What Has The Legislature Done To Us Now?

(Don't Worry – It's Not Too Bad!)

2011 Texas Estate and Trust Legislative Update

(Including Probate, Guardianships, Trusts, Powers of Attorney, and Other Related Matters)

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Legal Experience

Bill Pargaman is certified as a specialist in Estate Planning and Probate Law by the Texas Board of Legal Specialization and is a Fellow in the American College of Trust and Estate Counsel. Bill's practice involves the preparation of wills, trusts and other estate planning documents, charitable planning, and estate administration and alternatives to administration. He advises clients on the organization and maintenance of business entities such as corporations, partnerships, and limited liability entities. Additionally, he represents clients in contested litigation involving estates, trusts and beneficiaries, and tax issues.

Education

- Doctor of Jurisprudence, *with honors,* University of Texas School of Law, 1981, Order of the Coif, Chancellors
- Bachelor of Arts, Government, *with high honors,* University of Texas at Austin, 1978, Phi Beta Kappa

Professional Licenses

- Attorney at Law, Texas, 1981

Court Admissions

- United States Tax Court

Prior Experience

- Brown McCarroll, L.L.P., 1981 – 2012

Speeches and Publications

Mr. Pargaman has been a speaker, author, or course director at numerous seminars, including:

- State Bar of Texas, Advanced Estate Planning and Probate Course, Estate Planning and Probate Drafting Course, Advanced Guardianship Law Course, and Practice Skills for New Lawyers
- Real Estate, Probate and Trust Law Section Annual Meeting
- University of Houston Law Foundation, General Practice Institute, and Wills and Probate Institute
- South Texas College of Law, Wills and Probate Institute
- Austin Bar Association, Estate Planning and Probate Section Annual Probate and Estate Planning Seminar
- Austin Bar Association and Austin Young Lawyers Association Legal Malpractice Seminar
- Houston Bar Association Probate, Trusts & Estate Section
- Austin Chapter, Texas Society of Certified Public Accountants, Annual Tax Update
- Texas Bankers Association, Advanced Trust Forum
- Estate Planning Councils in Austin, Amarillo, Corpus Christi, Lubbock, and Tyler
- Austin Association of Life Underwriters
- Austin Chapter, University of Texas Medical Branch (Galveston) Alumni Association
- SAGE Group, University of Texas

Professional Memberships and Activities

- American College of Trust and Estate Counsel, Fellow
- State Bar of Texas
  - Real Estate, Probate and Trust Law Section, Member (Treasurer, 2013-2014)

  - Real Estate, Probate, and Trust Law Council, Member, 2004–2008
  - Estate and Trust Legislative Affairs Committee, Member, 2000–Present (Chair, 2008–2013)
  - Trusts Committee, Member, 2000–2010 (Chair, 2004–2008)
  - Uniform Trust Code Study Project, Articles 7–9 & UPIA, Subcommittee Member, 2000–2003
- Texas Board of Legal Specialization (Estate Planning and Probate Law), Examiner, 1995-1997
- Estate Planning Council of Central Texas, Member (President, 1991-1992)
- Austin Bar Association, Member
  - Estate Planning and Probate Section, Member (Chair, 1992-1993, Board Member, 1997-1999)

Honors

- Listed in *The Best Lawyers in America®*
- Listed in *Texas Super Lawyers* (Texas Monthly)
- Listed in *The Best Lawyers in Austin* (Austin Monthly)

Community Involvement

- St. Stephen's Episcopal School Professional Advisory Council, Past Member
- City of Austin, XERISCAPE Advisory Board, Past Member
- Volunteer Guardianship Program of Family Eldercare, Inc. of Austin, Past Member, Advisory Board

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2011 Texas Estate and Trust Legislative Update

Statutory Changes Affecting Probate, Guardianships, Trusts, Powers of Attorney, and Other Areas of Interest to Estate and Probate Practitioners

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1. The Preliminaries.

1.1 Introduction and Scope. The 82nd Regular Session of the Texas Legislature spans the 140 days beginning January 11, 2011, and ending May 30, 2011. This paper presents a summary of the bills that were filed relating to probate (*i.e.*, decedents' estates), guardianships, trusts, powers of attorney, and several other areas of interest to estate and probate practitioners. However, those issues are relegated to the subtitle of this paper due to their length, and the main title is limited to "probate and trust," as in the "Real Estate, ***Probate and Trust Law*** Section" of the State Bar of Texas ("REPTL"). Issues of interest to elder law practitioners are touched upon, but are not a focus of this paper.

1.2 Acknowledgments. A lot of the effort in the 2011 session, as in past sessions, comes from REPTL. REPTL, with its approximately 7,000 members, has been active in proposing legislation in this area for more than a quarter century. During the two years preceding the session, its Council worked hard to come up with a package that addressed the needs of its members and the public, and then work to get the package enacted into law. Thanks go to:

- Harry Wolff of San Antonio, Immediate Past Section Chair
- Craig Adams of Tyler, Section Chair-Elect and Chair – Power of Attorney Committee
- Bill Pargaman of Austin**,** Chair, Legislative – Probate Committee[1]
- Glenn Karisch of Austin, Past Section Chair (2007-2008), Past Chair, Legislative – Probate Committee, and a past author of this article[2]
- Jim Woo of San Antonio, Past Chair – Decedents' Estates Committee
- Tina Green of Texarkana, Current Chair – Decedents' Estates Committee
- Deborah Green of Austin, Chair – Guardianship Committee and Co-Chair, Guardianship Recodification Committee
- Linda Goehrs of Houston, Co-Chair, Guardianship Recodification Committee
- Shannon Guthrie of Dallas, Chair – Trust Code Committee
- Clint Hackney of Austin, Lobbyist
- Barbara Klitch of Austin, who provides invaluable service tracking legislation for REPTL

REPTL is helped along the way by the State Bar, its Board of Directors, and its excellent staff (in particular, KaLyn Laney, the Bar's Director of Governmental Relations).

REPTL has worked closely with the Texas Academy of Probate and Trust Lawyers (Harry Wolff of San Antonio, Chair, Barbara Anderson of Dallas, Treasurer, and Clint Hackney). The Academy is a group of attorneys who are Board Certified in Estate Planning and Probate Law or Fellows of the American College of Trust and Estate Counsel (ACTEC) (or both) who go the extra mile and help support quality legislation in this area. Attorneys who are eligible for membership but who are not yet members should consider supporting this fine organization.

Other groups have an interest in legislation in this area, and REPTL tries to work with them to mutual advantage. These include the statutory probate judges (Judge Guy Herman of Austin, Presiding Statutory

[1] The chutzpah of an author who thanks himself**!**

[2] Preparation of this article is an evolutionary process, and thanks also go to Glenn Karisch, Jerry Frank Jones, and Al Golden, all of Austin and prior Legislative Chairs, who are authors of previous incarnations of this article.

Probate Judge) and the Wealth Management and Trust Division of the Texas Bankers Association (Leslie Amann of Houston, Chair, Deborah Cox of Dallas, Governmental Relations Chair, and John Brigance, Executive Director).

Last, and of course not least, are the legislators and their capable staffs. Rep. Will Hartnett of Dallas has helped REPTL for a number of sessions. Senator José Rodriguez of El Paso, the Vice Chair of the Senate Committee on Jurisprudence, agreed to carry our REPTL bills in the Senate. Currently, the Chairs of the two committees that most of REPTL's legislation must pass through are Rep. Jim Jackson of Carrollton, the new (as of February, 2011) Chair of the House Committee on Judiciary & Civil Jurisprudence (referred to throughout this paper simply as "Judiciary"), and Senator Chris Harris of Arlington, the new (as of July, 2010) Chair of the Senate Committee on Jurisprudence (referred to throughout this paper simply as "Jurisprudence").

Thanks go to all of these persons, their staffs, and the many others who have helped in the past and will continue to do so in the future.

Hopefully, the effort that goes into the legislative process will become apparent to the reader. In the best of circumstances, this effort results in passing good bills and blocking bad ones. But in the real world of legislating, the best of circumstances is never realized.

1.3 CYA Disclaimer. The author has made every reasonable attempt to provide accurate descriptions of the contents of bills, their effects, and in some cases, their background. However, despite rumors to the contrary, he is human. And has been known to make mistakes. The author figuratively juggles many balls during the legislative session, and work on this paper is often done late at night, past his normal bedtime, perhaps, even, under the influence of medicinal amounts of Johnnie Walker Black (donations of Red, Black, Green, Gold, Blue, or even Swing happily accepted!). Therefore, later in this paper you'll fine directions for downloading copies of the actual bills themselves so you may review them yourself before relying on any information in this paper.

2. The Stakeholders.

A number or organizations and individuals get involved in the legislative process:

2.1 REPTL. The Real Estate, Probate and Trust Law Section of the State Bar of Texas, acting through its Council. Many volunteer Section members who are not on the Council give much of their time, energy and intellect in formulating REPTL-carried legislation. REPTL is not allowed to sponsor legislation or oppose legislation without the approval of the Board of Directors of the State Bar. There is no provision to support legislation offered by someone other than REPTL, and the ability of REPTL to react during the legislative session is hampered by the necessity for Bar approval. Therefore, REPTL must receive prior permission to carry the proposals discussed in this paper that are identified as REPTL proposals. REPTL has hired Clint Hackney, who has assisted with the passage of REPTL legislation for many sessions.

2.2 The Academy. As noted above, the Texas Academy of Probate and Trust Lawyers, a non-profit § 501(c)(6) organization composed of dues-paying members who are either Board Certified in Estate Planning and Probate Law or Fellows of the American College of Trust and Estate Counsel (or both). Unfettered by Bar control, the Academy can react to legislation, negotiate compromises, or oppose or support legislation. One of its primary missions is to support REPTL legislation and legislation approved by the REPTL Council which does not have State Bar approval for one reason or another. The author others wear hats representing both REPTL and the Academy during the legislative process.

2.3 The Statutory Probate Judges. The vast majority of probate and guardianship cases are heard by the judges of the Statutory Probate Courts (18 of them in 10 counties). Judge Guy Herman of the Probate Court No. 1 of Travis County (Austin) is the Presiding Statutory Probate Judge and has been very active in promoting legislative solutions to problems in our area for many years.

2.4 The Texas Bankers Association. The Wealth Management and Trust Division of the Texas Bankers Association ("TBA") represents the interests of corporate fiduciaries in Texas. While the interests of REPTL and TBA do not always coincide, the two groups have had an excellent working relationship during the past several sessions.

2.5 The Texas Legislative Council. Among other duties, the Texas Legislative Council provides bill drafting and research services to the Texas Legislature and legislative agencies. All proposed legislation must be reviewed (and usually revised) by the Legislative Council before a Representative or Senator may introduce it. In addition, as part of its continuing statutory revision program, the Legislative Council embarked on, and is the primary drafter of, a

nonsubstantive revision of the Texas Probate Code (discussed below). The decedents' estates portions of the Probate Code were nonsubstantively revised by the 81st (2009) Legislature under the direction of Maria Breitschopf of the Legislative Council's legal staff. The guardianship and power of attorney portions of the Probate Code were nonsubstantively revised by the 82nd (2011) Legislature under the direction of Anne Peters of the Legislative Council's legal staff. Questions, comments, or suggestions relating to the project may be directed to either of them at P. O. Box 12128, Austin, Texas 78711, at 512-463-1155, or at maria.breitschopf@tlc.state.tx.us and anne.peters@tlc.state.tx.us.

2.6 The Authors and Sponsors. All legislation needs an author, the Representative or Senator who introduces the legislation. A sponsor is the person who introduces a bill from the other house in the house of which he or she is a member. Many bills have authors in both houses originally, but either the House or Senate version will eventually be voted out if it is to become law; and so, for example, the Senate author of a bill may become the sponsor of a companion House bill when it reaches the Senate. In any event, the sponsor or author controls the bill and its fate in their respective house. Without the dedication of the various authors and sponsors, much of the legislative success of this session would not have been possible. The unsung heroes are the staffs of the legislators, who make sure that the bill does not get off track.

3. The Process.

3.1 The Genesis of REPTL's Package. REPTL[3] begins work on its legislative package shortly after the previous legislative session ends. In August or September of odd-numbered years – just weeks after a regular legislative session ends, the chairs of each of the main REPTL legislative committees (Decedents' Estates, Guardianship, Trust Code, and Powers of Attorney) put together lists of proposals for discussion by their committees. These items are usually gathered from a variety of sources. They may be ideas that REPTL Council or committee members come up with on their own, or they may be suggestions from practitioners around the state, accountants, law professors, legislators, judges – you name it. Most suggestions usually receive at least some review at the committee level.

3.2 Preliminary Approval by the REPTL Council. The full "PTL" or probate, guardianship, and trust law side of the REPTL Council reviews each committee's suggestions and gives preliminary approval (or rejection) to those proposals at its Fall meeting (usually in September or October) in odd-numbered years. Draft language may or may not be available for review at this stage – this step really involves a review of concepts, not language.

3.3 Actual Language is Drafted by the Committees, With Council Input and Approval. Following the Fall Council meeting, the actual drafting process usually begins by the committees. Proposals may undergo several redrafts as they are reviewed by the full Council at subsequent meetings. By the Spring meeting of the Council in even-numbered years (usually in April), language is close to being final, so that final approval by the Council at its June annual meeting held in conjunction with the State Bar's Annual Meeting is mostly *pro forma*. Note that items may be added to or removed from the legislative package at any time during this process as issues arise.

3.4 REPTL's Package is Submitted to the Bar. In order to obtain permission to support legislation, the entire REPTL package is submitted to the other substantive law sections of the State Bar for review and comment in early July. This procedure is designed to assure that legislation with the State Bar's "seal of approval" will be relatively uncontroversial and will further the State Bar's goal of promoting the interests of justice.

3.5 Legislative Policy Committee Review. Following a comment period (and sometimes revisions in response to comments received), REPTL representatives appear before the State Bar's Legislative Policy Committee in August to explain and seek approval for REPTL's legislative package.

3.6 State Bar Board of Directors Approval. Assuming REPTL's package receives preliminary approval from the State Bar's Legislative Policy Committee, it is submitted to the full Board of Directors of the State Bar for approval in September. At times, REPTL may not receive approval of portions of its package. In these cases, REPTL usually works to satisfy any concerns raised, and then seeks approval from the full Board of Directors through an appeal process. REPTL's 2011 legislative package received

[3] Note that the "RE" or real estate side of REPTL usually does not have a legislative package, but is very active in monitoring legislation filed in its areas of interest. In 2011, it proposed **S.B. 889** (Carona), an act relating to assignment of rents. This bill was signed by the Governor June 17th and is effective immediately.

approval from the full Board of Directors at its October, 2010, meeting.

3.7 REPTL is Ready to Go. After REPTL receives approval from the State Bar's Board of Directors to carry its package, it then meets with appropriate Representatives and Senators to obtain sponsors, who submit the legislation to the Legislative Council for review, revision, and drafting in bill form. REPTL's legislation is usually filed (in several different bills) in the early days of the sessions that begin in January of odd-numbered years.

3.8 This Year's REPTL Package. The 2011 REPTL package included a Decedents' Estates bill, a Guardianship bill, a Trust Code bill, and a Statutory Power of Attorney bill. REPTL also supported the bill prepared by the Legislative Council containing the nonsubstantive recodification of the guardianship provisions of the Probate Code for inclusion in the new Estates Code.

3.9 The Academy Steps In. While there are procedures for expedited consideration of additional proposals that do not meet the State Bar's deadlines described above, REPTL rarely, if ever, uses those procedures. For items that may come up relatively late in the game, or for items that may be considered inappropriate for the REPTL package, the Academy may step in and work for approval of legislation.

3.10 During the Session. During the legislative session, the work of REPTL and the Academy is not merely limited to working for passage of their respective bills. An equally important part of their roles is monitoring bills introduced by others and working with their sponsors to improve those bills, or, where appropriate, to oppose them.

3.11 Where You Can Find Information About Filed Bills. You can find information about any of the bills mentioned in this paper (whether or not they passed), including text, lists of witnesses and analyses (if available), and actions on the bill, at the Texas Legislature Online website: www.legis.state.tx.us. The website allows you to perform your own searches for legislation based on your selected search criteria. You can even create a free account and save that search criteria (go to the "My TLO" tab).

3.12 Summary of the Legislative Process. Watching the process is like being on a roller coaster; one minute a bill is sailing along, and the next it is in dire trouble. And, as we learned at the end of the 2009 legislative session, even when a bill has "died," its substance may be resurrected in another bill. The real work is done in committees, and the same legislation must ultimately pass both houses. Thus, even if an identical bill is passed by the Senate as a Senate bill and by the House as a House bill, it cannot be sent to the Governor until either the House has passed the Senate bill or vice-versa. At any point in the process, members can and often do put on amendments which require additional steps and additional shuttling. It is always a race against time, and it is much easier to kill legislation than to pass it.

4. Key Dates.

Key dates for the enactment of bills in the 2011 legislative session include:

- **Monday, November 8, 2010** – Prefiling of legislation for the 82nd Legislature begins
- **Tuesday, January 11, 2011** (1st day) – 82nd Legislature convenes at noon
- **Friday, March 11, 2011** (60th day) – Deadline for filing most bills and joint resolutions[4]
- **Monday, May 9, 2011** (119th day) – Last day for House committees to report House bills and joint resolutions
- **Thursday, May 12, 2011** (122nd day) – Last day for House to consider nonlocal House bills and joint resolutions on **second** reading
- **Friday, May 13, 2011** (123rd day) – Last day for House to consider nonlocal House bills and joint resolutions on **third** reading
- **Saturday, May 21, 2011** (131st day) – Last day for House committees to report Senate bills and joint resolutions
- **Tuesday, May 24, 2011** (134th day) – Last day for House to consider most Senate bills and joint resolutions on **second** reading
- **Wednesday, May 25, 2011** (135th day) – Last day for House to consider most Senate bills or joint resolutions on **third** reading

  Last day for Senate to consider any bills or joint resolutions on third reading

[4] By the end of the day on March 11th, a total of 7,269 bills (of all types) had been filed in both Houses. Of those, 904 bills, or almost 12½%, were filed **that** day.

- **Friday, May 27, 2011** (137th day) – Last day for House to consider Senate amendments

  Last day for Senate committees to report all bills

- **Sunday, May 29, 2011** (139th day) – Last day for House to adopt conference committee reports

  Last day for Senate to concur in House amendments or adopt conference committee reports

- **Monday, May 30, 2011** (140th day) – Last day of 82nd Regular Session; corrections only in House and Senate

- **Sunday, June 19, 2011** (20th day following final adjournment) – Last day Governor can sign or veto bills passed during the previous legislative session

- **Monday, August 29, 2011** (91st day following final adjournment) – Date that bills without specific effective dates (that could not be effective immediately) become law

5. The New Estates Code.

5.1 A New Beginning. **January 1, 2014.** That's a date you'll need to remember if you're still practicing in our area. It is the effective date of our new Estates Code, which will replace our current Probate Code. Here's the background … .

5.2 Our Current Probate Code is Not a "Code". Texas has had a number of statutory compilations during its history. In 1925, the 39th Legislature adopted its fourth bulk revision of Texas laws, the Revised Statutes of Texas, 1925.[5] In 1936, The Vernon Law Book Company published an unannotated compilation of the 1925 Revised Civil and Criminal Statutes, updated with changes through January 1, 1936. Between 1936 and 1948, this was updated with non-cumulative biennial supplements. In 1948, a new compilation was published, and biennial updates continued. The "Texas Probate Code" was first enacted in 1955, effective January 1, 1956. However, Texas had not yet adopted any organized system of statutory codification at the time, so the Texas Probate Code was incorporated into Vernon's Revised Civil Statutes, known as the "Black Statutes" for those of us old enough to have practiced with the hard copies of these volumes.

