of or against the report;  
10 and

11           (3) determine the sufficiency or insufficiency of the  
12 personal representative's general bond, if any has been required  
13 and given.

14           SECTION 32. Section 356.553, Estates Code, is amended to  
15 read as follows:

16           Sec. 356.553. APPROVAL [~~CONFIRMATION~~] OF SALE WHEN BOND NOT  
17 REQUIRED. If the personal representative of an estate is not  
18 required by this title to give a general bond, the court may approve  
19 [~~confirm~~] the sale of estate real property in the manner provided by  
20 Section 356.556(a) if the court finds that the sale is satisfactory  
21 and made in accordance with law.

22           SECTION 33. Sections 356.554(a), (b), and (c), Estates  
23 Code, are amended to read as follows:

24           (a) If the personal representative of an estate is required  
25 by this title to give a general bond, before the court approves  
26 [~~confirms~~] any sale of real estate, the court shall determine  
27 whether the bond is sufficient to protect the estate after the sale



1 proceeds are received.

2 (b) If the court finds that the general bond is sufficient,  
3 the court may approve [~~confirm~~] the sale as provided by Section  
4 356.556(a).

5 (c) If the court finds that the general bond is  
6 insufficient, the court may not approve [~~confirm~~] the sale until  
7 the general bond is increased to the amount required by the court,  
8 or an additional bond is given, and approved by the court.

9 SECTION 34. Section 356.556, Estates Code, is amended to  
10 read as follows:

11 Sec. 356.556. APPROVAL [~~CONFIRMATION~~] OR DISAPPROVAL  
12 ORDER. (a) If the court is satisfied that the proposed sale of real  
13 property [~~a sale~~] reported under Section 356.551 is [~~was~~]  
14 for a fair price, properly made, and in conformity with law, and the court has  
15 approved any increased or additional bond that the court found  
16 necessary to protect the estate, the court shall enter an order:

- 17 (1) approving [~~confirming~~] the sale;  
18 (2) showing conformity with this chapter;  
19 (3) detailing the terms of the sale; and  
20 (4) authorizing the personal representative to convey  
21 the property on the purchaser's compliance with the terms of the  
22 sale.

23 (b) If the court is not satisfied that the proposed sale of  
24 real property is [~~sale was~~] for a fair price, properly made, and in  
25 conformity with law, the court shall enter an order setting aside  
26 the bid or contract [~~sale~~] and ordering a new sale to be made, if  
27 necessary.

1 (c) The court's action in approving [~~confirming~~] or  
2 disapproving a report under Section 356.551 [~~of a sale~~] has the  
3 effect of a final judgment. Any person interested in the estate or  
4 in the sale is entitled to have an order entered under this section  
5 reviewed as in other final judgments in probate proceedings.

6 SECTION 35. Section 356.557, Estates Code, is amended to  
7 read as follows:

8 Sec. 356.557. DEED. Real estate of an estate that is sold  
9 shall be conveyed by a proper deed that refers to and identifies the  
10 court order approving [~~confirming~~] the sale. The deed:

11 (1) vests in the purchaser all right and title of the  
12 estate to, and all interest of the estate in, the property; and

13 (2) is prima facie evidence that the sale has met all  
14 applicable requirements of the law.

15 SECTION 36. Section 356.558(a), Estates Code, is amended to  
16 read as follows:

17 (a) After the court has approved [~~confirmed~~] a sale and the  
18 purchaser has complied with the terms of the sale, the personal  
19 representative of the estate shall promptly execute and deliver to  
20 the purchaser a proper deed conveying the property.

21 SECTION 37. Section 401.005, Estates Code, is amended by  
22 adding Subsection (a-1) to read as follows:

23 (a-1) If a decedent's will does not contain language  
24 directing that no bond or security be required of a person named as  
25 executor, unless the court finds that it would not be in the best  
26 interest of the estate, the court may waive the requirement of a  
27 bond if all of the distributees of the decedent agree to the waiver

1 of bond in:

2 (1) the application for probate of the decedent's  
3 will; or

4 (2) one or more separate documents consenting to the  
5 application for probate of the decedent's will.

