



# REPTL

REAL ESTATE, PROBATE  
& TRUST LAW  
SECTION OF THE STATE BAR OF TEXAS

August 31, 2015

## September 1 is almost upon us!

September 1 is almost upon us, and that's when most of the legislation passed in Austin earlier this year goes into effect. I thought those of you who practice on the probate side might like a reminder of changes that affect your pleadings or forms. (If your forms still contain references to the old Texas Trust Act, then please pay extra-special attention to this list!)

This isn't meant to be an exhaustive list of everything that's changing – just most of the changes that will affect how pleadings and forms are drafted.

This list is mostly organized in the same order as bills are discussed in my legislative update that you can access through the section's website, or directly [here](#). The changes go into effect September 1, unless otherwise noted.

- **Disclaimers** – New rules (found in new Property Code Chapter 240) apply to disclaimers of property interests. A great paper devoted solely to the disclaimer changes can be found [here](#).
- **Reformation of Wills** – Wills can be modified or reformed under appropriate circumstances. (This change applies to the administration of an estate that is still pending on or commenced after September 1.)
- **Affidavit in Lieu** – If you're filing an affidavit in lieu of inventory, you don't have to send a copy of the inventory (absent a request) to beneficiaries you weren't required to notify under Chapter 308.
- **One-Step Self-Proving Affidavits** – If you use the one-step version of self-proving affidavits (for both wills and guardianship declarations), some of the verb tenses have been corrected.
- **Affidavit or Attorney's Certificate of Notice** – The affidavit or attorney's certificate of notice to beneficiaries under Chapter 308 no longer needs to include the beneficiaries' addresses. (Sorry, this only applies if the decedent dies on or after September 1.)
- **Small Estate Affidavits** – The "applicant" should list all of the estate assets claimed to be exempt.
- **Initiation of Guardianships** – Significant changes go into effect relating to the initiation of guardianship proceedings:
  - Attorneys ad litem must discuss with the proposed ward whether alternatives to a guardianship would meet the proposed ward's needs and avoid creation of a guardianship.
  - Guardians ad litem should investigate whether a guardianship is even necessary and evaluate alternatives and supports and services that might avoid the need for a guardian.
  - The applicant's attorney must complete the ad litem certification course.
  - That certification course is increased to four hours, with one hour devoted to alternatives and supports and services.
  - The application must state (1) whether alternatives and supports and services were considered, (2) whether any that are available are feasible and would avoid the need for a guardianship, and (3) whether the proposed ward's right to make personal decisions regarding a residence should be terminated.
  - The physician's certificate must state whether improvement is possible and, if so, when the proposed ward should be reevaluated.
  - The order must (1) include a finding (by clear and convincing evidence) that alternatives and supports and services were considered but are not feasible, (2) specifically state whether the proposed ward lacks capacity, with or without supports and services, to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage, and (3) state the specific rights and powers retained by the ward either with the need for supports and services, or without that need.

- **Guardian's Duty to Notify Relatives** – A guardian of an adult ward must notify relatives if the ward dies, is admitted to an acute care medical facility for more than three days, changes residence, or is staying at a location other than the ward's residence for more than a week. If the ward dies, the relatives must also be informed of funeral arrangements and the final resting place. (This duty actually went into effect June 19.)
- **Duty to Maintain Orders** – Convalescent homes, nursing homes, and assisted living facilities must make a reasonable effort to request a copy of any court order appointing a guardian and keep the copy in the resident's medical records. (This duty applies beginning January 1, 2016.)
- **Real Property Transactions and Powers of Attorney** – Real property transactions carried out under a power of attorney are voidable if the power isn't also filed in the county where the property is located within 30 days of the filing of the real property transaction.
- **Advance Directives** – Several terms found in the statutory form of directives to physicians have changed:
  - "Artificial nutrition and hydration" becomes "artificially administered nutrition and hydration."
  - "Stomach (gastrointestinal tract)" becomes simply "gastrointestinal tract."
  - "Treatment decision" and "health care decision" both become "health care or treatment decision."
  - A reference to "fluids" becomes "hydration."
  - A reference to the "review process" becomes the "ethics or medical committee."

Enjoy changing your documents – and don't let me find any references to the Probate Code in them! (Although if you leave those obsolete references in, you can thank REPTL for the change to Estates Code Sec. 21.002 that makes that error "harmless" – similar to Trust Code Sec. 111.002 that makes those Texas Trust Act references harmless.)

Sincerely,

William (Bill) D. Pargaman, Chair  
[REPTL Section](#)  
State Bar of Texas