5.3 The "Codification" Process Began in 1963, After Our Probate Code Was Enacted. In the 38 years since the 1925 general revision of Texas laws, the statutes had become confusing and difficult to use. In 1963, the 58th Legislature passed S.B. 367, which ordered the creation of a permanent, ongoing statutory revision program. The Texas Legislative Council was charged with making a complete, non-substantive revision of Texas statutes. Legislation enacting new code sections is generally based on a Revisor's Report which contains the proposed language of the new code, the language of the old statutes, and brief notes. When the program is complete, all general and permanent statutes will be included in one of 27 codes. The Probate Code is not a "code" for purposes of the Code Construction Act and the Legislative Council codification initiative since (1) it was enacted before the codification effort began, and (2) it does not comply with the organizational and stylistic principles of modern Texas codes. (The Criminal Procedure Code is the only other remaining "uncodified" code. The Probate Code just happened to draw the short straw in 2006.)

5.4 The Legislative Council's Procedure. The Texas Legislative Council's nonsubstantive revision process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable—all toward promoting the stated purpose of making the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law. The Legislative Council staff encourages examination and review of all proposed code chapters by any interested person. The staff attempts to include in the proposed code all source law assigned to the code and to ensure that no substantive change has been made in the law. A complete and adequate outside review is necessary, however.

5.5 REPTL's Probate Codification Committee. When REPTL learned in the summer of 2006 that the Legislative Council was going to codify the Probate Code, it began to work actively with the Legislative Council staff on the codification project. It established a Probate Code Codification Committee, which is co-chaired by Professor Thomas M. Featherston, Jr., the Mills Cox Professor of Law at Baylor Law School, and by Barbara McComas Anderson, a Dallas attorney, both of whom are former REPTL chairs. Through a series of meetings with Legislative Council staff, it was ultimately decided that:

[5] The source of this "timeline" is: www.lrl.state.tx.us/research/texasLawTimeline.html.

1. REPTL and the Legislative Council would cooperate in determining how the new code would be organized.

2. The Legislative Council would take the lead in drafting the new code, although REPTL's committee would work on some of the thorniest provisions, like jurisdiction, venue, and independent administration, where it was considered difficult or impossible to codify the current statutes without some tweaking.

3. The chapters of the code governing decedents' estates would be drafted first, to be submitted to the Legislature for adoption in 2009.

4. The remaining chapters of the code, including those provisions governing guardianships and powers of attorney, would be drafted after the 2009 session, with a goal of submitting these chapters to the Legislature for adoption in 2011.

5. The new code would become effective after the 2013 session in order to make that session available to correct any errors identified after the 2009 and 2011 enactments but prior to their effective date.

6. REPTL would assist the Legislative Council during the entire legislative process, including providing expert review of chapters as they are drafted and expert testimony about legislation before the Legislature.

5.6 The Nonsubstantive Estates Code Passed. Legislative Council chose the "Estates and Guardianship Code" as the new name for the recodified Probate Code. It was filed in the as H.B. 2502 by Rep. Hartnett and S.B. 2071 by Senator Duncan. However, Rep. Hartnett felt that the new name was a mouthful, so the name of the new Code was shortened to just the "Estates Code" when H.B. 2502 passed on the floor of the House. It passed the Senate without further amendment and will go into effect on January 1, 2014.

5.7 The Substantive Independent Administration Recodification Bill Did Not Pass. The substantive recodification bill relating to independent administration did not pass in 2009, falling victim to the last-minute logjam of bills in the Senate that had a multitude of causes, an explanation of which would substantially lengthen this paper. However, they were included in REPTL's 2011 Decedents' Estates bill.

5.8 Recodification of the Guardianship and Power of Attorney Portions of the Probate Code. As noted above, the guardianship and power of attorney portions of the Probate Code underwent a nonsubstantive revision by the Legislative Council's legal staff for introduction in the 2011 session. REPTL appointed Deborah Green of Austin and Linda Goehrs of Houston (the current and immediate past chairs of REPTL's Guardianship Committee) as the co-chairs of its Probate Code Codification Committee dealing with this aspect of the recodification process. This portion of the nonsubstantive recodification was introduced as **H.B. 2759** (Hartnett) and **S.B. 1299** (Duncan). The House version of this bill was signed by the Governor June 17th and is effective January 1, 2014.

5.9 Revisor's Report for the Estates Code. Legislative Council has prepared and posted online an 882-page Revisor's Report indicating the derivation of each section of the portion of the new Estates Code passed in 2009. The last 20 pages consist of a handy disposition table. You can find a link to the full Revisor's Report on the Legislative Council website at:

www.tlc.state.tx.us/code_current_estates.htm.

In early 2012, an updated Revisor's Report including information on the portions of the Estates Code passed in 2011 should be available at the same location.

5.10 Professor Beyer's Estates Code. Prof. Gerry Beyer of the Texas Tech University School of Law has prepared and posted online a compilation of the entire Estates Code through the 2011 session, including substantive revisions, and both derivation and disposition tables. This version of the Estates Code can be found at:

professorbeyer.com/Estates_Code/Texas_Estates_Code.html

5.11 Continuing Codification. Since the portion of the Estates Code that was enacted last session doesn't go into effect until 2014, and it is intended to be a nonsubstantive codification of the Probate Code **as it exists immediately prior to 2014**, there is a continuing need to make additional nonsubstantive revisions to incorporate changes to the Probate Code made prior to that time that were not incorporated into the Estates Code. In addition, one reason for the delayed effective date of the Estates Code is to provide time for "errors" to be discovered and corrected prior to that effective date. These same issues apply not just to the Estates Code, but to other codes enacted as part of the nonsubstantive codification process. **S.B. 1303** (West) is a **very** lengthy bill that makes "nonsubstantive" revisions to a number of

codes, including the Estates and Trust Codes (see Article 8 and Sections 21.002 and 21.003 of the bill), for the purposes of:

1. codifying without substantive change or providing for other appropriate disposition of various statutes that were omitted from enacted codes;

2. conforming codifications enacted by the 81st Legislature to other Acts of that legislature that amended the laws codified or added new law to subject matter codified;

3. making necessary corrections to enacted codifications; and

4. renumbering or otherwise redesignating titles, chapters, and sections of codes that duplicate title, chapter, or section designations.

This bill was signed by the Governor May 19th and the amendments to the Estates Code are effective January 1, 2014.

6. Decedents' Estates.

6.1 The REPTL Decedents' Estates Bill. The REPTL 2011 Decedents' Estates bill – **H.B. 2046** (Hartnett) and **S.B. 1198** (Rodriguez) – contains a number of proposals.[6]

(a) Deadline for Filing Disclaimers (Section 37A). Our current disclaimer statute generally requires that disclaimers be made within nine months of the date of death. This deadline intentionally mirrors the identical deadline for "qualified disclaimers" under Section 2518 of the Internal Revenue Code. The recent federal tax bill that went into effect December 17th extends the deadline for making certain disclaimers of property passing as a result of a death occurring in 2010 – for federal tax purposes – until nine months from the date of enactment (or September 17, 2011). REPTL's Decedents' Estates bill has been modified to amend Section 37A to extend the deadline in these situations for state law purposes, as well. While this provision was not included in the package originally submitted for State Bar approval, REPTL received expedited permission to carry this as a REPTL proposal. (A similar change is made to our Trust Code disclaimer statute in the REPTL Trust Code bill.)

Drafting Tip

This change will apply to all disclaimers under Section 37A related to interests passing upon the death of pre-December 17th 2010 decedents. While the general effective date of the REPTL Decedents' Estates bill is September 1st, the change to Section 37A will be effective upon enactment. Therefore, it may be prudent to wait until the Governor signs this bill to execute a disclaimer under Section 37A so that the change will be in effect at the time of the disclaimer. **But don't wait until after September 17th, because by then it may be too late!**

(b) Determination of Heirship Sought by Trustees (Sections 48 & 49). Sections 48 and 49 are amended to add trustees to the list of persons who may bring a determination of heirship action where necessary to determine the beneficiaries of the trust (i.e., "if no descendant of settlor is then surviving, the trust estate shall be distributed to settlor's then surviving heirs.")

(c) "One-Step" Procedure for Will Execution (Section 59). Ever find yourself trying to explain to your clients why it's necessary for them and the witnesses to sign the will twice? Ever consider the procedure archaic? Well REPTL has something just for you – a handy, dandy revision to Section 59 that allows an **optional** method of simultaneously executing, attesting, and making a will self-proved, so that everyone signs just once. For those of you who think this is just too radical a departure from current law, rest assured that the Uniform Probate Code has contained an optional one-step method for years. Further, if that still doesn't make you feel better, the tried-and-true two-step method will remain available. (This provision was included in the ill-fated 2009 decedents' estates bill, but a similar provision relating to self-proving affidavits in guardianship designations went into effect September 1, 2009, thanks to REPTL's 2009 guardianship bill.) See the attachments to this paper for a form for this one-step method of will execution.

(d) Foreign Self-Proving Affidavit (Section 84). Ever find yourself with a will executed in another state that appears to have a perfectly good self-proving affidavit, only to determine is doesn't comply with Section 59? This change provides that if a will is properly executed with a self-proving affidavit that complies with the laws of the testator's domicile (at the time of execution), the will should be considered self-proved for purposes of probating it here in Texas even if the affidavit does not conform to our normal Texas

[6] Section references are to the Texas Probate Code unless otherwise noted.

form of self-proving affidavit. The bill also provides that wills with a "Uniform Probate Code" form of self-proving affidavit are to be considered self-proved here in Texas (without any need to prove that the UPC form complied with the law of the testator's domicile).

(e) No Contest Provisions in Wills (Section 64). A 2009 amendment expressly made no contest provisions unenforceable if probable cause exists for commencing the contest and the contest was brought and maintained in good faith. The REPTL bill revised this provision to conform the language with Probate Code Section 243, relating to allowances for defending wills. (A similar change was made to Trust Code Section 112.038 relating to trust contests, also added in 2009).

(f) Pretermitted Children (Section 67). This change revises the provisions relating to pretermitted children (children born after the execution of a will who are not otherwise provide for). Since the rationale for this change isn't as self-evident as some of the other changes, here's some background.

Professor Stanley Johanson brought the following hypothetical to REPTL's attention, taken from one of his law school exams (edited for brevity):

Harvey and Lucille were married, lived in Dallas, and had no children. In 2000, Harvey executed a will that gave all of his property to Lucille. In 2002, Harvey had an affair with Blaze Starr, resulting in a son: Curly. While threatening divorce, Lucille decided to stick with Harvey. Harvey died in 2005 without changing his will. Harvey had separate personal property of $300,000 and an interest in a community estate of $600,000. What are Curly's rights, if any?

Under current Probate Code §67(a)(2), because Harvey had no children when he executed his will, Curly succeeds to an amount equal to what he would inherit if Harvey had died intestate and unmarried, "owning only that portion of his estate not devised or bequeathed to the **parent** of the pretermitted child." Since the other parent of the child was Blaze and Harvey had understandably given nothing to her in his will, Curly gets Harvey's entire estate, leaving Lucille with only her half of the community property, and none of Harvey's estate. Prof. Johanson questioned whether this was the appropriate result when Curly would have taken nothing had he been born to Lucille.

The REPTL Council agreed, proposing an amendment that would exclude from consideration the portion of the estate passing to **either** the other parent of the pretermitted child **or the surviving spouse** of the testator. However, due to Rep. Hartnett's concerns about completely disinheriting the pretermitted child when the estate passes to a spouse who is not the child's parent, this provision has been modified to provide that the amounts passing to that pretermitted child may not reduce the amount passing to the surviving spouse by more than half.

Drafting Tip

If a client has another child, make sure that child is "provided for" in the will, or reexecute the will so that the child will no longer be considered "pretermitted."

(g) Repeal of Testamentary Provision for Management of Separate Property (Section 70). Section 70 allows a testator to include a provision in his or her will giving the surviving spouse the power to keep testator's separate property together until each of the beneficiaries becomes an adult, using the same provisions applicable to the management of community property. Since this provision is rarely (if ever) used, REPTL proposed repealing it in 2009, and was successful in its efforts in 2011.

(h) Dissolutions of Marriage After Execution of Will (Sections 81 & 89A). The bill further simplifies the statements required in applications to probate wills relating to marriage dissolutions following the execution of a will.

Drafting Tip

The standard provision in the probate application and witness testimony can be simplified as follows:

"No marriage of the decedent was ever dissolved after the will was made~~, whether by divorce, annulment, or a declaration that the marriage was void~~."

(i) Dueling Will Applications (Section 83). Section 83(a) provides that where a second will is offered for probate before the first is admitted, the court should hear both applications together and determine which, if either, should be admitted to probate. This amendment specifically prohibits severance or bifurcation of the proceeding on the applications. [Note that this provision was "borrowed" from H.B. 2899 (discussed in the list of bills that did not pass) and was added to the REPTL bill by Judiciary May 16th.]

(j) Notice to Beneficiaries (Section 128A). Section 128A was amended in 2007 to require an executor to provide notice of the probate proceedings to beneficiaries under a will within 60 days from the date

of the executor's qualification. Much difficulty and confusion arose from this 2007 amendment. The REPTL Decedents' Estates bill simplifies the notice requirements in several respects:

- Clarification that a beneficiary who is entitled to benefits only upon the occurrence of a contingency that has not occurred at the time of the decedent's death need not receive the notice.

- Clarification that no notice is necessary in a muniment of title proceeding.

- Elimination of the need to notify all trust beneficiaries of the probate proceedings, no matter how remote the beneficial interest, when ancestors with similar interests have already been notified.

- Elimination of the need to notify beneficiaries who receive only nominal gifts, or whose gifts have already been satisfied by the time the notice would otherwise be given.

- Allows the executor to provide a written summary of gifts to the beneficiary, in lieu of a full copy of the will.

While these revisions to Section 128A were drafted with input from REPTL members and they were included in the REPTL Decedents' Estates bill by Rep. Hartnett, this is **not** an official REPTL proposal. See the attachments to this paper for a form of the executor's affidavit of compliance with these revised notice requirements.

(k) Independent Administration. A number of independent administration revisions were proposed in 2009 designed to bring some clarification to three areas of independent administration:

1. Specifying the authority of an independent executor or administrator to sell assets in the absence of an express grant in the will;

2. Detailing the procedures for presenting and dealing with creditors' claims; and

3. Providing a simpler procedure for filing a notice that an independent administration has "closed" without the need for a full accounting of all receipts and disbursements.

They were included again in the 2011 REPTL Decedents' Estates bill. Here are the highlights:

(i) Determination of Heirships (Section 145). While not originally a REPTL proposal in 2009, the 2011 proposal requires a judicial determination of heirship in the event of an independent administration by agreement in an intestate situation. (This is already the case by local rule in most statutory probate courts.)

(ii) Independent Administration by Agreement (Section 145). Provisions are added allowing parents of minor children and trustees to consent to independent administration by agreement where no conflict exists.

(iii) Power of Sale by Consent (Sections 145A, 145B, & 145C). The revisions confirm that an independent representative may sell without a court order under the same circumstances that a dependent representative could sell with a court order. In administrations without a will, or where a will fails to expressly grant a power of sale, an independent administrator may be granted a power of sale over real property in the order of appointment if the beneficiaries who would receive the real property consent to the power (avoiding a later need to obtain their consent). Perhaps more importantly from a practical standpoint, the revisions include a new concept (borrowed from the Trust Code) providing statutory protection for third parties who rely on the apparent authority of an independent representative where a power of sale is granted in the will or the representative provides an affidavit that the sale is necessary under the circumstances described in current Probate Code Section 341(1).

Drafting Tip

When you are drafting a will, make sure you give your executor a power of sale, or, better yet, "all of the powers granted trustees under the Texas Trust Code."

(iv) Secured Claims (Section 146). Over twenty years ago, the Texas Supreme Court ruled that Probate Code Section 306 applies to independent administrations. See *Geary v. Texas Commerce Bank*, 967 S.W.2d 836 (Tex. 1998). However, the Probate Code has never been amended to recognize this. Therefore, the revisions pay special attention to providing guidance regarding the handling of secured claims. Secured creditors electing matured, secured status must file a notice in the official records of the county in which the real property securing the indebtedness is located. Those creditors must obtain court approval or the administrator's consent to exercise any foreclosure rights. Secured creditors electing preferred debt and lien status may not exercise

any nonjudicial foreclosure rights during the first six months of the administration.

(v) Method of Presenting Claims and Notices (Section 146). Creditors must present their claims or respond to notices (i) in a written instrument that is hand-delivered or sent by certified mail, in either case with proof of receipt, to the administrator or the administrator's attorney; (ii) in a pleading filed in a lawsuit with respect to the claim; or (iii) in a written instrument or pleading filed in the court in which the administration is pending.

(vi) Statute of Limitations (Section 146). The running of the statute of limitations is tolled only by (i) a written approval of a claim signed by the administrator, (ii) a pleading filed in a suit pending at the time of the decedent's death, or (iii) a suit brought by the creditor against the administrator. The mere presentment of a claim or notice does not toll the running of the statute of limitations.

(vii) Other Claims Procedures (Section 146). Other claims procedures generally do not apply. Specifically, a claim is not barred merely because a creditor fails to file suit within ninety days following the rejection of a claim.

(viii) Time for Petition for Accounting and Distribution (Section 149B). The Probate Code currently allows an interested person to seek an accounting and distribution of an estate from an independent executor or administrator after the expiration of two years from the grant of letters testamentary or administration. This change clarifies that in the case of successor administrators or executors, the two-year waiting period runs from the initial grant of letters to the first representative, and does not restart when the successor is appointed.

(ix) Removal of Independent Executor for Material Conflict of Interest (Section 149C). Section 149C is revised to allow a court to remove an independent executor if the independent executor is prevented from properly performing the executor's fiduciary duties due to a "material conflict of interest." This provision was added to the REPTL bill by Judiciary May 16th and is **not** a REPTL provision. This addition appears to be an attempt to statutorily overrule the decision in *Kappus v. Kappus*, 284 S.W.3d 831 (Tex. 2009).

(x) Notice of Closing Estate (Section 151). In addition to existing procedures for closing independent administrations, an administrator may elect to close an independent administration by filing an affidavit stating that all known debts have been paid, or have been paid to the extent the assets of the estate will permit; that all remaining assets have been distributed; and the names and addresses of the distributees. Once the administration is closed, third parties may deal directly with the distributees. See the attachments to this paper for a form for this notice.

(xi) Closing Not Required (Section 151). A new provision explicitly recognizes that independent administrations are not required to be closed.

(l) Compensation of Representatives (Section 241) – Not This Time! In a significant departure from current Texas law, REPTL proposed to change standard compensation of an executor or administrator from the historical 5%-of-receipts-plus-5%-of-disbursements-up-to-5%-of-the-estate formula to a "reasonable compensation" standard, which is in accordance with the rule in the vast majority of states. **However, due to opposition of some probate judges, this change has been eliminated from the bill.**

(m) Affidavit in Lieu of Inventories (Section 250). If no debts remain by the inventory due date, this change allows an **independent** executor or administrator to file an affidavit in lieu of the inventory stating those facts. The executor or administrator must still **prepare** a sworn inventory and provide a copy to all. The bill also allows an "interested person," including an intestate heir or beneficiary under a prior will, to obtain a copy from the executor or administrator upon written request. See the attachments to this paper for a form for this affidavit.

Drafting Tip

Many wills currently provide for independent administration with a sentence similar to the following:

"No action shall be required in any court of probate jurisdiction in relation to the settlement of my estate other than the probating and recording of this will and the return of an inventory and list of claims of my estate."

This language comes from Probate Code Section 145(b). In order to avoid an argument that this will language would override the new statutory provision of Section 250 allowing the filing of an affidavit in lieu of an inventory (an argument the author finds dubious), consider adding "if required by law" or "or an affidavit in lieu of inventory" to the end of this sentence.

(n) Co-Owners Need Not be Listed on Inventory (Section 250). The Probate Code currently requires a listing of the co-owners of property on an inventory. REPTL proposes deleting this requirement.