6 SECTION 38. Subchapter A, Chapter 402, Estates Code, is  
7 amended by adding Section 402.003 to read as follows:

8 Sec. 402.003. DIGITAL ASSETS. The court, either at the time  
9 the independent executor of an estate is appointed or at any time  
10 before the administration of the estate is closed, may enter an  
11 order that:

12 (1) directs disclosure of the content of electronic  
13 communications of the decedent to the independent executor as  
14 provided by Section 2001.101 and that contains any court finding  
15 described by Section 2001.101(b)(3);

16 (2) with respect to a catalog of electronic  
17 communications sent or received by the decedent and other digital  
18 assets of the decedent, other than the content of an electronic  
19 communication, contains any court finding described by Section  
20 2001.102(b)(4); or

21 (3) directs under Section 2001.231 a custodian to  
22 comply with a request to disclose digital assets under Chapter  
23 2001.

24 SECTION 39. Subchapter B, Chapter 403, Estates Code, is  
25 amended by adding Section 403.05851 to read as follows:

26 Sec. 403.05851. OTHER CLAIM PROCEDURES APPLY TO MEDICAID  
27 ESTATE RECOVERY PROGRAM CLAIM. The procedural provisions of this

1 title governing creditor claims in supervised administrations  
2 apply to a claim of the Medicaid estate recovery program under  
3 Section 531.077, Government Code, in an independent  
4 administration.

5 SECTION 40. Section 455.008(a), Estates Code, is amended to  
6 read as follows:

7 (a) If gross assets of an estate do not exceed 20 [~~10~~]  
8 percent of the maximum amount authorized for a small estate  
9 affidavit under Section 205.001, the public probate administrator  
10 may act without issuance of letters testamentary or of  
11 administration if the court approves a statement of administration  
12 stating:

- 13 (1) the name and domicile of the decedent;  
14 (2) the date and place of death of the decedent; and  
15 (3) the name, address, and relationship of each known  
16 heir or devisee of the decedent.

17 SECTION 41. Section 455.009, Estates Code, is amended by  
18 adding Subsection (a-1) to read as follows:

19 (a-1) The public probate administrator may file the  
20 affidavit as provided by Subsection (a) after the public probate  
21 administrator has acted under Section 455.007 or 455.008.

22 SECTION 42. Section 455.012, Estates Code, is amended to  
23 read as follows:

24 Sec. 455.012. DEPOSIT OF FUNDS IN COURT REGISTRY [~~INTO THE~~  
25 ~~COUNTY TREASURY~~]. The public probate administrator shall deposit  
26 all funds coming into the custody of the administrator in the court  
27 registry, except as provided by Section 455.003 [~~county treasury~~].

1 Funds deposited must be disbursed [~~dispersed~~] at the direction of  
2 the public probate administrator and according to an order issued  
3 by the statutory probate court judge who appointed the  
4 administrator [~~the guidelines of the county treasurer or auditor~~].

5 SECTION 43. Section 25.002201(b), Government Code, is  
6 amended to read as follows:

7 (b) If the judge who is the subject of an order of recusal or  
8 disqualification is the presiding judge of the statutory probate  
9 courts, the chief justice of the supreme court shall assign [~~a~~  
10 ~~regional presiding judge,~~] a statutory probate judge[~~7~~] or a former  
11 or retired judge of a statutory probate court to hear the case.

12 SECTION 44. Section 25.00255(a), Government Code, is  
13 amended to read as follows:

14 (a) Notwithstanding any conflicting provision in the Texas  
15 Rules of Civil Procedure, Rules 18a and 18b, Texas Rules of Civil  
16 Procedure, apply to the recusal and disqualification of a statutory  
17 probate court judge except as otherwise provided by this section or  
18 another provision of this subchapter. The presiding judge:

19 (1) has the authority and shall perform the functions  
20 and duties of the presiding judge of the administrative judicial  
21 region under the rules, including the duty to hear or rule on a  
22 referred motion of recusal or disqualification or, subject to  
23 Subdivisions (2) and (3) [~~and to Section 25.002201~~], assign a judge  
24 to hear and rule on a referred motion of recusal or  
25 disqualification;

26 (2) may assign a presiding judge of the administrative  
27 judicial region to hear and rule on a referred motion of recusal or

1 disqualification only with the consent of the presiding judge of  
2 the administrative judicial region; ~~and~~

3 (3) may not assign a judge of a statutory probate court  
4 located in the same county as the statutory probate court served by  
5 the judge who is the subject of the motion of recusal or  
6 disqualification; and

7 (4) if the presiding judge is the subject of the motion  
8 of recusal or disqualification, shall sign and file with the clerk  
9 an order referring the motion to the chief justice of the supreme  
10 court for assignment of a presiding judge of an administrative  
11 judicial region, a statutory probate court judge, or a former or  
12 retired judge of a statutory probate court to hear and rule on the  
13 motion, subject to Subdivisions (2) and (3).