While most of the "intrasession negotiations" on the REPTL Decedents' Estates bill were conducted over the House version authored by Rep. Hartnett, once a consensus was reached, the Senate version (authored by Sen. Rodriguez) was quickly revised to match it, and virtually sailed through the Senate. The Senate bill was amended slightly by Judiciary and passed the House May 23rd. However, shortly afterwards, H.B. 2899 (described in the list of bills that did not pass) stalled in the Senate after passing the House. Therefore, a conference was requested on S.B. 1198 in order to add virtually all of the provisions of H.B. 2899 to the REPTL Decedents' Estates bill. The Senate adopted the conference report on the afternoon of Sunday, May 29th, the last possible day, but as time was running out to adopt the conference report in the House Sunday evening, a strategic decision was made to "jettison" the conference changes in order to save the main bill. Sen. Rodriguez withdrew his request for a conference, and the Senate concurred in the previous House amendments, eliminating the need for further action in the House. As it turned out, this was a wise move, since the House was still ten bills away from consideration of S.B. 1198 on its calendar when the clock struck midnight. This bill was signed by the Governor June 17th, and is generally effective September 1st. However, the extension of the disclaimer deadline for 2010 decedents is effective immediately, and amendments to the Estates Code are effective January 1, 2014.

7. Guardianships.

7.1 The REPTL Guardianship Bill. The REPTL Guardianship bill – **H.B. 1837** (Hartnett) and **S.B. 1196** (Rodriguez) – deals with a variety of issues, the most significant of which was originally the proposed change in guardian compensation described below (but as already noted, that provision has not survived).

(a) Term of Attorney Ad Litem in Temporary Guardianship (Section 646). Current law provides that the appointment of an attorney ad litem in response to the filing of an application for the appointment of a guardian expires upon the appointment of the guardian. The proposed change provides that the attorney ad litem's appointment does not expire upon appointment of temporary guardian; only upon the appointment of a permanent guardian.

(b) Location of Hearings (Section 652). Unless an adult proposed ward, adult ward, or attorney for either requests that a hearing be held at the courthouse, hearings on a guardianship matter could be held at any suitable location within the county. [Note that this provision was "borrowed" from H.B. 2900 (discussed in the list of bills that did not pass) and was added to the REPTL bill by Judiciary in mid- May.]

(c) "Reasonable Compensation" for Guardians (Section 665) – Again, Not This Time! REPTL proposed to change standard compensation of guardians and trustees of Section 867 management trusts from the current 5%-of-income-plus-5%-of-disbursements formula to a "reasonable compensation" standard as determined by the court, which is in accordance with the rule in the vast majority of states. **However, due to opposition of some probate judges, this change has been eliminated.**

(d) Physician's Certificate (Section 687). This change further clarifies the necessary requirements of a physician's or psychologist's report in a guardianship proceeding. (These requirements were modified in 2009.)

(e) Co-Owners Need Not be Listed on Inventory (Section 729(c)). The Probate Code currently requires a listing of the co-owners of property on an inventory. REPTL proposes deleting this requirement.

(f) Termination of Guardianship by Transfer to Pooled Interest Trust (Sections 745(6) & 867) This change allows the complete termination of a guardianship proceeding if all of the assets of the guardianship estate have been transferred to a pooled interest trust sub-account for the ward.

(g) Admission of Ward to Psychiatric Facility (Section 770(c)(3)). This change increases the age of wards whom a guardian may admit to an inpatient psychiatric facility from 16 to 18 years or younger.

(h) Gifts for Non-Tax Purposes (Section 865). The Probate Code currently allows court-approved gifts motivated by tax considerations. REPTL's proposal also allows gifts or transfers in order to make the ward eligible for government benefits. At the request of some probate judges, this change is clarified to apply only to transfers allowed under applicable state and federal benefits rules.

(i) Asset Report Within 30 Days of Management Trust Funding (Section 867). A court

could require the trustee of a management trust to file a report showing the current value and descriptions of trust assets within 30 days of trust funding.

(j) Management Trusts for Persons With Physical Disability Only (Sections 867, 871, & 873). Another change expands the list of persons eligible to apply for establishment of a management trust to include a person with a physical disability only. In that case, there would be no requirement for annual accounts.

(k) Persons Eligible to Apply for Establishment of Pooled Interest Sub-Account (Section 911). The final change expands the list of persons eligible to apply for establishment of pooled interest trust sub-account.

As with the REPTL Decedents' Estates bill, most of the "intrasession negotiations" on the REPTL Guardianship bill were conducted over the House version authored by Rep. Hartnett, but it is the Senate version that passed when the Senate concurred in House amendments May 27th. This bill was signed by the Governor June 17th and is effective September 1st.

7.2 Assorted Guardianship Changes (Sections 633, 646A, 682, 697B, & 761). S.B. 220 (Nelson) contains provisions related to the assessment of proposed wards by the Department of Aging and Disability Services, including the possible release of request may release confidential information to the assessed individual, his or her guardian, or executor or administrator. Other guardianship changes in this bill include:

- A requirement that the initial citation to interested persons in a guardianship proceeding contain a "clear and conspicuous statement" informing them of their right to be notified of future motions, applications, or pleadings. See the attachments to this paper for a form for this statement.
- Adding relatives within the third degree of consanguinity to the list of persons who must be notified if the proposed ward has no living spouse, parents, adult siblings, or adult children.
- Allowing a proposed ward with capacity to contract, or an existing ward who has retained the capacity to contract, to retain his or her own attorney of choice, so long as the attorney has the certification required of attorneys ad litem. Upon finding that the ward or proposed ward retains contractual capacity, the court may remove the attorney ad litem.
- Adding conduct with respect to a ward that would constitute abuse, neglect, or exploitation of an elderly or disabled person, as defined in Section 48.002 of the Human Resources Code, as a specific ground for removal of a guardian.
- Requiring a court to appoint both a guardian ad litem and an attorney ad litem in a proceeding to remove a guardian on grounds of (i) misapplication, embezzlement, etc.; (ii) conduct constituting abuse, neglect, or exploitation; or (iii) neglect. The GAL and AAL may be the same person if no conflict exists in the interests to be represented.
- Appointment of a successor guardian following removal does not preclude an interested person from filing an application to be appointed in lieu of the successor.

This bill was signed by the Governor June 17th and is effective September 1st.

7.3 Notice to Removed Guardian (Sections 761 & 762). S.B. 481 (Harris) requires the clerk to notify a guardian (other than a missing guardian) of the guardian's removal under Section 761, and extends from 10 to 30 days the permissible time period under Section 762 for filing a motion for reinstatement of the guardian. This bill was signed by the Governor June 17th and is effective September 1st.

7.4 The Hartnett/Herman/Ferchill "Omnibus" Guardianship Bill. During the regular session, **H.B. 2900** (Hartnett) was originally an "omnibus" guardianship bill accompanied by **H.B. 2899** (Hartnett) – an "omnibus" decedents' estates bill, that the author understands contained miscellaneous proposals from Rep. Hartnett and Statutory Probate Judges Guy Herman (of Travis County) and Pat Ferchill (of Tarrant County) – and again, perhaps one or two other probate judges.

H.B 2900 stalled over proposed changes relating to allocation of attorney's fees and costs in guardianship proceedings. While compromise language was eventually reached, the agreement came too late for passage in both chambers. While the Senate adopted the conference report on the afternoon of Sunday, May 29th, the last possible day, the House was still four bills away from consideration of this bill on its calendar when the clock struck midnight. Therefore, this bill failed to pass.

We did not see the last of these provisions, however. During the First Called Session (*i.e.*, the special

session), many of the original provisions of H.B. 2900 were added by the House to **S.B. 1** – the "fiscal matters" bill that was the primary reason for a special session. Those provisions remained in the conference committee report that was passed by both chambers on June 28th. (See the attachments to this paper for a description of the provisions of H.B. 2900 that failed to make their way into any other bill.) Here is a summary of the provisions of S.B. 1 related to guardianships:

(a) Transfer of Guardianships (Sections 612 – 619). Following the transfer of a guardianship to another county, the guardian is required to post a new bond payable to the judge of the new court, or a rider to the existing bond noting the change. The new court must hold a hearing within 90 days to determine whether any of the terms of the guardianship should be modified.

(b) Foreign Guardianships (Sections 892 – 895). Another change requires a foreign guardian of a ward residing in or intending to move to Texas to attach certified copies of all papers filed in the foreign proceeding to the application to transfer the guardianship to a Texas court. The court is then required to consider whether any of the terms of the guardianship should be modified to comply with our laws. A court in which a guardianship is pending may delay further action if a subsequent guardianship proceeding is filed in another jurisdiction and venue there is proper. The expressed preference of a proposed ward who is 12 years of age or older is added as a factor in making this decision. But if at any time a Texas court determines that it has acquired jurisdiction over a guardianship because of unjustifiable conduct, the court may:

1. decline to exercise jurisdiction;

2. exercise jurisdiction just to impose an appropriate remedy for the health, safety, and welfare of the incapacitated person's property or prevent a repetition of the unjustifiable conduct; or

3. continue to exercise jurisdiction after considering the extent to which all necessary parties have acquiesced to the court's jurisdiction, whether the Texas court is a more appropriate forum, and whether the other court would have jurisdiction under the facts.

If the Texas court determines that it has jurisdiction because a party engaged in unjustifiable conduct, the court could assess costs against that party. The court may not assess costs against the state or a governmental subdivision or agency unless authorized by other law.

S.B. 1 was signed by the Governor July 19th and is effective September 28th.

8. Trusts.

8.1 The REPTL Trust Code Bill. The REPTL Trust Code package – **H.B. 1835** (Hartnett) and **S.B. 1197** (Rodriguez) – is relatively modest.

(a) Deadline for Filing Disclaimers (Trust Code Section 112.010). Our current disclaimer statute generally requires that disclaimers be made within nine months of the date of the event creating the interest. This deadline intentionally mirrors the identical deadline for "qualified disclaimers" under Section 2518 of the Internal Revenue Code. The recent federal tax bill that went into effect December 17th extends the deadline for making certain disclaimers of property passing as a result of a death occurring in 2010 – for federal tax purposes – until nine months from the date of enactment (or September 17, 2011). The REPTL Trust Code bill amends Section 112.010 to extend the deadline in these situations for state law purposes, as well. While this provision was not included in the package originally submitted for State Bar approval, REPTL received expedited permission to carry this as a REPTL proposal. (A similar change is made to our Probate Code disclaimer statute in the REPTL Decedents' Estates bill.)

Drafting Tip

While this change will apply to all disclaimers under the Trust Code related to interests passing upon the death of pre-December 17th 2010 decedents, the effective date of the bill is September 1, 2011. Therefore, it may be prudent to wait until September 1st to execute a disclaimer under Section 112.010 so that the change will be in effect at the time of the disclaimer. **But don't wait until after September 17th, because by then it may be too late!**

(b) No Contest Provisions in Trusts (Trust Code Section 112.038). This section of the Trust Code, relating to the enforceability of forfeiture clauses in trust contests, was added in 2009, and is similar to Probate Code Section 64 relating to will contests, also added in 2009. REPTL proposes to revise Probate Code Section 64 to conform the language with Probate Code Section 243, related to allowances for defending wills, and believes it appropriate to make the same change applicable to trusts so the same standard will apply to both wills and trusts.

(c) Waiver of Notice of Combination of Trusts (Trust Code Section 112.057). This section of

the Trust Code allows trustees to divide and combine trusts when appropriate (usually to achieve beneficial tax results) upon 30-days notice to the beneficiaries. New subsections (e) and (f) allow waiver by the beneficiaries of the 30-day notice provision for combination of trusts, and allow waiver of the notice by guardians, parents, etc., of incapacitated beneficiaries.

(d) Trust Jurisdiction of Statutory County Courts (Trust Code Section 115.001). Recent changes to the Probate Code extend jurisdiction over trusts created by a decedent to statutory county courts (as opposed to just statutory probate courts) while administration of the decedent's estate is pending (e.g., Section 4B(b)(2) and (3)). However, the Trust Code still provides that jurisdiction is exclusively in the district court in these cases. This change expands jurisdiction over trusts created by a decedent to statutory county courts while administration of the decedent's estate is pending.

(e) Permissive Venue of Trust Proceedings While Estate is Pending (Trust Code Section 115.002) Generally, venue for a trust proceeding is in the county of the trustee's residence. However, since courts in which the administration of a deceased settlor's estate is pending have jurisdiction over such proceedings, this change adds permissive venue in those counties.

(f) Necessary Parties to Trust Proceedings (Trust Code Section 115.011(b)). Necessary parties to a trust proceeding include any beneficiary designated by name in the instrument creating a trust Technically, this includes anyone named as a beneficiary in a will creating a testamentary trust, even if the person is not a beneficiary of the trust. It also includes persons whose interest in the trust may have previously terminated. This change limits necessary parties to persons designated by name as a beneficiary of the trust, and whose interests have not been previously extinguished.

(g) 2008 UPIA Amendment (Trust Code Section 116.205). The REPTL Trust Code bill also includes a provision incorporating a 2008 amendment by the National Conference of Commissioners on Uniform State Laws to the Uniform Principal and Income Act. Tax allocations to trusts from pass-through entities, such as partnerships or S corporations, often create cash-flow problems to the trust when the entity makes a distribution during the year, but does not distribute all of its taxable income. The problem is created by the current requirement that taxes be paid proportionately from income, to extent the entity's receipts are allocated to income, and from principal, to the extent that receipts from the entity are allocated to principal, **or to the extent that the trust's share of the entity's taxable income exceeds receipts from the entity**. This supplemental proposal incorporates NCCUSL's 2008 amendment into Trust Code Section 116.205 to alleviate the problem. While drafted with input from REPTL members and included in the REPTL Trust Code bill by Rep. Hartnett, this is **not** an official REPTL proposal

(h) Effect of Divorce on Revocable Trusts (Probate Code Sections 471 – 473). The REPTL Decedents' Estates package also contains provisions dealing with revocable trusts (because the provisions are, for some reason, in the Probate Code, not the Trust Code). Changes to Probate Code Section 69 in 2007 revoked provisions in a will in favor of the relatives of an ex-spouse when the will was executed prior to the divorce. The changes also included references to a declaration that a marriage is void (in addition to divorce and annulment). REPTL's 2009 Decedents' Estates bill included conforming amendments to Probate Code Sections 471, 472, and 473 relating to provisions in a revocable trust in favor of an ex-spouse or the ex-spouse's relatives. However, as noted previously, above, the 2009 proposal did not pass. Therefore, they are included in the 2011 package.

Drafting Tip

Until this change to the Probate Code passes (and maybe even after it passes), consider incorporating the substance of Probate Code Section 69 in your revocable management trusts by including a provision such as:

"If settlor's marriage to settlor's spouse is dissolved, whether by divorce, annulment, or a declaration that the marriage is void, all provisions in this agreement, including all fiduciary appointments, shall be read as if settlor's spouse and each relative of settlor's spouse who is not a relative of settlor failed to survive settlor."

Unlike the two other REPTL bills, there were no provisions in the REPTL Trust Code bill requiring any "negotiations." The Senate version was signed by the Governor June 17th and is effective September 1st.

9. Jurisdiction and Venue.

9.1 The REPTL Decedents' Estates Bill. The REPTL 2011 Decedents' Estates bill contains several changes to both jurisdiction and venue.

(a) Transfer of Entire Proceeding from Constitutional County Court (Section 4D) – Another Thorny Issue. REPTL's proposed jurisdictional

change would have allowed a constitutional county court in a contested matter to transfer the entire proceeding (not just the contested part) to a statutory probate judge or district court (this is consistent with similar a proposed change to guardianship jurisdiction). **However, due to opposition of some probate judges, this change will be eliminated prior to passage.**

(b) Consolidation of Venue Provisions (Sections 6, 7, 8, & 48). The proposed change consolidates venue provisions, including venue for heirship proceedings previously located in the heirship provisions. At the request of certain probate judges, the current provision allowing an heirship proceeding to be brought in a guardianship proceeding following the death of an intestate ward is modified to continue to allow venue in that county, but require that the heirship proceeding be brought as a separate cause. The bill also adds clarification that Probate Code venue provisions are subordinate to the Travis County venue provided by Property Code Section 123.005 for suits by the AG's office related to breach of fiduciary duties by charitable organizations or their agents.

9.2 The REPTL Guardianship Bill. The REPTL 2011 Guardianship bill also contains several similar changes to jurisdiction in guardianship proceedings.

(a) Transfer of Entire Proceeding from Constitutional County Court (Sections 601 – 609) – The Same Thorny Issue. As noted above, REPTL proposed allowing a constitutional county court in a contested matter to transfer the entire proceeding (not just the contested part) to a statutory probate judge or district court (this is consistent with similar proposed changes to decedents' estates jurisdiction). **However, due to opposition of some probate judges, this change has been eliminated.** In addition, the changes make the guardianship provisions more consistent with those applicable to decedents' estates.

10. Charities.

10.1 Jurisdiction Over Charitable Breach of Fiduciary Proceedings. In 2009, Property Code Section 123.005 was amended to provide that the **venue** for a proceeding brought by the AG's office for breach of fiduciary duty against a charity (not just against an agent of the charity) could be brought in Travis County, and that to the extent of a conflict with the Probate Code, this section controlled. **S.B. 587** (Uresti) amends Section 123.005 once again to provide that a statutory probate court has concurrent **jurisdiction** over such a proceeding involving a charitable trust under a will with any other court that may have jurisdiction under the Probate Code. This bill was signed by the Governor June 17th and is effective immediately.

10.2 Charitable Immunity. Chapter 84 of the Civil Practice and Remedies Code provides certain immunities or limitations on liability for volunteers or employees of charitable organizations if the charity meets certain minimum liability insurance requirements. **S.B. 1846** (Lucio) provides that the insurance coverage may also be provided by a plan providing for self-insured retention, a Lloyd's plan, or an indemnity policy. This bill was signed by the Governor May 9th and is effective immediately.

10.3 Minimizing Control by Governmental Entities Over Charitable Organizations. H.B. 3573 (King, Susan) adds new Government Code Section 2252.906 preventing any governmental entity from requiring a charitable organization or split-interest trust to disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of (1) an employee, officer, director, trustee, or member; or (2) a person or entity (or an employee, officer, director, trustee, member, or owner of the entity) that receives money or in-kind contributions from or contracts with the organization or trust. A governmental entity may not require that the governing board or officers include an individual of any particular race, religion, etc., nor may it prohibit an individual from serving as a board member or officer based on familial relationship to another board member, officer, or donor, or require that the board or officers include one or more individuals who do not share a familial relationship with the board members or officers. Finally, unless a condition is imposed on expenditures by a donor, no governmental agency may require distributions to or contracts with a person based on the race, religion, etc., of (1) the person or an employee, officer, director, trustee, member, or owner of the entity, or (2) the populations, locales, or communities served by the person or entity. A committee substitute clarifies that the new section **does not** limit attorney general's authority to investigate or enforce laws in accordance with its duty to protect the public interest in charity. This bill was signed by the Governor June 17th and is effective September 1st.

11. Court Administration.

11.1 "Loser Pays" Bill. The famed "Loser Pays" bill – **H.B. 274** (Creighton | Aliseda | Kleinschmidt | Jackson, Jim | Sheets) may have an

impact on probate practitioners. The following is an abridged version of a more Glenn Karisch's analysis:

While the Legislature stripped many of the more controversial provisions from the final version of the "loser pays" bill, it may still impact probate and guardianship practice. The biggest problem remaining for probate and guardianship lawyers is the potential for new Supreme Court rules that alter the way probate and guardianship actions are handled.

Under amendments to Government Code Section 22.004, the Supreme Court must adopt rules that "apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy does not exceed $100,000." The rules "shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system." While the Court is not permitted to adopt rules that conflict with the Family or Property Codes, there is no carve-out for conflicts with the Probate Code. (The Property Code exception should apply in trust law cases since the Trust Code is part of the Property Code.)

Hopefully the Court will consider some of the unique aspects of probate and guardianship actions when drafting the new rules. Still, there is a potential problem in these cases:

- ***Claims Practice.*** The Probate Code already has an expedited way to handle claims against probate estates, most of which are under $100,000. Will the rules provide a different way to handle these claims? Will the rules be mandatory?

- ***Administrative Matters Not Involving an Amount in Controversy.*** Some statutes dealing with specialized procedures in litigation over monetary damages expressly limit their application to claims for monetary relief. (*See, e.g.*, Section 42.002(a) of the Civil Practices and Remedies Code.) However, while the new rulemaking mandate appears aimed at litigation involving recovery of monetary damages, the statutory mandate for new rules is not limited to damage cases. What if a party in an action to remove an independent executor under Section 149C of the Probate Code elects to follow a new procedure enabled by rules implemented under H.B. 274?

Other provisions of H.B. 274 which may impact probate, guardianship and trust practice:

- Appeal of interlocutory orders becomes easier under amended Section 51.014 of the Civil Practices and Remedies Code.

- Deposition costs are added to the list of costs a loser may be required to pay under amended Section 42.001 of the Civil Practices and Remedies Code if a settlement offer is rejected under Section 42.003.

The Loser Pays bill was signed by the Governor May 30th and is effective September 1st.

11.2 Probate Fee Exemption for Estates of Persons Killed in Line of Duty. **S.B. 543** (Hegar) adds Probate Code Section 11B, exempting the estates of certain law enforcement officers, firefighters, EMS personnel, and others killed in the line of duty from paying probate filing fees. This bill was signed by the Governor June 17th, and is effective September 1st. However, amendments to the Estates Code are effective January 1, 2014.

11.3 Eligibility of Former Statutory Probate Court Judge for Assignment. In a "technical correction" made to REPTL's Decedents' Estates bill on the last day of the session, the minimum time a former statutory probate judge must have served as such in order to be eligible to be assigned as a visiting statutory probate judge will be reduced from eight to six years. (This provision was "borrowed" from **H.B. 322** (Hartnett), which did not pass.) The same change was further clarified by **H.B. 79** (Lewis | Jackson, Jim) passed in the special session. This special session bill was signed by the Governor July 19th and is generally effective January 1, 2012.

11.4 Use of Unsworn Declarations. After the end of the regular session, George Cosson, a member of Glenn Karisch's TexasProbate e-mail list, brought the provisions of **H.B. 3674** (Eiland) to the attention of the list. This bill transformed Section 132.001 of the Civil Practice and Remedies Code – a little-known provision dealing solely with the use of unsworn declarations by inmates (since they have limited access to notaries) – into a provision with very broad potential implications. As passed, the amended provision allows the use of an unsworn written declaration made under penalty of perjury in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law. (The section does not apply to an oath of office or an oath required to be taken before a specified official other than a notary.) This proposal was generated by the Administration of

Rules of Evidence Committee of the State Bar and was approved by the Bar's Board of Directors. It appears from the documentation in support of this proposal that it was intended to expedite filings not only in judicial proceedings, but also administrative proceedings. But is is not clear that thought was given to its possible effect on non-judicial/administrative documents, such as a self-proving affidavit to a will. Further, Property Code Section 12.001(a) allows the recording of an instrument concerning real or personal property that has been **either "**acknowledged, **sworn to with a proper jurat**, or proved according to law." Section 12.001(b) allows an instrument conveying real property to be recorded if it is **either** "signed and acknowledged or **sworn to by the grantor** in the presence of two or more credible subscribing witnesses or acknowledged **or sworn to before and certified by an officer authorized to take acknowledgements or oaths**, as applicable." This bill was signed by the Governor June 17th and is effective September 1st. This amendment is likely to be reviewed for possible amendment (and restriction in application) in 2013.

12. Nontestamentary Transfers.

12.1 The REPTL Decedents' Estates Bill. The REPTL 2011 Decedents' Estates bill contains two changes to the nontestamentary transfer provisions of the Probate Code.

(a) Charities as Beneficiaries of POD Accounts (Section 436). The bill clarifies that a charitable organization may be made the beneficiary of a pay-on-death (P.O.D.) account at a financial institution upon the death of the accountholder.

(b) Community Property Survivorship Agreements (Sections 439 & 452). The recent case of *Holmes v. Beatty*, 290 S.W.3d 852 (Tex. 2009), held that community property survivorship agreements need not meet the same requirements of survivorship agreements between nonspouses. REPTL's bill adds language intended to reverse the result of that case by providing that an account designation as "JT TEN" alone is insufficient to create a community property right of survivorship.

13. Disability Documents.

13.1 Uniform Power of Attorney Act – Not This Time! Our current Durable Power of Attorney Act was enacted in 1993 and is based, in large part, on the Uniform Durable Power of Attorney Act last amended by the National Conference of Commissioners on Uniform State Laws in 1987, over 20 years ago. A national survey conducted by NCCUSL concluded that a durable power of attorney should:

- provide for confirmation that contingent powers are activated;
- revoke a spouse-agent's authority upon the dissolution or annulment of the marriage to the principal;
- include a portability provision;
- require gift-making authority to be expressly stated in the grant of authority;
- provide a default standard for fiduciary duties;
- permit the principal to alter the default fiduciary standard;
- require notice by an agent when the agent is no longer willing or able to act;
- include safeguards against abuse by the agent;
- include remedies and sanctions for abuse by the agent;
- protect the reliance of other persons on a power of attorney; and
- include remedies and sanctions for refusal of other persons to honor a power of attorney.

In 2006, NCCUSL promulgated a new Uniform Power of Attorney Act responding to these concerns. REPTL has been studying this act since then and is now ready to propose replacement of our current act with a "Texified" version of the newer uniform act – **H.B. 1858** (Hartnett) and **S.B. 1192** (Rodriguez). Highlights of REPTL's original proposal include the following:

- The default rule will now be that a power of attorney is durable unless provided otherwise.
- The agent is expressly allowed reasonable compensation and reimbursement of expenses.
- An agent's duties only arise following acceptance by exercising authority or performing duties under the power.
- The act includes a list of statutory duties owed by the agent to the principal, including preservation of the principal's estate plan.

- The act expands the class of individuals with standing to intervene on the principal's behalf.
- The act imposes liability on third parties for refusal to accept the power of attorney.
- The statutory form will change (significantly, but not drastically).
- The act expressly provides for successor agents and co-agents.
- Each power listed in the statutory form (such as a power to make gifts) has a corresponding definitional section in the act.

However, as introduced, the power of attorney bill contained a number of modifications, and the bill ran into some opposition from the Business Law Foundation and others. Neither version of this bill will pass this session, but the provisions described above will likely serve as the basis for negotiations regarding a similar bill to be introduced in the 2013 session.

13.2 Nonparent Relative Authorization Agreements. The 2009 legislation added a new chapter 34 to the Family Code providing for authorization agreements for nonparent relatives – sort of like powers of attorney. **S.B. 482** (Harris) clarifies that only one such authorization agreement may be in effect at any time, and a subsequent authorization agreement is void if a previous authorization agreement is still in effect. This bill was signed by the Governor June 17th and is effective September 1st.

13.3 Organ Donation. **H.B. 2904** (Zerwas) requires the Department of State Health Services to enter into a contract with a nonprofit organization to administer the Glenda Dawson Donate Life-Texas Registry, and abolishes the Texas Organ, Tissue, and Eye Donor Council. This bill was signed by the Governor June 17th, and is generally effective September 1st. However, certain provisions are effective January 1, 2012.

14. Exempt Property.

14.1 Anti-*Jarboe* Bill. An early-2007 bankruptcy decision interpreting Texas law (the *Jarboe* case) held that the exemption of IRA's by Property Code Section 42.0021 did not extend to inherited IRA's (other than spousal IRA's). Many of us were surprised at this interpretation, and members of the Texas Academy drafted language during the 2007 session to reverse the result of that case. The proposal made no headway, and no similar provision was introduced in 2009. **S.B. 1810** (Carona), as passed by the Senate, amends that section in a manner that closely resembles the 2007 Academy proposal. A House committee substitute approved on May 17th, includes suggestions from individual members of the State Bar's Section of Taxation that clarify the exemption applies to any "annuity, deferred compensation, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, or a simplified employee pension plan, an individual retirement account or individual retirement annuity, including an inherited individual retirement account or individual retirement annuity, or a health savings account, and under any annuity or similar contract purchased with assets distributed from that type of plan or account" (new language underscored). This bill was signed by the Governor June 17th and is effective immediately.

14.2 Exemptions for Adult Incapacitated Children. **H.B. 2492** (Naishtat) amends numerous Probate Code statutes relating to the family allowance, exempt property, and the allowance in lieu of exempt property to extend the benefits of the provisions to a decedent's adult **incapacitated** children (in addition to the surviving spouse, minor children, and adult children residing with the decedent). This bill was signed by the Governor June 17th, and is generally effective September 1st. However, amendments to the Estates Code are effective January 1, 2014.

14.3 Encumbrance of Homestead by Co-Owner. **S.B. 473** (West), described at the end of this paper in the selected list of bills that didn't pass, would have changed the rules for adverse possession with respect to co-tenancies created by intestacies. Senator West also introduced **S.B. 1368** (West) that allows a co-owner of residential property claimed as the co-owner's homestead to place a lien on the property, under certain conditions. New Chapter 64 of the Property Code applies to residential property of 10 acres or less with improvements primarily designed for not more than four families that is owned by more than one person, with at least one of those owners claiming a residence homestead exemption for property tax purposes. If that co-owner has occupied and timely paid all of the taxes on the property for more than five years, without contribution from another co-owner, and the occupying co-owner has the residence homestead exemption for property tax purposes, then that co-owner may file an affidavit affirming these facts, including the corroborating affidavits of two additional witnesses, and the tax collector's certificate that the co-owner has timely paid all taxes for the preceding five years. Upon filing these documents, the co-owner has

authority to act as an agent and attorney-in-fact for the other co-owners to grant a mechanic's or materialman's lien and a execute a deed of trust for the purpose of preserving or improving the property. The occupying co-owner remains solely obligated on the debt, but the other co-owners may not repudiate or disaffirm the lien. This bill was signed by the Governor June 17th and is effective immediately.

15. Selected Marital Issues.

15.1 Fraud on the Community. H.B. 908 (Thompson) adds a new remedy for fraud on the community. Currently, a court is limited to dividing the existing community estate, which may be completely exhausted due to the fraud, leaving the wronged spouse without any effective remedy. New Family Code Section 7.009 allows a court to divide the "reconstituted estate," including the property that would have been part of the community estate absent the fraud. After dividing this reconstituted estate, if there were insufficient actual assets to allocate to the wronged spouse, the court could award a money judgment in favor of the wronged spouse against the spouse who committed the fraud. This bill was signed by the Governor June 17th and is effective September 1st.

15.2 LLC Interests and Marital Property Laws. S.B. 748 (Carona) amends the Business Organizations Code to explicitly state that while a member's interest in an LLC may be community property, the member's right to participate in the management of the LLC is not. The bill also added a default rule that on the divorce or death of a member, any interest of the member's spouse or successors becomes an assignee interest. Similarly, on the death of the member's spouse, any interest of the spouse's successors (other than the member) becomes an assignee interest. These changes do not affect any buy-sell provisions. This bill was signed by the Governor May 27th and is effective September 1st.

16. A Little Lagniappe.

We are happy to report the following developments critical to the future of Texas:

- While not officially a "REPTL" bill, once again Texans may capture reptiles and amphibians alongside Texas roads using non-lethal means (*see* **H.B. 1788** (Farias | King, Tracy O. | Larson | Gallego)).
- Meanwhile, the red drum has been designated as the official State Saltwater Fish of Texas (*see* **H.C.R. 133** (Bonnen)).
- In what I assume is an unrelated development, a longtime ban on "noodling" – the time-honored Southern practice of catching catfish by hand – has been repealed. "I personally don't noodle, but I would defend to the death your right to do so," stated Sen. Bob Deuell (Greenville) in what clearly was one of his finest moments on the Senate floor (*see* **H.B. 2189** (Elkins)). Gov. Perry signed the bill on June 17th. Due to the emergency nature of the need to lift the noodling ban, the bill went into effect immediately.
- Lamesa has been declared the Legendary Home of the Chicken-fried Steak (*see* **H.C.R. 134** (Craddick)).
- You may have missed it, but April, 2011, was Safe Digging Month (*see* **H.C.R. 136** (Keffer)).
- While ZZ Top fans were Asleep at the Wheel, western swing was designated the official State Music of Texas (*see* **S.C.R. 35** (Wentworth)).
- Despite attempts to designate "42" as the official State Table Game of Texas, the non-domino table game forces (Monopoly fans?) rallied the troops. After a heated debate, "42" was merely designated as the official State Domino Game of Texas (*see* **H.C.R. 84** (Cain | White)).
- In a peripherally-Texas-related event, following the Dallas Mavericks' victory over the Miami Heat (and no-so-coincidentally **former** Ohio resident LeBron James) in the NBA Finals, Ohio Gov. John Kasich issued a **proclamation** naming the entire Dallas Mavericks organization, friends, family, and fans as honorary Ohioans for the entire day of June 14th. He also recognized NBA Finals MVP Dirk Nowitzki, "who chose to keep his talents in Dallas."

17. Conclusion.

As in any session, there were a few good bills and plenty of bad bills that didn't pass. Hopefully, very few, if any, of the "bad bills" made their way all the way through to enactment. Without diminishing the significance of some of REPTL's proposals, most of what we saw this session consisted of "tinkering" while waiting for 2014 when our new Estates Code will go into effect.

So, with apologies to Willie Nelson, it's time to…

Turn out the lights;
The party's over.
They say that
All good things must end.
Let's call it a night,
The party's over.
And [next session] starts
The same old thing again.

(*See* **H.C.R. 28** (Branch | Cain)).

Attachment 1 – List of Bills That Passed and Earliest Effective Dates

(The following list includes all bills tracked by REPTL, not just those discussed in the paper.)

82nd Legislature, Regular Session

Bill No.	Caption	Status	Effective Date
H.B. 0001	General Appropriations Bill.	Signed 6/17	9/1/11
H.B. 0035	Relating to extending a local behavioral health intervention pilot project.	Signed 6/17	9/1/11
H.B. 0074	Relating to persons authorized to control the disposition of the remains of certain members of the United States armed forces.	Signed 5/20	5/20/11
H.B. 0118	Relating to requiring the provision of notice by certain hospitals regarding patients' medical records.	Signed 6/17	9/1/11
H.B. 0167	Relating to the transportation of certain mental health patients.	Signed 6/17	9/1/11
H.B. 0274	Relating to the reform of certain remedies and procedures in civil actions and family law matters.	Signed 5/30	9/1/11
H.B. 0549	Relating to the disposition of a decedent's remains.	Signed 6/17	6/17/11
H.B. 0577	Relating to emergency prehospital care provided by emergency services personnel.	Signed 6/17	6/17/11
H.B. 0627	Relating to a fee collected by a district clerk for certain certified copies.	Signed 6/17	6/17/11
H.B. 0645	Relating to the information required to be included on a form for an application for an exemption from ad valorem taxation of property owned by a charitable organization.	Signed 6/17	9/1/11
H.B. 0692	Relating to high school graduation requirements for a student who is unable to participate in physical activity due to disability or illness.	Signed 6/17	6/17/11
H.B. 0848	Relating to an agreement authorizing certain persons to make decisions regarding a child during an investigation of child abuse or neglect.	Signed 6/17	9/1/11
H.B. 0871	Relating to indigent health care services that may be provided by a county.	Signed 6/17	9/1/11
H.B. 0901	Relating to spousal maintenance.	Signed 6/17	9/1/11
H.B. 0906	Relating to appointments made in and the appeal of certain suits affecting the parent-child relationship.	Signed 5/19	5/19/11
H.B. 0908	Relating to the division of community property on dissolution of marriage.	Signed 6/17	9/1/11
H.B. 1009	Relating to procedures for obtaining informed consent before certain postmortem examinations or autopsies.	Signed 6/17	9/1/11[1]
H.B. 1032	Relating to a rescission period for annuity contracts.	Signed 5/19	9/1/11
H.B. 1075	Relating to an alert for a missing person with an intellectual disability.	Signed 6/17	9/1/11
H.B. 1128	Relating to consent to certain medical treatments by a surrogate decision-maker on behalf of certain inmates.	Signed 6/17	9/1/11
H.B. 1314	Relating to the operation and jurisdiction of certain district courts serving Webb County.	Signed 6/17	6/17/11
H.B. 1335	Relating to certain resources available to teachers of a public school student with a disability under the statewide plan for delivery of services to public school students with disabilities.	Signed 6/17	6/17/11
H.B. 1481	Relating to the use of person first respectful language in reference to individuals with disabilities.	Signed 6/17	9/1/11
H.B. 1720	Relating to certain facilities and care providers, including providers under the state Medicaid program and to improving health care provider accountability and efficiency under the child health plan and Medicaid programs; providing penalties.	Signed 6/17	9/1/11

[1] Certain provisions are effective 1/1/12.

Bill No.	Caption	Status	Effective Date
H.B. 1754	Relating to the reorganization of powers and duties among agencies in this state that provide representation to indigent defendants in criminal cases and to the reorganization of funding sources for indigent defense.	Signed 6/17	9/1/11
H.B. 1829	Relating to an application for emergency detention and to the transfer to a mental hospital of a person admitted for emergency detention.	Signed 6/17	9/1/11
H.B. 1830	Relating to the method of delivery of certain notices sent by statutory probate court associate judges.	Signed 6/17	6/17/11
H.B. 1897	Relating to the jurisdiction of, number of jurors in, and the clerk serving the County Court at Law of Van Zandt County.	Signed 6/17	9/1/11
H.B. 1983	Relating to certain childbirths occurring before the 39th week of gestation.	Signed 6/17	9/1/11
H.B. 2080	Relating to certification of a person as eligible for disabled parking privileges.	Signed 6/17	6/17/11
H.B. 2096	Relating to the filing of writs of habeas corpus in mental health cases.	Signed 6/17	6/17/11
H.B. 2109	Relating to agency action concerning assisted living facilities, including regulation of inappropriate placement of residents at facilities; providing a penalty.	Signed 6/17	6/17/11
H.B. 2119	Relating to the requirement that the Texas Correctional Office on Offenders with Medical or Mental Impairments provide certain services and programs.	Signed 6/17	6/17/11
H.B. 2132	Relating to the creation of magistrates in certain counties.	Signed 6/17	6/17/11
H.B. 2136	Relating to regional contracted brokers and subcontractors of regional contracted brokers providing Medicaid nonemergency medical transportation services.	Signed 6/17	9/1/11
H.B. 2154	Relating to certain continuing education requirements for agents who sell annuities.	Signed 6/17	9/1/11
H.B. 2229	Relating to the creation of the Texas HIV Medication Advisory Committee.	Signed 6/17	9/1/11
H.B. 2245	Relating to physician incentive programs to reduce hospital emergency room use for non-emergent conditions by Medicaid recipients.	Signed 6/17	9/1/11
H.B. 2258	Relating to the use and transferability of certain state property transferred from the state to Spindletop MHMR Services.	Signed 6/17	6/17/11
H.B. 2277	Relating to life settlements and the sale, exchange, or replacement of life insurance and annuity contracts.	Signed 6/17	9/1/11
H.B. 2286	Relating to the duties of a funeral director or an agent at the interment or entombment of a human body.	Signed 6/17	6/17/11
H.B. 2330	Relating to the statutory county courts in Wise County.	Signed 6/17	9/1/11
H.B. 2357	Relating to motor vehicles; providing penalties.	Signed 6/17	1/1/12[2]
H.B. 2488	Relating to access to a child's medical records by the child's attorney ad litem, guardian ad litem, or amicus attorney.	Signed 5/30	5/30/11
H.B. 2492	Relating to the family allowance, treatment of exempt property, and an allowance in lieu of exempt property in the administration of a decedent's estate.	Signed 6/17	9/1/11[3]
H.B. 2495	Relating to cemeteries and perpetual care cemetery corporations; providing a penalty.	Signed 6/17	9/1/11
H.B. 2609	Relating to convictions barring employment at or by certain facilities serving the elderly or persons with disabilities.	Signed 6/17	9/1/11

[2] Certain provisions are effective 9/1/11.
[3] Portions amending the Estates Code are effective 1/1/14.