14 SECTION 45. The following provisions of the Estates Code  
15 are repealed:

16 (1) Section 114.002(b); and

17 (2) Subchapter D, Chapter 114.

18 SECTION 46. (a) Subchapter C, Chapter 111, Estates Code, as  
19 added by this Act, applies to an agreement, account, contract, or  
20 designation made or entered into before, on, or after the effective  
21 date of this Act, regardless of the date of the deceased party's  
22 death.

23 (b) Section 113.252(c), Estates Code, as amended by this  
24 Act, applies to a proceeding commenced on or after the effective  
25 date of this Act. A proceeding commenced before the effective date  
26 of this Act is governed by the law in effect on the date the  
27 proceeding was commenced, and the former law is continued in effect

1 for that purpose.

2 (c) The repeal of Subchapter D, Chapter 114, Estates Code,  
3 by this Act does not affect the validity of a transfer on death deed  
4 or a cancellation of a transfer on death deed executed before, on,  
5 or after the effective date of this Act.

6 (d) Section 202.151, Estates Code, as amended by this Act,  
7 applies only to a proceeding to declare heirship commenced on or  
8 after the effective date of this Act. A proceeding to declare  
9 heirship commenced before that date is governed by the law in effect  
10 on the date the proceeding was commenced, and the former law is  
11 continued in effect for that purpose.

12 (e) Section 255.456, Estates Code, as added by this Act,  
13 applies only to a petition filed on or after the effective date of  
14 this Act. A petition filed before the effective date of this Act is  
15 governed by the law in effect on the date the petition was filed,  
16 and the former law is continued in effect for that purpose.

17 (f) Sections 256.052(a), 256.053(b), and 257.051(a),  
18 Estates Code, as amended by this Act, and Section 401.005(a-1),  
19 Estates Code, as added by this Act, apply only to an application for  
20 the probate of a will filed on or after the effective date of this  
21 Act. An application for the probate of a will filed before that  
22 date is governed by the law in effect on the date the application  
23 was filed, and the former law is continued in effect for that  
24 purpose.

25 (g) Section 301.052(a), Estates Code, as amended by this  
26 Act, applies only to an application for letters of administration  
27 filed on or after the effective date of this Act. An application

1 for letters of administration filed before the effective date of  
2 this Act is governed by the law in effect on the date the  
3 application was filed, and the former law is continued in effect for  
4 that purpose.

5 (h) Sections 351.106 and 402.003, Estates Code, as added by  
6 this Act, apply only to the administration of a decedent's estate  
7 that is pending or commenced on or after the effective date of this  
8 Act.

9 (i) Sections 351.152(a) and (b), Estates Code, as amended by  
10 this Act, apply only to a contract entered into or a conveyance made  
11 on or after the effective date of this Act. A contract entered into  
12 or a conveyance made before the effective date of this Act is  
13 governed by the law in effect on the date the contract was entered  
14 into or the conveyance was made, and the former law is continued in  
15 effect for that purpose.

16 (j) Sections 352.052(c), 403.05851, and 455.009(a-1),  
17 Estates Code, as added by this Act, and Subchapters I and J, Chapter  
18 356, and Sections 355.102(b) and (c), 355.103, 355.1551(a) and (b),  
19 356.502, 356.551, 356.552, 356.553, 356.554(a), (b), and (c),  
20 356.556, 356.557, 356.558(a), 455.008(a), and 455.012, Estates  
21 Code, as amended by this Act, apply only to the estate of a decedent  
22 who dies on or after the effective date of this Act. The estate of a  
23 decedent who dies before the effective date of this Act is governed  
24 by the law in effect on the date of the decedent's death, and the  
25 former law is continued in effect for that purpose.

26 (k) Section 25.00255(a), Government Code, as amended by  
27 this Act, applies only to a motion of recusal or disqualification



1 made on or after the effective date of this Act. A motion of recusal  
2 or disqualification made before the effective date of this Act is  
3 governed by the law in effect on the date the motion was made, and  
4 the former law is continued in effect for that purpose.

5 SECTION 47. This Act takes effect September 1, 2019.