Bill No.	Caption	Status	Effective Date
H.B. 2610	Relating to facilitating access to certain public assistance benefits programs and health care providers and services through a community-based navigator program and through promotoras and community health workers.	Signed 6/17	9/1/11
H.B. 2651	Relating to the eligibility of visitors to use certain public transportation services for people with disabilities.	Signed 6/17	9/1/11
H.B. 2716	Relating to fees charged for the management and preservation of the county clerk's records.	Signed 6/17	6/17/11
H.B. 2717	Relating to the duties and responsibilities of certain county officials and the functions of county government.	Signed 6/17	6/17/11
H.B. 2722	Relating to the state Medicaid program as the payor of last resort.	Signed 6/17	6/17/11
H.B. 2759	Relating to the nonsubstantive revision of provisions of the Texas Probate Code relating to durable powers of attorney, guardianships, and other related proceedings and alternatives, and the redesignation of certain other provisions of the Texas Probate Code, including conforming amendments and repeals.	Signed 6/17	1/1/14
H.B. 2866	Relating to the electronic submission of certain documents to the attorney general and the submission of certain documents by the attorney general; imposing certain fees.	Signed 6/17	6/17/11
H.B. 2903	Relating to the program of all-inclusive care for the elderly.	Signed 6/17	9/1/11
H.B. 2904	Relating to the administration of the Glenda Dawson Donate Life-Texas Registry.	Signed 6/17	9/1/11[4]
H.B. 2936	Relating to the administration of district courts in Bexar County.	Signed 5/28	9/1/11
H.B. 3004	Relating to prepaid funeral benefits contracts and the prepaid funeral contract guaranty fund.	Signed 6/17	6/17/11
H.B. 3145	Relating to the regulation of chemical dependency counselors.	Signed 6/17	6/17/11
H.B. 3146	Relating to consent for treatment for chemical dependency in a treatment facility and required training for the facility's intake personnel.	Signed 6/17	6/17/11
H.B. 3197	Relating to creating a pilot program to implement the culture change model of care at certain state supported living centers.	Signed 6/17	6/17/11
H.B. 3342	Relating to representation of and by the state and joinder of the state in certain mental health proceedings.	Signed 6/17	6/17/11
H.B. 3573	Relating to limiting the disclosure of certain information regarding certain charitable organizations, trusts, private foundations, and grant-making organizations.	Signed 6/17	9/1/11
H.B. 3616	Relating to designating October as Persons with Disabilities History and Awareness Month.	Signed 6/17	9/1/11
H.B. 3674	Relating to the use of an unsworn declaration.	Signed 6/17	9/1/11
H.B. 3796	Relating to the composition of certain judicial districts.	Signed 6/17	9/1/11
H.C.R. 182	Instructing the enrolling clerk of the house to make corrections in S.B. No. 1198.	Signed 6/17	N/A
S.B. 0037	Relating to the duration of the interagency task force on ensuring appropriate care settings for persons with disabilities.	Signed 4/21	4/21/11
S.B. 0041	Relating to the use of restraints in state supported living centers.	Signed 6/17	6/17/11
S.B. 0054	Relating to certification to teach public school students who have visual impairments.	Signed 6/17	9/1/11
S.B. 0118	Relating to a court's authority to order a proposed patient to receive extended outpatient mental health services.	Signed 5/28	9/1/11
S.B. 0141	Relating to debt management services and the regulation of debt management services providers.	Signed 6/17	9/1/11

[4] Certain provisions are effective 1/1/12.

Bill No.	Caption	Status	Effective Date
S.B. 0156	Relating to health care data collected by the Department of State Health Services and access to certain confidential patient information within the department, including data and confidential patient information concerning bleeding and clotting disorders, and other issues related to bleeding and clotting disorders.	Signed 6/17	6/17/11
S.B. 0187	Relating to human body and anatomical specimen donation.	Signed 6/17	9/1/11
S.B. 0201	Relating to the calculation of ad valorem taxes on the residence homestead of a 100 percent or totally disabled veteran for the tax year in which the veteran qualifies or ceases to qualify for an exemption from taxation of the homestead.	Signed 6/17	1/1/12
S.B. 0219	Relating to health and mental health services for children in foster care and kinship care.	Signed 6/17	9/1/11
S.B. 0220	Relating to guardianships, including the assessment of prospective wards for, and the provision of, guardianship services by the Department of Aging and Disability Services.	Signed 6/17	9/1/11
S.B. 0221	Relating to the Department of Family and Protective Services, including protective services and investigations of alleged abuse, neglect, or exploitation for certain adults who are elderly or disabled; providing a criminal penalty.	Signed 6/17	9/1/11
S.B. 0222	Relating to access to certain long-term care services and supports under the medical assistance program.	Signed 6/17	9/1/11
S.B. 0223	Relating to certain facilities and care providers, including providers under the state Medicaid program; providing penalties.	Signed 6/17	9/1/11
S.B. 0267	Relating to a joint statement regarding the transfer of a motor vehicle as the result of a gift.	Signed 6/17	6/17/11
S.B. 0293	Relating to telemedicine medical services, telehealth services, and home telemonitoring services provided to certain Medicaid recipients.	Signed 6/17	9/1/11
S.B. 0481	Relating to the removal of a guardian of an incapacitated person ordered by a court.	Signed 6/17	9/1/11
S.B. 0482	Relating to authorization agreements between parents and nonparent relatives of a child.	Signed 6/17	9/1/11
S.B. 0516	Relating to the exemption from ad valorem taxation of all or part of the appraised value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran.	Signed 6/17	1/1/12[5]
S.B. 0543	Relating to a probate fee exemption for estates of certain law enforcement officers, firefighters, and others killed in the line of duty.	Signed 6/17	9/1/11[6]
S.B. 0544	Relating to unlawful acts against and criminal offenses involving the Medicaid program; providing penalties.	Signed 6/17	9/1/11
S.B. 0579	Relating to the total benefit amount under a prepaid funeral contract.	Signed 6/17	9/1/11
S.B. 0587	Relating to jurisdiction in certain proceedings brought by the attorney general with respect to charitable trusts.	Signed 6/17	6/17/11
S.B. 0605	Relating to the creation of an appellate judicial system for the Eighth Court of Appeals District.	Signed 5/9	9/1/11
S.B. 0628	Relating to the authority of the Childress County Hospital District to provide facilities and services for persons who are elderly or disabled; providing authority to issue bonds and notes.	Signed 5/28	5/28/11
S.B. 0652	Relating to governmental and certain quasi-governmental entities subject to the sunset review process.	Signed 6/17	6/17/11
S.B. 0688	Relating to the investigation, prosecution, and punishment of criminal Medicaid fraud and certain other offenses related to Medicaid fraud; providing penalties.	Signed 6/17	9/1/11

[5] Contingent on passage of enabling constitutional amendment.
[6] Portions amending the Estates Code are effective 1/1/14.

Bill No.	Caption	Status	Effective Date
S.B. 0748	Relating to business entities and associations.	Signed 5/27	9/1/11
S.B. 0778	Relating to the inclusion of professional staff who educate students with disabilities on district-level and campus-level planning and decision-making committees.	Signed 6/17	9/1/11
S.B. 0864	Relating to the regulation of funeral establishments, including requirements for a retail price list of services provided by such establishments.	Signed 6/17	9/1/11
S.B. 0866	Relating to the education of public school students with dyslexia, the education and training of educators who teach students with dyslexia, and the assessment of students with dyslexia attending an institution of higher education.	Signed 6/17	6/17/11
S.B. 0867	Relating to testing accommodations for a person with dyslexia taking a licensing examination administered by a state agency.	Signed 6/17	9/1/11
S.B. 0910	Relating to certain state attorneys called into active duty military service.	Signed 6/17	6/17/11
S.B. 1167	Relating to cemeteries and perpetual care cemetery corporations; providing a penalty.	Signed 6/17	9/1/11
S.B. 1187	Relating to the effect of indexing notices of lis pendens.	Signed 6/17	9/1/11
S.B. 1196	Relating to guardianships and alternatives to guardianship for persons who have physical disabilities or who are incapacitated.	Signed 6/17	9/1/11
S.B. 1197	Relating to trusts.	Signed 6/17	9/1/11
S.B. 1198	Relating to decedents' estates.	Signed 6/17	9/1/11[7]
S.B. 1220	Relating to the advisory committee on Medicaid and child health plan program rate and expenditure disparities between the Texas-Mexico border region and other areas of the state.	Signed 6/17	6/17/11
S.B. 1242	Relating to the judicial immunity and powers of certain magistrates.	Signed 5/28	9/1/11
S.B. 1271	Relating to alternative dispute resolution systems established by counties.	Signed 6/17	6/17/11
S.B. 1303	Relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 81st Legislature to other Acts of that legislature.	Signed 5/19	9/1/11[8]
S.B. 1368	Relating to the authority of a co-owner of residential property to encumber the property.	Signed 6/17	6/17/11
S.B. 1449	Relating to an alternative method of satisfying certain licensing requirements for chemical dependency treatment facilities.	Signed 6/17	9/1/11
S.B. 1680	Relating to certain evidence in a prosecution of fraud or theft involving Medicaid or Medicare benefits and to certain criminal procedures involving offenses in general.	Signed 5/20	9/1/11
S.B. 1807	Relating to the composition of the 444th Judicial District.	Vetoed 6/17	N/A
S.B. 1810	Relating to the exemption of certain retirement accounts from access by creditors.	Signed 6/17	6/17/11
S.B. 1846	Relating to organizations that are covered by the Charitable Immunity and Liability Act of 1987.	Signed 5/9	5/9/11
S.B. 1857	Relating to the administration of medication for persons with intellectual and developmental disabilities.	Signed 6/17	6/17/11
S.J.R. 014	Proposing a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran.	Filed with the Secretary of State 5/27	N/A

[7] Disclaimer amendment is effective 6/17/11. Portions amending the Estates Code are effective 1/1/14.
[8] Article 8, which contains amendments to the Estates Code, is effective 1/1/14.

82nd Legislature, First Called Session

Bill No.	Caption	Status	Effective Date
H.B. 0079	Relating to fiscal and other matters necessary for implementation of the judiciary budget as enacted by H.B. No. 1, Acts of the 82nd Legislature, Regular Session, 2011, and to the operation and administration of, and practice and procedures in courts in, the judicial branch of state government.	Signed 7/19	1/1/12[9]
S.B. 0001	Relating to certain state fiscal matters; providing penalties.	Signed 7/19	9/28/11[10]

[9] While the general effective date of H.B. 79 is 1/1/12, Articles 11 (relating to suits affecting the parent-child relationship) and 13 (relating to exemptions of certain judicial officers from concealed handgun license requirements) take effect 9/28/11, and certain provisions relating to small claims cases take effect 5/1/13.

[10] While S.B. 1 has a stated earliest effective date of 9/1/11 if it received a vote of two-thirds of all the members elected to each house, it received a final vote of 96 Yeas, 44 Nays, 2 Present, not voting, in the House, which appears short of two-thirds of the 150 elected members. Therefore, the earliest effective date is the 91st day following the end of the legislative session. Since the First Called Session ended June 29, 2011, the earliest effective date is September 28, 2011.

Attachment 2 – 2011 Amendments to the Texas Probate Code (Decedents' Estates)

[The following excerpts reflect amendments made by H.B. 2492, S.B. 543, and S.B. 1198.]

Sec. 4D. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR STATUTORY COUNTY COURT.

(a)–(b) [No change.]

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

(c)–(d) [No change.]

(e) A statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. A statutory probate court judge assigned to hear only the contested matter in a probate proceeding shall, on [~~On~~] resolution of the [~~a contested~~] matter [~~for which a statutory probate court judge is assigned under this section~~], including any appeal of the matter, [~~the statutory probate court judge shall~~] return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire probate proceeding as provided by Subsection (b-1) of this section shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(f) [No change.]

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

(h)–(i) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.43(a) of SB 1198 provides: "(a) The changes in law made by Sections 4D, 4H, 6, 8, 48, and 49, Texas Probate Code, as amended by this article, and Sections 6A, 6B, 6C, 6D, 8A, and 8B, Texas Probate Code, as added by this article, apply only to an action filed or other proceeding commenced on or after the effective date of this Act. An action filed or other proceeding commenced before the effective date of this Act is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose."

Sec. 4H. CONCURRENT JURISDICTION WITH DISTRICT COURT.

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

(1)–(2) [No change.]

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

(4)–(6) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

~~Sec. 5. JURISDICTION WITH RESPECT TO PROBATE PROCEEDINGS.~~

Repealed by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.42(b) of SB 1198 provides: "(b) Notwithstanding the transfer of Section 5, Texas Probate Code, the the Estates Code and redesignation as Section 5 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Section 5, Texas Probate Code, is repealed."

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011.

Sec. 6. VENUE: [~~FOR~~] PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION [~~OF ESTATES OF DECEDENTS~~].

Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

(1) in [~~(a) In~~] the county where the decedent [~~deceased~~] resided, if the decedent [~~he~~] had a domicile or fixed place of residence in this State; [~~.~~]

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

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

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

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

Sec. 6B. VENUE: CERTAIN ACTIONS INVOLVING PERSONAL REPRESENTATIVE.

Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

Sec. 6C. VENUE: HEIRSHIP PROCEEDINGS.

(a) Venue for a proceeding to determine a decedent's heirs is in:

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

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

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

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

(b) Notwithstanding Subsection (a) of this section and Section 6 of this code, if there is no administration pending of the estate of a deceased ward who died intestate, venue for a proceeding to determine the deceased ward's heirs is in the probate court in which the guardianship proceedings with respect to the ward's estate were pending on the date of the ward's death. A proceeding described by this subsection may not be brought as part of the guardianship proceedings with respect to the ward's estate, but rather must be filed as a separate cause in which the court may determine the heirs' respective shares and interests in the estate as provided by the laws of this state.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

Sec. 6D. VENUE: CERTAIN ACTIONS INVOLVING BREACH OF FIDUCIARY DUTY.

Notwithstanding any other provision of this chapter, venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under Section 123.005, Property Code.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

Sec. 8. CONCURRENT VENUE IN PROBATE PROCEEDING [~~AND TRANSFER OF PROCEEDINGS~~].

(a) Concurrent Venue. When two or more courts have concurrent venue of [~~an estate or~~] a probate proceeding [~~to declare heirship under Section 48(a) of this code~~], the court in which the application for the [~~a~~] proceeding [~~in probate or determination of heirship~~] is first filed shall have and retain jurisdiction of the [~~estate or heirship~~] proceeding[~~, as appropriate,~~] to the exclusion of the other court or courts. The proceeding shall be deemed commenced by the filing of an application averring facts sufficient to confer venue; and the proceeding first legally commenced shall extend to all of the property of the decedent or the decedent's estate. Provided, however, that a bona fide purchaser of real property in reliance on any such subsequent proceeding, without knowledge of its invalidity, shall be protected in such purchase unless before the purchase the decree admitting the will to probate, determining heirship, or granting administration in the prior proceeding is [~~shall be~~] recorded in the office of the county clerk of the county in which such property is located.

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

Sec. 8A. TRANSFER OF VENUE IN PROBATE PROCEEDING [~~TRANSFER OF PROCEEDING~~].

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

SEC. 8B. VALIDATION OF PRIOR PROCEEDINGS [~~(D) VALIDATION OF PRIOR PROCEEDINGS~~].

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

Sec. 11B. EXEMPTION FROM PROBATE FEES FOR ESTATES OF CERTAIN LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHERS.

(a) In this section:

(1) "Eligible decedent" means an individual listed in Section 615.003, Government Code.

(2) "Line of duty" and "personal injury" have the meanings assigned by Section 615.021(e), Government Code.

(b) Notwithstanding any other law, the clerk of a court may not charge, or collect from, the estate of an eligible decedent any of the following fees if the decedent died as a result of a personal injury sustained in the line of duty in the individual's position as described by Section 615.003, Government Code:

(1) a fee for or associated with the filing of the decedent's will for probate; and

(2) a fee for any service rendered by the court regarding the administration of the decedent's estate.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 543), effective September 1, 2011. Section 1.02 of SB 543 provides: "The changes in law made by this article apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose."

Sec. 15. CASE FILES.

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

(1)–(5) [No change.]

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

(6)–(10) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011.

Sec. 37A. MEANS OF EVIDENCING DISCLAIMER OR RENUNCIATION OF PROPERTY OR INTEREST RECEIVABLE FROM A DECEDENT.

(a)–(g) [No change.]

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

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

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

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

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

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

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

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

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

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

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

(j)–(o) [No change.]

(p) Extension of Time for Certain Disclaimers. Notwithstanding the periods prescribed by Subsections (h) and (i) of this section, a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, may be executed and filed, and notice of the disclaimer may be given, not later than nine months after December 17, 2010. A disclaimer filed and for which notice is given during this extended period is valid and shall be treated as if the disclaimer had been filed and notice had been given within the periods prescribed by Subsections (h) and (i) of this section. This subsection does not apply to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198 effective upon enactment. Section 1.43(b) of SB 1198 provides: "(b) The changes in law made by Subsection (p), Section 37A, Texas Probate Code, as added by this article, apply to all disclaimers made after December 31, 2009, for decedents dying after December 31, 2009, but before December 17, 2010." Section 1.44 of SB 1198 provides: "Subsection (p), Section 37A, Texas Probate Code, as added by this article, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Subsection (p), Section 37A, Texas Probate Code, as added by this article, takes effect September 1, 2011."

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

(a) When a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon the person's [~~his~~] estate; or when it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent; or when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the court of the county in which [~~such proceedings were last~~

~~pending, or in the event no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the court of the county in which~~] venue would be proper [~~for commencement of an administration of the decedent's estate~~] under Section 6C [~~6~~] of this code[~~,~~] may determine and declare in the manner hereinafter provided who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent or, if applicable, in the trust, and proceedings therefor shall be known as proceedings to declare heirship.

(b) [No change.]

(c) [Repealed.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D. Section 1.42(a) of SB 1198 provides: "(a) Subsection (c), Section 48, Section 70, and Subsection (f), Section 251, Texas Probate Code, are repealed."

Sec. 49. WHO MAY INSTITUTE PROCEEDINGS TO DECLARE HEIRSHIP.

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

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

(2) the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the estate of the decedent or in the trust, as applicable;

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

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

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

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

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

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

(b) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 4D.

Sec. 59. REQUISITES OF A WILL.

(a) Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths [~~under the laws of this State~~]. Provided that nothing shall require an affidavit or certificate of any testator or testatrix as a prerequisite to self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said _____, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

_____

Testator

_____

Witness

_____

Witness

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

(SEAL)

(Signed) _____

(Official Capacity of Officer)

(a-1) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses under Subsection (a) of this section, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

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

_____

Testator

The undersigned, _____ and _____, each being above fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this _____ day of _____, 20_____.

_____

Witness

_____

Witness

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

(SEAL)

(Signed) _____

(Official Capacity of Officer)

(b) An affidavit in form and content substantially as provided by Subsection (a) of this section is a "self-proving affidavit." A will with a self-proving affidavit subscribed and sworn to by the

testator and witnesses attached or annexed to the will, or a will simultaneously executed, attested, and made self-proved as provided by Subsection (a-1) of this section, is a "self-proved will." Substantial compliance with the form provided by Subsection (a) or (a-1) of this section [~~form of such affidavit~~] shall suffice to cause the will to be self-proved. For this purpose, an affidavit that is subscribed and acknowledged by the testator and subscribed and sworn to by the witnesses would suffice as being in substantial compliance. A signature on a self-proving affidavit as provided by Subsection (a) of this section is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses, or both, but in that case, the will may not be considered a self-proved will.

(c) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.43(d) of SB 1198 provides: "(d) The changes in law made by this article to Section 59, Texas Probate Code, apply only to a will executed on or after the effective date of this Act. A will executed before the effective date of this Act is governed by the law in effect on the date the will was executed, and the former law is continued in effect for that purpose."

Sec. 64. FORFEITURE CLAUSE.

A provision in a will that would cause a forfeiture of [~~a devise~~] or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is unenforceable if:

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.43(c) of SB 1198 provides: "(c) The changes in law made by Sections 64, 67, 84, 128A, 143, 145, 146, 149C, 227, 250, 256, 260, 271, 286, 293, 385, 471, 472, and 473, Texas Probate Code, as amended by this article, and Sections 145A, 145B, and 145C, Texas Probate Code, as added by this article, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose."

Sec. 67. PRETERMITTED CHILD.

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

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

(A) No provision is made therein for any such child, a pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the other parent of the pretermitted child.

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

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

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

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

(2) If the testator has no child living when he executes his last will, the pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the other parent of the pretermitted child.

(b) The pretermitted child may recover the share of the testator's estate to which he is entitled

either from the other children under Subsection (a)(1)(B) or the testamentary beneficiaries under Subsections (a)(1)(A) and (a)(2) other than the other parent of the pretermitted child, ratably, out of the portions of such estate passing to such persons under the will. In abating the interests of such beneficiaries, the character of the testamentary plan adopted by the testator shall be preserved to the maximum extent possible.

(c)—(d) [No change.]

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

~~Sec. 70. PROVISION IN WILL FOR MANAGEMENT OF SEPARATE PROPERTY.~~

Repealed by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 48.

Sec. 81. CONTENTS OF APPLICATION FOR LETTERS TESTAMENTARY.

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

(1) The name and domicile of each applicant.

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

(3) Facts showing that the court has venue.

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

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

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

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

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

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

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

(b) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011.

Sec. 83. PROCEDURE PERTAINING TO A SECOND APPLICATION.

(a) Where Original Application Has Not Been Heard. If, after an application for the probate of a will or for the appointment of a general personal representative has been filed, and before such application has been heard, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall hear both applications together and determine what instrument, if any, should be admitted to probate, or whether the decedent died intestate. The court may not sever or bifurcate the proceeding on the applications.

(b)—(c) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.43(d-1) of SB 1198 provides: "(d-1) The changes in law made by this article to Subsection (a), Section 83, Texas Probate Code, apply only to an application for the probate of a will or administration of the estate of a decedent that is pending or filed on or after the effective date of this Act."

Sec. 84. PROOF OF WRITTEN WILL PRODUCED IN COURT.

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

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

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

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

(b)—(d) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 89A. CONTENTS OF APPLICATION FOR PROBATE OF WILL AS MUNIMENT OF TITLE.

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

(1) The name and domicile of each applicant.

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

(3) Facts showing that the court has venue.

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

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

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

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

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

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

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

(b) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011.

Sec. 128A. NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF WILL.

(a) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust entitled to receive [~~real or personal~~] property under the terms of a decedent's will, to be determined for purposes of this section with the assumption that each person who is

alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will. The term does not include a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust that would be entitled to receive property under the terms of a decedent's will on the occurrence of a contingency that has not occurred as of the date of the decedent's death.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) is signed by the beneficiary; and

(C) is filed with the court.

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

(1) [~~state:~~

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

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

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

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

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

(6) either:

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

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

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

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

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

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

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

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

(h) The affidavit or certificate required by Subsection (g) of this section may be included with any pleading or other document filed with the clerk of the court, including the inventory, appraisement, and list of claims, an affidavit in lieu of the inventory, appraisement, and list of claims, or an application for an extension of the deadline to file the inventory, appraisement, and list of claims or an affidavit in lieu of the inventory, appraisement, and list of claims, provided that the pleading or other document with which the affidavit or certificate is included is filed not later than the date the affidavit or certificate is required to be filed as provided by Subsection (g) of this section.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 139. APPLICATION FOR ORDER OF NO ADMINISTRATION.

If the value of the entire assets of an estate, not including homestead and exempt property, does not exceed the amount to which the surviving spouse, [~~and~~] minor children, and adult incapacitated children of the decedent are entitled as a family allowance, there may be filed by or on behalf of the surviving spouse, [~~or~~] minor children, or adult incapacitated children an application in any court of proper venue for administration, or, if an application for the appointment of a personal representative has been filed but not yet granted, then in the court where such application has been filed, requesting the court to make a family allowance and to enter an order that no administration shall be necessary. The application shall state the names of the heirs or devisees, a list of creditors of the estate together with the amounts of the claims so far as the same are known, and a description of all real and personal property belonging to the estate, together with the estimated value thereof according to the best knowledge and information of the applicant, and the liens and encumbrances thereon, with a prayer that the court make a family allowance and that, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, the same be set aside to the surviving spouse, [~~and~~] minor children, and adult incapacitated children, as in the case of other family allowances provided for by this Code.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. Section 1.04 of HB 2492 provides: "The changes in law made by this article apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose."

Sec. 140. HEARING AND ORDER UPON THE APPLICATION.

Upon the filing of an application for no administration such as that provided for in the preceding Section, the court may hear the same forthwith without notice, or at such time and upon such notice as the court requires. Upon the hearing of the application, if the court finds that the facts contained therein are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall make a family allowance and, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, shall order that no administration be had of the estate and shall assign to the surviving spouse, [~~and~~] minor children, and adult incapacitated children the whole of the estate, in the same manner and with the same effect as provided in this Code for the making of family allowances to the surviving spouse, [~~and~~] minor children, and adult incapacitated children.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 143. SUMMARY PROCEEDINGS FOR SMALL ESTATES AFTER PERSONAL REPRESENTATIVE APPOINTED.

Whenever, after the inventory, appraisement, and list of claims or the affidavit in lieu of the inventory, appraisement, and list of claims has been filed by a personal representative, it is established that the estate of a decedent, exclusive of the homestead and exempt property and family allowance to the surviving spouse, [~~and~~] minor children, and adult incapacitated children, does not exceed the amount sufficient to pay the claims of Classes One to Four, inclusive, as claims are hereinafter classified, the personal representative shall, upon order of the court, pay the claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of such claims, and thereafter present the personal representative's [~~his~~] account with an application for the settlement and allowance thereof. Thereupon the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, may decree final distribution, discharge the personal representative, and close the administration.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 145. INDEPENDENT ADMINISTRATION.

(a)—(f) [No change.]

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

(h) When an independent administration has been created, and the order appointing an independent executor has been entered by the county court, and the inventory, appraisement, and list aforesaid has been filed by the executor and approved by the county court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the executor, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the county court except where this Code specifically and explicitly provides for some action in the county court.

(i) If a distributee described in Subsections (c) through (e) of this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interests of the incapacitated person, then, notwithstanding anything to the contrary in Subsections (c) through (e) of this section, the county court shall not enter an order granting independent administration of the estate. If such distributee who is an incapacitated person has no guardian of the person, the county court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the county court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor's

behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

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

(k)—(r) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 145A. GRANTING POWER OF SALE BY AGREEMENT.

In a situation in which a decedent does not have a will or a decedent's will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority, the court may include in an order appointing an independent executor under Section 145 of this code any general or specific authority regarding the power of the independent executor to sell real property that may be consented to by the beneficiaries who are to receive any interest in the real property in the application for independent administration or in their consents to the independent administration. The independent executor, in such event, may sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 145B. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL.

Unless this code specifically provides otherwise, any action that a personal representative subject to court supervision may take with or without a court order may be taken by an independent executor without a court order. The other provisions of this part are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this part.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

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

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

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

(c) Protection of Person Purchasing Estate Property. (1) A person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

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

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

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

(2) As to acts undertaken in good faith reliance, the affidavit described by Subsection (c)(1)(C) of this section is conclusive proof, as between a

purchaser of property from an estate, and the personal representative of the estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 146. PAYMENT OF CLAIMS AND DELIVERY OF EXEMPTIONS AND ALLOWANCES.

(a) [No change.]

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

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

(b) Secured Claims for Money. Within six months after the date letters are granted or within four months after the date notice is received under Section 295 of this code, whichever is later, a creditor with a claim for money secured by real or personal property of the estate must give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. In addition to giving the notice within this period, a creditor whose claim is secured by real property shall record a notice of the creditor's election under this subsection in the deed records of the county in which the real property is located. If no [~~the~~] election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period [~~is not made~~], the claim shall be [~~is~~] a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien, and the claim may not be asserted against other assets of the estate. The independent executor may pay the claim before the claim matures if paying the claim before maturity is in the best interest of the estate.

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

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

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

(2) Subdivision (1) of this subsection may not be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. Except with respect to real property, any third party acting in good faith may obtain good title with respect to an estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(3) If a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Section 71A of this code, the independent executor shall collect from the devisees the amount of the debt and pay that amount to the claimant or shall sell the property and pay out of the sale proceeds the

claim and associated expenses of sale consistent with the provisions of Section 306(c-1) of this code applicable to court supervised administrations.

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

(b-3) Certain Unsecured Claims; Barring of Claims. An unsecured creditor who has a claim for money against an estate and who receives a notice under Section 294(d) of this code shall give to the independent executor notice of the nature and amount of the claim not later than the 120th day after the date the notice is received or the claim is barred.

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

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

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

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

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

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

(b-7) Other Claim Procedures of Code Generally Do Not Apply. Except as otherwise provided by this section, the procedural provisions of this code governing creditor claims in supervised administrations do not apply to independent administrations. By way of example, but not as a limitation:

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

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

(c)—(e) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 149B. ACCOUNTING AND DISTRIBUTION.

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

(b)—(c) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.43(e) of SB 1198 provides: "(e) The changes in law made by this article to Section 149B, Texas Probate Code, apply only to a petition for an accounting and distribution filed on or after the effective date of this Act. A petition for an accounting and distribution filed before the effective date of this Act is governed by the law in effect on the date the petition is filed, and the former law is continued in effect for that purpose."

Sec. 149C. REMOVAL OF INDEPENDENT EXECUTOR.

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

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

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

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

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

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties; [~~or~~]

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

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

(b)—(d) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 151. CLOSING INDEPENDENT ADMINISTRATION BY CLOSING REPORT OR NOTICE OF CLOSING ESTATE [~~AFFIDAVIT~~].

(a) Filing of Closing Report or Notice of Closing Estate [~~Affidavit~~]. When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, when there is no pending litigation, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a closing report or a notice of closing of the estate.

(a-1) Closing Report. An independent executor may file[~~:~~

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

(1) shows:

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

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

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

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

(E) the [~~(v) The~~] names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

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

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

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

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

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

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

(c) Effect of Filing Closing Report or Notice of Closing Estate [~~the Affidavit~~]. (1) The independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. If an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

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

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

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

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.43(f) of SB 1198 provides: "(f) The changes in law made by this article to Section 151, Texas Probate Code, apply only to a closing report or notice of closing of an estate filed on or after the effective date of this Act. A closing report or notice of closing of an estate filed before the effective date of this Act is governed by the law in effect on the date the closing report or notice is filed, and the former law is continued in effect for that purpose."

Sec. 227. SUCCESSORS RETURN OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.

An appointee who has been qualified to succeed to a prior personal representative shall make and return to the court an inventory, appraisement, and list of claims of the estate or, if the appointee is an independent executor, shall make and return to the court that document or file an affidavit in lieu of the inventory, appraisement, and list of claims, within ninety days after being qualified, in like manner as is provided for [~~required of~~] original appointees; and he shall also in like manner return additional inventories, appraisements, and lists of claims or file additional affidavits. In all orders appointing successor representatives of estates, the court shall appoint

appraisers as in original appointments upon the application of any person interested in the estate.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 250. INVENTORY AND APPRAISEMENT; AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.

(a) Within ninety days after the representative's [~~his~~] qualification, unless a longer time shall be granted by the court, the representative shall prepare and file with the clerk of court a verified, full, and detailed inventory, in one written instrument, of all the property of such estate which has come to the representative's [~~his~~] possession or knowledge, which inventory shall include:

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

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

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

(c) Notwithstanding Subsection (a) of this section, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisement, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory. The affidavit in lieu of the inventory, appraisement, and list of claims must be filed within the 90-day period prescribed by Subsection (a) of this section, unless the court grants an extension.

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

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

(2) as an heir of the decedent.

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

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

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 251. LIST OF CLAIMS.

There shall also be made out and attached to said inventory a full and complete list of all claims due or owing to the estate, which shall state:

(a)—(e) [No change.]

(f) [Repealed.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 48.

Sec. 256. DISCOVERY OF ADDITIONAL PROPERTY.

(a) If, after the filing of the inventory and appraisement, property or claims not included in the inventory shall come to the possession or knowledge of the representative, the representative [~~he~~] shall forthwith file with the clerk of court a verified, full, and detailed supplemental inventory and appraisement.

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

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

If there be more than one representative qualified as such, any one or more of them, on the neglect of the others, may make and return an inventory and appraisement and list of claims or file an affidavit in lieu of an inventory, appraisement, and list of claims; and the representative so neglecting shall not thereafter interfere with the estate or have any power over same; but the representative so returning the inventory, appraisement, and list of claims or filing the affidavit in lieu of an inventory, appraisement, and list of claims shall have the whole administration, unless, within sixty days after the return or the filing, the delinquent or delinquents shall assign to the court in writing and under oath a reasonable excuse which the court may deem satisfactory; and if no excuse is filed or if the excuse filed is not deemed sufficient, the court shall enter an order removing any and all such delinquents and revoking their letters.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Sec. 271. EXEMPT PROPERTY TO BE SET APART.

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

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

(2) all other property of the estate that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the surviving spouse, [~~and~~] minor children, [~~and~~] unmarried adult children remaining with the family of the deceased, and each other adult child who is incapacitated.

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

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

(2) any unmarried adult child [~~children~~] remaining with the family of the deceased, any other adult child who is incapacitated, or a person who is authorized to act on behalf of the adult incapacitated child may apply to the court to have all exempt property other than the homestead set aside by filing an application and a verified affidavit listing all of the other property that the applicant claims is exempt.

(c) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 272. TO WHOM DELIVERED.

The exempt property set apart to the surviving spouse and children shall be delivered by the executor or administrator without delay as follows: (a) If there be a surviving spouse and no children, or if the

children, including any adult incapacitated children, be the children of the surviving spouse, the whole of such property shall be delivered to the surviving spouse. (b) If there be children and no surviving spouse, such property, except the homestead, shall be delivered to the guardian of each of those [~~such~~] children who is a minor, to each of those children who is of lawful age and not incapacitated, and to the guardian of each of those children who is an incapacitated adult or to another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian [~~if they be of lawful age, or to their guardian if they be minors~~]. (c) If there be children of the deceased of whom the surviving spouse is not the parent, the share of such children in such exempted property, except the homestead, shall be delivered to the guardian of each of those [~~such~~] children who is a minor, to each of those children who is of lawful age and not incapacitated, and to the guardian of each of those children who is an incapacitated adult or to another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian [~~if they be of lawful age, or to their guardian, if they be minors~~]. (d) In all cases, the homestead shall be delivered to the surviving spouse, if there be one, and if there be no surviving spouse, to the guardian of the minor children.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 273. ALLOWANCE IN LIEU OF EXEMPT PROPERTY.

In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such surviving spouse and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed $15,000 and the allowance for other exempted property shall in no case exceed $5,000, exclusive of the allowance for the support of the surviving spouse, [~~and~~] minor children, and adult incapacitated children which is hereinafter provided for.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 274. HOW ALLOWANCE PAID.

The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such surviving spouse, [~~or~~] children who are [~~, if they be~~] of lawful age, guardian of children who are [~~or their guardian if they be~~] minors, or guardian of each adult incapacitated child or other appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian, shall choose to take at the appraisement, or a part thereof, or both, as they shall select; provided, however, that property specifically bequeathed or devised to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 275. TO WHOM ALLOWANCE PAID.

The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows: (a) If there be a surviving spouse and no children, or if all the children, including any adult incapacitated children, be the children of the surviving spouse, the whole shall be paid to such surviving spouse.

(b) If there be children and no surviving spouse, the whole shall be [~~paid to and~~] equally divided among them and each of their shares shall be paid as follows:

(1) if the child is [~~they be~~] of lawful age and not incapacitated, to the child;

(2) [~~, but~~] if the child is a minor, [~~any of such children are minors, their shares shall be paid~~] to the child's [~~their~~] guardian; or

(3) if the child is an incapacitated adult, to the adult incapacitated child's guardian or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian [~~guardians~~].

(c) If there be a surviving spouse, and children of the deceased, some of whom are not children of the surviving spouse, the surviving spouse shall receive one-half of the whole, plus the shares of the children of whom the survivor is the parent, and the remaining shares shall be paid with respect to each of the children of whom the survivor is not the parent as follows:

(1) if the child is an adult who is not incapacitated, to the child;

(2) if the child is a minor [~~or, if they are minors~~], to the child's [~~their~~] guardian; or

(3) if the child is an incapacitated adult, to the adult incapacitated child's guardian or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 276. SALE TO RAISE ALLOWANCE.

If there be no property of the deceased that such surviving spouse or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the court, on the application in writing of such surviving spouse and children, or of a person authorized to represent any of those children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 286. FAMILY ALLOWANCE TO SURVIVING SPOUSES, [~~AND~~] MINORS, AND ADULT INCAPACITATED CHILDREN.

(a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisement, and list of claims have been approved or the affidavit in lieu of the inventory, appraisement, and list of claims has been filed, the court shall fix a family allowance for the support of the surviving spouse, [~~and~~] minor children, and adult incapacitated children of the deceased.

(b) Before the approval of the inventory, appraisement, and list of claims or, if applicable, before the filing of the affidavit in lieu of the inventory, appraisement, and list of claims, a surviving spouse or any person who is authorized to act on behalf of minor children or adult incapacitated children of the deceased may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing the amount necessary for the maintenance of the surviving spouse, [~~and~~] minor children, and adult incapacitated children for one year after the date of the death of the decedent and describing the spouse's separate property and any property that minor children or adult incapacitated children have in their own right. The applicant bears the burden of proof by a preponderance of the evidence at any hearing on the application. The court shall fix a family allowance for the support of the surviving spouse, [~~and~~] minor children, and adult incapacitated children of the deceased.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 287. AMOUNT OF FAMILY ALLOWANCE.

Such allowance shall be of an amount sufficient for the maintenance of such surviving spouse, [~~and~~] minor children, and adult incapacitated children for one year from the time of the death of the testator or intestate. The allowance shall be fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. The allowance may be paid either in a lump sum or in installments, as the court shall order.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 288. WHEN FAMILY ALLOWANCE NOT MADE.

No such allowance shall be made for the surviving spouse when the survivor has separate property adequate to the survivor's maintenance; nor shall such allowance be made for the minor children or adult incapacitated children when they have property in their own right adequate to their maintenance.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 290. FAMILY ALLOWANCE PREFERRED.

The family allowance made for the support of the surviving spouse, [~~and~~] minor children, and adult incapacitated children of the deceased shall be paid in preference to all other debts or charges against the estate, except Class 1 claims.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 291. TO WHOM FAMILY ALLOWANCE PAID.

The executor or administrator shall apportion and pay the family allowance:

(a) To the surviving spouse, if there be one, for the use of the survivor and the minor children and adult incapacitated children, if such children be the survivor's.

(b) If the surviving spouse is not the parent of such minor children and adult incapacitated children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which the survivor is not the parent shall be paid to the guardian or guardians of such child or children who are minors, and to the guardian of each adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(c) If there be no surviving spouse, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children, and the allowance to each adult incapacitated child shall be paid to the guardian of the adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(d) If there be a surviving spouse and no minor child or adult incapacitated child [~~children~~], the entire allowance shall be paid to the surviving spouse.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 292. MAY TAKE PROPERTY FOR FAMILY ALLOWANCE.

The surviving spouse, [~~or~~] the guardian of the minor children, or the guardian of an adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement; provided, however, that property specifically devised or bequeathed to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 2492), effective September 1, 2011. See transitional note following Section 139.

Sec. 293. SALE TO RAISE FUNDS FOR FAMILY ALLOWANCE.

If there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisement, and list of claims are returned and approved or, if applicable, the affidavit in lieu of the inventory, appraisement, and list of claims is filed, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011.

Sec. 385. PARTITION OF COMMUNITY PROPERTY.

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

(b)—(c) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 64.

Attachment 3 – 2011 Amendments to the Texas Probate Code (Guardianship)

[The following excerpts reflect amendments made by S.B. 220, S.B. 481, and S.B. 1196 during the Regular Session and by S.B. 1 during the First Called Session.]

Sec. 601. DEFINITIONS.

In this chapter:

(1)—(24) [No change.]

(25) The term [~~"Proceedings in guardianship," "guardianship matter," "guardianship matters,"~~] "guardianship proceeding" means [~~proceeding," and "proceedings for guardianship" are synonymous and include~~] a matter or proceeding related [~~relating~~] to a guardianship or any other matter covered [~~addressed~~] by this chapter, including:

(A) the appointment of a guardian of a minor or other incapacitated person, including an incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child;

(B) an application, petition, or motion regarding guardianship or an alternative to guardianship under this chapter;

(C) a mental health action; and

(D) an application, petition, or motion regarding a trust created under Section 867 of this code.

(26)—(33) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. Section 43(a) of SB 1196 provides: "(a) Except as otherwise provided by this section, the changes in law made by this Act apply to: (1) a guardianship created before, on, or after the effective date of this Act; and (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act."

Sec. 605. GENERAL PROBATE [~~COUNTY~~] COURT JURISDICTION IN GUARDIANSHIP PROCEEDINGS; APPEALS.

(a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in Section 606A of this code for that type of court.

(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) A final order issued by a probate court is appealable to the court of appeals. [~~The county court has the general jurisdiction of a probate court. The county court shall appoint guardians of minors and other incapacitated persons, grant letters of guardianship, settle accounts of guardians, and transact all business appertaining to estates subject to guardianship, including the settlement, partition, and distribution of the estates. The county court may also enter other orders as may be authorized under this chapter.~~]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. Section 43(b) of SB 1196 provides: "(b) Sections 605, 608, and 609, Texas Probate Code, as amended by this Act, and Sections 606A, 607A, 607B, 607C, 607D, and 607E, Texas Probate Code, as added by this Act, apply only to an action filed or a proceeding commenced on or after the effective date of this Act. An action filed or proceeding commenced before the effective date of this Act is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose."

~~Sec. 606. JURISDICTION WITH RESPECT TO GUARDIANSHIP PROCEEDINGS.~~

Repealed by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. Section 42 of SB 1196 provides: "Notwithstanding the transfer of Sections 606 and 607, Texas Probate Code, to the Estates Code and redesignation as Sections 606 and 607 of that code effective January 1, 2014, by Section 5, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Sections 606 and 607, Texas Probate Code, are repealed."

Sec. 606A. MATTERS RELATED TO GUARDIANSHIP PROCEEDING.

(a) For purposes of this code, in a county in which there is no statutory probate court, a matter related to a guardianship proceeding includes:

(1) the granting of letters of guardianship;

(2) the settling of an account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward's estate;

(3) a claim brought by or against a guardianship estate;

(4) an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property;

(5) an action for trial of the right of property that is guardianship estate property;

(6) after a guardianship of the estate of a ward is required to be settled as provided by Section 745 of this code:

(A) an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian;

(B) an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety;

(C) an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian;

(D) a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Subpart H, Part 2, of this chapter; and

(E) a matter related to an authorization made or duty performed by a guardian under Subpart C, Part 4, of this chapter; and

(7) the appointment of a trustee for a trust created under Section 867 of this code, the settling of an account of the trustee, and all other matters relating to the trust.

(b) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsection (a) of this section;

(2) a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 867 of this code; and

(3) a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 605.

~~Sec. 607. MATTERS APPERTAINING AND INCIDENT TO AN ESTATE.~~

Repealed by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 606.

Sec. 607A. ORIGINAL JURISDICTION FOR GUARDIANSHIP PROCEEDINGS.

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of guardianship proceedings.

(b) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of guardianship proceedings, unless otherwise provided by law. The judge of a county court may hear guardianship proceedings while sitting for the judge of any other county court.

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of guardianship proceedings.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 605.

Sec. 607B. JURISDICTION OF CONTESTED GUARDIANSHIP PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR COUNTY COURT AT LAW.

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022, Government Code; or

(2) transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.

(b) If a party to a guardianship proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the matter to the district court unless the party withdraws the motion.

(c) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a guardianship proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(d) A party to a guardianship proceeding may file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) of this section if the matter later becomes contested.

(e) Notwithstanding any other law, a transfer of a contested matter in a guardianship proceeding to a district court under any authority other than the authority provided by this section:

(1) is disregarded for purposes of this section; and

(2) does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(f) A statutory probate court judge assigned to a contested matter in a guardianship proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. A statutory probate court judge assigned to hear only the contested matter in a guardianship proceeding shall, on resolution of the matter, including any appeal of the matter, return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire guardianship proceeding as provided by Subsection (c) of this section shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(g) A district court to which a contested matter in a guardianship proceeding is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this code. On resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, the district court shall return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(h) If only the contested matter in a guardianship proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a guardianship proceeding is transferred to a district court under this section, the county court shall continue to exercise jurisdiction over the management of the guardianship, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any matter related to a guardianship proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the proceeding is filed may, on the court's own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the guardianship.

(i) If a contested matter in a guardianship proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the county court shall transfer those contested matters to the district court. If a statutory probate court judge is assigned under this section to hear a contested matter in a guardianship proceeding, the statutory probate court judge shall be assigned to hear any contested matter in the proceeding that is subsequently filed.

(j) The clerk of a district court to which a contested matter in a guardianship proceeding is transferred under this section may perform in relation to the transferred matter any function a county clerk may perform with respect to that type of matter.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 605.

Sec. 607C. JURISDICTION OF CONTESTED GUARDIANSHIP PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT.

(a) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

(b) A county court at law to which a proceeding is transferred under this section may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the matter, the matter shall be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 605.

Sec. 607D. EXCLUSIVE JURISDICTION OF GUARDIANSHIP PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT.

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.

(b) A cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction as provided by Subsection (a) of this section must be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 607E of this code or with the jurisdiction of any other court.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 605.

Sec. 607E. CONCURRENT JURISDICTION WITH DISTRICT COURT.

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

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

(2) an action involving a guardian in which each other party aligned with the guardian is not an interested person in the guardianship.

SECTION 4. Section 608, Texas Probate Code, is amended to read as follows:

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 605.

Sec. 608. TRANSFER OF [~~GUARDIANSHIP~~] PROCEEDING BY STATUTORY PROBATE COURT.

(a) A judge of a statutory probate court, on the motion of a party to the action or of a person interested in the [~~a~~] guardianship, may:

(1) transfer to the judge's court from a district, county, or statutory court a cause of action that is a matter related [~~appertaining to or incident~~] to a guardianship proceeding [~~estate that is~~] pending in the statutory probate court, including [~~or~~] a cause of action that is a matter related [~~relating~~] to a guardianship proceeding pending in the statutory probate court and in which the [~~a~~] guardian, ward, or proposed ward in the [~~a guardianship~~] pending guardianship proceeding [~~in the statutory probate court~~] is a party; and

(2) [~~may~~] consolidate the transferred cause of action with the guardianship proceeding to which it relates and any other proceedings in the statutory probate court that are related [~~relating~~] to the guardianship proceeding [~~estate~~].

(b) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a guardian, ward, or proposed ward for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 605.

Sec. 609. TRANSFER OF CONTESTED GUARDIANSHIP OF THE PERSON OF A MINOR.

(a) If an interested person contests an application for the appointment of a guardian of the person of a minor or an interested person seeks the removal of a guardian of the person of a minor, the judge, on the judge's own motion, may transfer all matters related [~~relating~~] to the guardianship proceeding [~~of the person of the minor~~] to a court of competent jurisdiction in which a suit affecting the

parent-child relationship under the Family Code is pending.

(b)—(c) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 605.

Sec. 611. CONCURRENT VENUE AND TRANSFER FOR WANT OF VENUE.

(a) If two or more courts have concurrent venue of a guardianship proceeding [~~matter~~], the court in which an application for a guardianship proceeding is initially filed has and retains jurisdiction of the proceeding [~~guardianship matter~~]. A proceeding is considered commenced by the filing of an application alleging facts sufficient to confer venue, and the proceeding initially legally commenced extends to all of the property of the guardianship estate.

(b)—(d) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 612. APPLICATION FOR TRANSFER OF GUARDIANSHIP TO ANOTHER COUNTY.

When a guardian or any other person desires to transfer [~~remove~~] the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for the transfer [~~moving the transaction of business~~].

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. Section 66.09 of SB 1 provides: "Sections 612, 613, 614, 615, 616, 617, and 618, Texas Probate Code, as amended by this article, and Section 619, Texas Probate Code, as added by this article, apply only to an application for the transfer of a guardianship to another county filed on or after the effective date of this article. An application for the transfer of a guardianship to another county filed before the effective date of this article is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose." Section 80.01 of SB 1 provides: "Except as otherwise provided by this Act: (1) this Act takes effect September 1, 2011, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and (2) if this Act does not receive the vote necessary for effect on that date: (A) this Act takes effect on the 91st day after the last day of the legislative session; and (B) a provision of this Act that purports to take effect on September 1, 2011, takes effect on the date specified by Paragraph (A) of this subdivision." S.B. 1 failed to receive a vote of two-thirds of all the members elected to the House.

Sec. 613. NOTICE.

(a) On filing an application to transfer [~~remove~~] a guardianship to another county, the sureties on the bond of the guardian shall be cited by personal service to appear and show cause why the application should not be granted.

(b) [No change.]

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. See transitional note following Section 612.

Sec. 614. COURT ACTION.

(a) On hearing an application under Section 612 of this code, if good cause is not shown to deny the application and it appears that transfer [~~removal~~] of the guardianship is in the best interests of the ward, the court shall enter an order authorizing the transfer [~~removal~~] on payment on behalf of the estate of all accrued costs.

(b) In an order entered under Subsection (a) of this section, the court shall require the guardian, not later than the 20th day after the date the order is entered, to:

(1) give a new bond payable to the judge of the court to which the guardianship is transferred; or

(2) file a rider to an existing bond noting the court to which the guardianship is transferred.

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. See transitional note following Section 612.

Sec. 615. TRANSFER OF RECORD.

When an order of transfer [~~removal~~] is made under Section 614 of this code, the clerk shall record any unrecorded papers of the guardianship required to be recorded. On payment of the clerk's fee, the clerk shall transmit to the county clerk of the county to which the guardianship was ordered transferred [~~removed~~]:

(1) the case file of the guardianship proceedings; and

(2) a certified copy of the index of the guardianship records.

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. See transitional note following Section 612.

Sec. 616. TRANSFER [~~REMOVAL~~] EFFECTIVE.

The order transferring [~~removing~~] a guardianship does not take effect until:

(1) the case file and a certified copy of the index required by Section 615 of this code are filed in the office of the county clerk of the county to which the guardianship was ordered transferred [~~removed~~]; and

(2) a certificate under the clerk's official seal and reporting the filing of the case file and a certified copy of the index is filed in the court ordering the transfer [~~removal~~] by the county clerk of the county to which the guardianship was ordered transferred [~~removed~~].

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. See transitional note following Section 612.

Sec. 617. CONTINUATION OF GUARDIANSHIP.

When a guardianship is transferred [~~removed~~] from one county to another in accordance with this subpart, the guardianship proceeds in the court to which it was transferred [~~removed~~] as if it had been originally commenced in that court. It is not necessary to record in the receiving court any of the papers in the case that were recorded in the court from which the case was transferred [~~removed~~].

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. See transitional note following Section 612.

Sec. 618. NEW GUARDIAN APPOINTED ON TRANSFER [~~REMOVAL~~].

If it appears to the court that transfer [~~removal~~] of the guardianship is in the best interests of the ward, but that because of the transfer [~~removal~~] it is not in the best interests of the ward [~~will be unduly expensive or unduly inconvenient to the estate~~] for the guardian of the estate to continue to serve in that capacity, the court may in its order of transfer [~~removal~~] revoke the letters of guardianship and appoint a new guardian, and the former guardian shall account for and deliver the estate as provided by this chapter in a case in which a guardian resigns.

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. See transitional note following Section 612.

Sec. 619. REVIEW OF TRANSFERRED GUARDIANSHIP.

Not later than the 90th day after the date the transfer of the guardianship takes effect under Section 616 of this code, the court to which the guardianship was transferred shall hold a hearing to consider modifying the rights, duties, and powers of the guardian or any other provisions of the transferred guardianship.

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. See transitional note following Section 612.

Sec. 621. APPLICATION AND OTHER PAPERS TO BE FILED WITH CLERK.

(a) An application for a guardianship proceeding or[~~,~~] a complaint, petition, or other paper permitted or required by law to be filed in the court in a guardianship proceeding [~~matters~~] shall be filed with the county clerk of the proper county.

(b) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 622. COSTS AND SECURITY.

(a) The laws regulating costs in ordinary civil cases apply to a guardianship proceeding [~~matter~~] unless otherwise expressly provided by this chapter.

(b) When a person other than the guardian, attorney ad litem, or guardian ad litem files an application, complaint, or opposition in relation to a guardianship proceeding [~~matter~~], the clerk may require the person to give security for the probable costs of the [~~guardianship~~] proceeding before filing. A person interested in the guardianship or in the welfare of the ward, or an officer of the court, at any time before the trial of an application, complaint, or opposition in relation to a guardianship proceeding [~~matter~~], may obtain from the court, on written motion, an order requiring the person who filed the application, complaint, or opposition to give security for the probable costs of the proceeding. The rules governing civil suits in the county court relating to this subject control in these cases.

(c) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 629. CALL OF THE DOCKETS.

The judge of the court in which a guardianship proceeding is pending, as the judge determines, shall call guardianship proceedings [~~matters~~] in their regular order on both the guardianship and claim dockets and shall make necessary orders.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 630. CLERK MAY SET HEARINGS.

If the [~~county~~] judge is absent from the county seat or is on vacation, disqualified, ill, or deceased and is unable to designate the time and place for hearing a guardianship proceeding [~~matter~~] pending in the judge's court, the county clerk of the county in which the proceeding [~~matter~~] is pending may designate the time and place for hearing, entering the setting on the judge's docket and certifying on the docket the reason that the judge is not acting to set the hearing. If a qualified judge is not present for the hearing, after service of the notices and citations required by law with reference to the time and place of hearing has been perfected, the hearing is automatically continued from day to day until a qualified judge is present to hear and make a determination in the proceeding [~~determine the matter~~].

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 632. ISSUANCE, CONTENTS, SERVICE, AND RETURN OF CITATION, NOTICES, AND WRITS IN GUARDIANSHIP PROCEEDINGS [~~MATTERS~~].

(a) A person does not need to be cited or otherwise given notice in a guardianship proceeding [~~matter~~] except in situations in which this chapter expressly provides for citation or the giving of notice. If this chapter does not expressly provide for citation or the issuance or return of notice in a guardianship proceeding [~~matter~~], the court may require that notice be given. If the court requires that notice be given, the court shall prescribe the form and manner of service and return of service.

(b) Unless a court order is required by a provision of this chapter, the county clerk shall issue without a court order necessary citations, writs, and process in guardianship proceedings [~~matters~~] and all notices not required to be issued by guardians.

(c)—(g) [No change.]

(h) In a guardianship proceeding [~~matter~~] in which citation or notice is required to be served by posting and issued in conformity with the applicable provision of this code, the citation or notice and the service of and return of the citation or notice is sufficient and valid if a sheriff or constable posts a copy of the citation or notice at the place or places prescribed by this chapter on a day that is sufficiently before the return day contained in the citation or notice for the period of time for which the citation or notice is required to be posted to elapse before the return day of the citation or notice. The sufficiency or validity of the citation or notice or the service of or return of the service of the citation or notice is not affected by the fact that the sheriff or constable makes the [~~his~~] return on the citation or notice and returns the citation or notice to the court before the period elapses for which the citation or notice is required to be posted, even though the return is made, and the citation or notice is returned to the court, on the same day it is issued.

(i)—(j) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 633. NOTICE AND CITATION.

(a) [No change.]

(b) The court clerk shall issue a citation stating that the application for guardianship was filed, the name of the proposed ward, the name of the applicant, and the name of the person to be appointed guardian as provided in the application, if that person is not the applicant. The citation must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if they wish to contest the application and must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 632(j) of this code to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any. The citation shall be posted.

(c) [No change.]

(c-1) The citation served as provided by Subsection (c) of this section must contain the statement regarding the right provided under Section 632(j) of this code that is required in the citation issued under Subsection (b) of this section.

(d) The applicant shall mail a copy of the application for guardianship and a notice containing the information required in the citation issued under Subsection (b) of this section by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:

(1) all adult children of a proposed ward;

(2) all adult siblings of a proposed ward;

(3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;

(4) the operator of a residential facility in which the proposed ward resides;

(5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;

(6) a person designated to serve as guardian of the proposed ward by a written declaration under Section 679 of this code, if the applicant knows of the existence of the declaration;

(7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the ward;

(8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and

(9) each person named as another relative within the third degree by consanguinity [~~next of kin~~] in the application for guardianship as required by Section 682(10) or (12) of this code if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

(d-1)—(g) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 220), effective September 1, 2011. Section 13(c) of SB 220 provides: "(c) Sections 633 and 682, Texas Probate Code, as amended by this Act, apply only to an application for a guardianship filed on or after the effective date of this Act. An application for a guardianship filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose."

Sec. 641. DEFECTS IN PLEADING.

A court may not invalidate a pleading in a guardianship proceeding [~~matter~~] or an order based on the pleading based on a defect of form or substance in the pleading, unless the defect has been timely objected to and called to the attention of the court in which the proceeding was or is pending.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 646. APPOINTMENT OF ATTORNEY AD LITEM AND INTERPRETER.

(a)—(d) [No change.]

(e) The term of appointment of an attorney ad litem appointed under this section expires, without a court order, on the date the court [~~either~~] appoints a guardian in accordance with Section 693 of this code, appoints a successor guardian, or denies the application for appointment of a guardian, unless the court determines that the continued appointment of the attorney ad litem is in the ward's best interest.

(f) The term of appointment of an attorney ad litem appointed under this section continues after the court appoints a temporary guardian under Section 875 of this code unless a court order provides for the termination or expiration of the attorney ad litem's appointment.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 646A. REPRESENTATION OF WARD OR PROPOSED WARD BY ATTORNEY.

(a) The following persons may at any time retain an attorney who holds a certificate required by Section 647A of this code to represent the person's interests in a guardianship matter instead of having those interests represented by an attorney ad litem appointed under Section 646 of this code or another provision of this chapter:

(1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 694K of this code; and

(2) a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract.

(b) If the court finds that the ward or the proposed ward has capacity to contract, the court may

remove an attorney ad litem appointed under Section 646 of this code or any other provision of this chapter that requires the court to appoint an attorney ad litem to represent the interests of a ward or proposed ward and appoint a ward or a proposed ward's retained counsel.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 220), effective September 1, 2011. Section 13(a) of SB 220 provides: "(a) Except as otherwise provided by this section, the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act."

Sec. 650. DECREES.

A decision, order, decree, or judgment of the court in a guardianship proceeding [~~matter~~] must be rendered in open court, except in a case in which it is otherwise expressly provided.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 652. LOCATION OF HEARING.

(a) Except as provided by Subsection (b) of this section, the judge may hold a hearing on a guardianship matter involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship matter is pending. The hearing should be held in a physical setting that is not likely to have a harmful effect on the ward or proposed ward.

(b) On the request of the adult proposed ward, the adult ward, or the attorney of the proposed ward or ward, the hearing may not be held under the authority of this section at a place other than the courthouse.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. Section 43(c) of SB 1196 provides: "(c) Section 652, Texas Probate Code, as added by this Act, applies to a guardianship matter that is pending or commenced on or after the effective date of this Act."

Sec. 653. EXECUTION.

An execution in a guardianship proceeding [~~matter~~] shall be directed "To any sheriff or any constable within the State of Texas," made returnable in 60 days, and attested and signed by the clerk officially under the seal of the court. A proceeding under an execution in a guardianship proceeding [~~matter~~] is governed so far as applicable by the laws regulating a proceeding under an execution issued from the district court. An execution directed to the sheriff or a constable of a specific county in this state may not be held defective if the execution was properly executed within the county by the officer to whom the direction for execution was given.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 666. EXPENSES ALLOWED.

A guardian is entitled to be reimbursed from the guardianship estate for all necessary and reasonable expenses incurred in performing any duty as a guardian, including reimbursement for the payment of reasonable attorney's fees necessarily incurred by the guardian in connection with the management of the estate or any other [~~guardianship~~] matter in the guardianship.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 669. COSTS AGAINST GUARDIANSHIP.

(a) Except as provided by Subsection (b) of this section, in a guardianship proceeding [~~matter~~], the cost of the proceeding, including the cost of the guardian ad litem or court visitor, shall be paid out of the guardianship estate, or, if the estate is insufficient to pay for the cost of the proceeding, the cost of the proceeding shall be paid out of the county treasury, and the judgment of the court shall be issued accordingly.

(b) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 670. COMPENSATION OF CERTAIN GUARDIANS; CERTAIN OTHER GUARDIANSHIP COSTS.

(a) In this section:

(1) "Applied income" means the portion of the earned and unearned income of a recipient of medical assistance or, if applicable, the recipient and the recipient's spouse, that is paid under the medical assistance program to an institution or long-term care facility [~~a nursing home~~] in which the recipient resides.

(2) "Medical assistance" has the meaning assigned by Section 32.003, Human Resources Code.

(b) Notwithstanding any other provision of this chapter and to the extent permitted by federal law, a court that appoints a guardian for a recipient of medical assistance who has applied income may order the following to be deducted as an additional personal needs allowance in the computation of the recipient's

applied income in accordance with Section 32.02451, Human Resources Code [~~paid under the medical assistance program~~]:

(1) compensation to the guardian in an amount not to exceed $175 per month;

(2) costs directly related to establishing or terminating the guardianship, not to exceed $1,000 except as provided by Subsection (c) of this section; and

(3) other administrative costs related to the guardianship, not to exceed $1,000 during any three-year period.

(c) Costs ordered to be deducted [~~paid~~] under Subsection (b)(2) of this section may include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney's fees for an attorney representing the guardian. The costs ordered to be paid may exceed $1,000 if the costs in excess of that amount are supported by documentation acceptable to the court and the costs are approved by the court.

(d) A court may not order:

(1) that the deduction for compensation and costs under Subsection (b) of this section take effect before the later of:

(A) the month in which the court order issued under that subsection is signed; or

(B) the first month of medical assistance eligibility for which the recipient is subject to a copayment; or

(2) a deduction for services provided before the effective date of the deduction as provided by Subdivision (1) of this subsection.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 220), effective September 1, 2011. Section 13(b) of SB 220 provides: "(b) Section 32.02451, Human Resources Code, as amended by this Act, and Section 670, Texas Probate Code, as amended by this Act, apply to a recipient of medical assistance under Chapter 32, Human Resources Code, regardless of whether the recipient was determined eligible for medical assistance before, on, or after the effective date of this Act, and regardless of whether a guardianship was created for the recipient before, on, or after the effective date of this Act."

Sec. 682. APPLICATION; CONTENTS.

Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue. The application must be sworn to by the applicant and state:

(1) the name, sex, date of birth, and address of the proposed ward;

(2) the name, relationship, and address of the person the applicant desires to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election; and

(B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code;

(5) the facts requiring that a guardian be appointed and the interest of the applicant in the appointment;

(6) the nature and description of any guardianship of any kind existing for the proposed ward in any other state;

(7) the name and address of any person or institution having the care and custody of the proposed ward;

(8) the approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;

(9) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;

(10) if the proposed ward is a minor and if known by the applicant:

(A) the name of each parent of the proposed ward and state the parent's address or that the parent is deceased;

(B) the name and age of each sibling, if any, of the proposed ward and state the sibling's address or that the sibling is deceased; and

(C) if each of the proposed ward's parents and adult siblings are deceased, the

names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and [~~next of kin~~] who are adults;

(11) if the proposed ward is a minor, whether the minor was the subject of a legal or conservatorship proceeding within the preceding two-year period and, if so, the court involved, the nature of the proceeding, and the final disposition, if any, of the proceeding;

(12) if the proposed ward is an adult and if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and state the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and state the parent's address or that the parent is deceased;

(C) the name and age of each of the proposed ward's siblings, if any, and state the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed ward's children, if any, and state the child's address or that the child is deceased; and

(E) if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased, or, if there is no spouse, parent, adult sibling, or adult child, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and [~~next of kin~~] who are adults;

(13) facts showing that the court has venue over the proceeding; and

(14) if applicable, that the person whom the applicant desires to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 111, Government Code, and has complied with the requirements of Section 697 of this code.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 220), effective September 1, 2011. See transitional note following Section 633.

Sec. 682A. APPLICATION FOR APPOINTMENT OF GUARDIAN FOR CERTAIN PERSONS.

(a) [No change.]

(a-1) Notwithstanding any other law, if the applicant who files an application under Subsection (a) of this section or Section 682 of this code is a person who was appointed conservator of a disabled child and the proceeding is a guardianship proceeding described by Section 601(25)(A) of this code in which the proposed ward is the incapacitated adult with respect to whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child [~~for whom a court obtains jurisdiction under Section 606(k) of this code~~], the applicant may present to the court a written letter or certificate that meets the requirements of Section 687(a) of this code.

(a-2) If, on receipt of the letter or certificate described by Subsection (a-1) of this section, the court is able to make the findings required by Section 684 of this code, the court, notwithstanding Section 677 of this code, shall appoint the conservator as guardian without conducting a hearing and shall, to the extent possible, preserve the terms of possession and access to the ward that applied before the court obtained jurisdiction of the guardianship proceeding [~~under Section 606(k) of this code~~].

(b) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 687. EXAMINATIONS AND REPORTS.

(a)—(b) [No change.]

(c) If the basis of the proposed ward's alleged incapacity is mental retardation, the court may not grant an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) [~~a written letter or certificate that:~~

[~~(A)~~] complies with Subsection (a) of this section; [~~and~~

[~~(B) states that the physician has made a determination of mental retardation in accordance with Section 593.005, Health and Safety Code;~~] or

(2) shows that [~~both~~]:

(A) [~~written documentation showing that,~~] not earlier than 24 months before the date of the hearing, the proposed ward has been examined by a physician or psychologist licensed in this state or certified by the Department of Aging and Disability Services to perform the examination, in

accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind; and

(B) the physician's or psychologist's written findings and recommendations to the court include [~~, including~~] a statement as to whether the physician or psychologist has made a determination of mental retardation in accordance with Section 593.005, Health and Safety Code.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 697B. CERTIFICATION REQUIREMENT FOR PRIVATE PROFESSIONAL GUARDIANS AND PUBLIC GUARDIANS.

(a)—(c) [No change.]

(d) An individual volunteering with a guardianship program or with the Department of Aging and Disability Services is not required to be certified as provided by this section to provide guardianship services or other services under Section 161.114, Human Resources Code, on the program's or the department's behalf.

(e) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 220), effective September 1, 2011.

Sec. 729. INVENTORY AND APPRAISEMENT.

(a)—(b) [No change.]

(c) An inventory made under this section must specify:

(1) what portion of the property is separate property and what portion is community property; and

(2) if [~~. If~~] any of the property is owned in common with other persons, the interest owned by the ward [~~shall be shown in the inventory, together with the names and relationship, if known, of co-owners~~].

(d)—(e) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 730. LIST OF CLAIMS.

The guardian shall make and attach to an inventory under Section 729 of this code a full and complete list of all claims due or owing to the ward that must state:

(1) the name of each person indebted to the ward and the address of the person if known;

(2) the nature of the debt, whether it is a note, bill, bond, or other written obligation or whether it is an account or verbal contract;

(3) the date of the indebtedness and the date when the debt is or was due;

(4) the amount of each claim, the rate of interest on each claim, and time for which the claim bears interest; and

(5) what portion of the claim is held in common with others[~~, including the names and the relationships of other part owners~~] and the interest of the estate in the claim.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 745. SETTLING GUARDIANSHIPS OF THE ESTATE.

(a) A guardianship of the estate of a ward shall be settled when:

(1) a minor ward dies or becomes an adult by becoming 18 years of age, or by removal of disabilities of minority according to the law of this state, or by marriage;

(2) an incapacitated ward dies, or is decreed as provided by law to have been restored to full legal capacity;

(3) the spouse of a married ward has qualified as survivor in community and the ward owns no separate property;

(4) the estate of a ward becomes exhausted;

(5) the foreseeable income accruing to a ward or to the ward's [~~his~~] estate is so negligible that maintaining the guardianship in force would be burdensome;

(6) all of the assets of the estate have been placed in a management trust under Subpart N[~~, Part 4,~~] of this part, or have been transferred to a pooled trust subaccount in accordance with a court order issued as provided by Subpart I, Part 5, of this chapter, [~~code~~] and the court determines that a guardianship of [~~for~~] the ward's estate [~~ward~~] is no longer necessary; or

(7) the court determines for any other reason that a guardianship for the ward is no longer necessary.

(b)—(c) [No change.]

(d) In the settlement of a guardianship, the court may appoint an attorney ad litem to represent the interests of the ward, and may allow the attorney ad litem reasonable compensation to be taxed as costs [~~for services provided by the attorney out of the ward's estate~~].

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 761. REMOVAL.

(a) The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian[~~,~~] appointed under this chapter[~~,~~] who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return within 30 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge;

(3) having been required to give a new bond, fails to do so within the time prescribed;

(4) absents himself or herself from the state for a period of three months at one time without permission of the court, or removes from the state;

(5) cannot be served with notices or other processes because of the fact that:

(A) the guardian's whereabouts are unknown;

(B) the guardian is eluding service; or

(C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship;

(6) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the guardian's care;

(7) has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section [~~neglected or cruelly treated a ward~~]; or

(8) has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit.

The following subsection (a-1) was added by SB 220:

(a-1) In a proceeding to remove a guardian under Subsection (a)(6), (7), or (8) of this section, the court shall appoint a guardian ad litem as provided by Section 645 of this code and an attorney ad litem. The attorney ad litem has the duties prescribed by Section 647 of this code. In the interest of judicial economy, the court may appoint the same person as guardian ad litem and attorney ad litem unless a conflict exists between the interests to be represented by the guardian ad litem and attorney ad litem.

The following subsection (a-1) was added by SB 481:

(a-1) The court clerk shall issue notice of an order rendered by the court removing a guardian under Subsection (a)(1), (2), (3), (4), (6), (7), or (8) of this section. The notice must:

(1) state the names of the ward and the removed guardian;

(2) state the date the court signed the order of removal;

(3) contain the following statement printed in 12-point bold font:

"If you have been removed from serving as guardian under Section 761(a)(6) or (7), Texas Probate Code, you have the right to contest the order of removal by filing an application with the court for a hearing under Section 762, Texas Probate Code, to determine whether you should be reinstated as guardian. The application must be filed not later than the 30th day after the date the court signed the order of removal.";

(4) contain as an attachment a copy of the order of removal; and

(5) be personally served on the removed guardian not later than the seventh day after the date the court signed the order of removal.

(b) [No change.]

(c) The court may remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when:

(1) sufficient grounds appear to support belief that the guardian has misapplied, embezzled, or removed from the state, or that the

guardian is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the care of the guardian;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey any proper order of the court having jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the duties of the guardian;

(5) the guardian becomes incapacitated, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of the guardian's trust;

(6) the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section [~~neglects or cruelly treats the ward~~];

(6-a) the guardian neglects to educate or maintain the ward as liberally as the means of the ward's estate and the ward's ability or condition permit;

(7) the guardian interferes with the ward's progress or participation in programs in the community;

(8) the guardian fails to comply with the requirements of Section 697 of this code;

(9) the court determines that, because of the dissolution of the joint guardians' marriage, the termination of the guardians' joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward; or

(10) the guardian would be ineligible for appointment as a guardian under Section 681 of this code.

(c-1)—(e) [No change.]

(f) If the necessity exists, the court may immediately appoint a successor guardian without citation or notice but may not discharge the person removed as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian. Subject to an order of the court, a successor guardian has the rights and powers of the removed guardian.

(g) [No change.]

(h) The appointment of a successor guardian under Subsection (f) of this section does not preclude an interested person from filing an application to be appointed guardian of the ward for whom the successor guardian was appointed. The court shall hold a hearing on an application filed under the circumstances described by this subsection. At the conclusion of the hearing, the court may set aside the appointment of the successor guardian and appoint the applicant as the ward's guardian if the applicant is not disqualified and after considering the requirements of Section 676 or 677 of this code, as applicable.

(i) If the court sets aside the appointment of the successor guardian under this section, the court may require the successor guardian to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the estate property.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 220), effective September 1, 2011. Section 13(d) of SB 220 provides: "(d) Section 761, Texas Probate Code, as amended by this Act, applies only to a proceeding to remove a guardian commenced on or after the effective date of this Act. A proceeding to remove a guardian commenced before the effective date of this Act is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose."

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 481), effective September 1, 2011. Section 3 of SB 220 providea: "The changes in law made by this Act to Sections 761 and 762, Texas Probate Code, apply only to a removal of a guardian ordered by a court on or after the effective date of this Act. A removal of a guardian ordered by a court before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose."

Sec. 762. REINSTATEMENT AFTER REMOVAL.

(a) Not later than the 30th [~~10th~~] day after the date the court signs the order of removal, a guardian [~~personal representative~~] who is removed under Section 761(a)(6) [~~Subsection (a)(6)~~] or (7)[~~, Section 761,~~] of this code may file an application with the court for a hearing to determine whether the guardian [~~personal representative~~] should be reinstated.

(b) [No change.]

(c) The court shall hold a hearing on an application for reinstatement under this section as soon

as practicable after the application is filed, but not later than the 60th day after the date the court signed the order of removal. If, at the conclusion of the [~~a~~] hearing [~~under this section~~], the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, the court shall set aside an order appointing a successor guardian [~~representative~~], if any, and shall enter an order reinstating the applicant as guardian [~~personal representative~~] of the ward or estate.

(d) If the court sets aside the appointment of a successor guardian [~~representative~~] under this section, the court may require the successor guardian [~~representative~~] to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the property of the estate.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 481), effective September 1, 2011. See transitional note following Section 761.

Sec. 770. CARE OF WARD; COMMITMENT.

(a)—(b) [No change.]

(c) A guardian of a person younger than 18 [~~16~~] years of age may voluntarily admit the ward [~~an incapacitated person~~] to a public or private inpatient psychiatric facility for care and treatment.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

SUBPART M. TAX-MOTIVATED, [~~TAX MOTIVATED AND~~] CHARITABLE, AND OTHER GIFTS

Sec. 865. POWER TO MAKE CERTAIN [~~TAX MOTIVATED~~] GIFTS AND TRANSFERS.

(a) On application of the guardian of the estate or any interested person [~~party~~] and after the posting of notice, the court, after hearing, may enter an order that authorizes the guardian to apply the principal or income of the ward's estate that is not required for the support of the ward or the ward's family during the ward's lifetime toward the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate, or to transfer a portion of the ward's estate as necessary to qualify the ward for government benefits and only to the extent allowed by applicable state or federal laws, including rules, regarding those benefits, on a showing that the ward will probably remain incapacitated during the ward's lifetime. On the ward's behalf, the court may authorize the guardian to make gifts or transfers described by this subsection, outright or in trust, of the ward's [~~personal~~] property [~~or real estate~~] to or for the benefit of:

(1) an organization to which charitable contributions may be made under the Internal Revenue Code and in which it is shown the ward would reasonably have an interest;

(2) the ward's spouse, descendant, or other person related to the ward by blood or marriage who are identifiable at the time of the order;

(3) a devisee under the ward's last validly executed will, trust, or other beneficial instrument if the instrument exists; and

(4) a person serving as guardian of the ward if the person is eligible under either Subdivision (2) or (3) of this subsection.

(b) The person making an application to the court under this section shall outline the proposed estate or other transfer plan and set forth all the benefits that are to be derived from the [~~estate~~] plan. The application must indicate that the planned disposition is consistent with the ward's intentions if the ward's intentions can be ascertained. If the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation, the qualification for government benefits, and the partial distribution of the ward's estate as provided by this section.

(c)—(f) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011.

Sec. 867. CREATION OF MANAGEMENT TRUST.

(a) [No change.]

(a-1) The following persons may apply for the creation of a trust under this section:

(1) the guardian of the estate of a ward;

(2) the guardian of the person of a ward;

(3) the guardian of both the person of and estate of a ward;

(4) an attorney ad litem or guardian ad litem appointed to represent a ward or the ward's interests;

(5) a person interested in the welfare of an alleged incapacitated person who does not have a guardian [~~of the estate~~]; [~~or~~]

(6) an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated person who does not have a guardian; or

(7) a person who has only a physical disability [~~that person's interests~~].

(b) On application by an appropriate person as provided by Subsection (a-1) of this section and subject to Subsection (b-1) of this section, if applicable, the court with jurisdiction over the proceedings [~~guardianship~~] may enter an order that creates [~~for the ward's benefit~~] a trust for the management of the [~~guardianship~~] funds of the person with respect to whom the application is filed if the court finds that the creation of the trust is in the person's [~~ward's~~] best interests.

(b-1)—(b-5) [No change.]

(c) Subject to Subsection (d) of this section, if the court finds that it is in the [~~ward's or incapacitated person's~~] best interests of the person for whom a trust is created under this section, the court may appoint a person or entity that meets the requirements of Subsection (e) of this section to serve as trustee of the trust instead of appointing a financial institution to serve in that capacity.

(d)—(e) [No change.]

(f) If a trust is created for a person [~~ward~~], the order shall direct any [~~a~~] person or entity holding property belonging to the person for whom the trust is created [~~ward~~] or to which that person [~~the ward~~] is entitled to deliver all or part of the property to a person or corporate fiduciary appointed by the court as trustee of the trust. [~~If a trust is created for an incapacitated person who does not have a guardian, the order shall direct a person holding property belonging to the incapacitated person or to which the incapacitated person is entitled to deliver all or part of the property to the corporate fiduciary or other person appointed as trustee of the trust.~~] The order shall include terms, conditions, and limitations placed on the trust. The court may [~~shall~~] maintain the trust under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward [~~applicable~~].

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. Section 43(d) of SB 1196 provides: "(d) Sections 867, 868, 868C, 869, 870, 871, and 873, Texas Probate Code, as amended by this Act, and Section 870A, Texas Probate Code, as added by this Act, apply only to an application for the creation, modification, or termination of a management trust under Subpart N, Part 4, Chapter XIII, Texas Probate Code, that is filed on or after the effective date of this Act. An application described by this subsection that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose."

Sec. 868. TERMS OF MANAGEMENT TRUST.

(a) Except as provided by Subsection (d) of this section, a trust created under Section 867 of this code must provide that:

(1) the ward, [~~or~~] incapacitated person, or person who has only a physical disability is the sole beneficiary of the trust;

(2) the trustee may disburse an amount of the trust's principal or income as the trustee determines is necessary to expend for the health, education, support, or maintenance of the [~~ward or incapacitated~~] person for whom the trust is created;

(3) the income of the trust that the trustee does not disburse under Subdivision (2) of this subsection must be added to the principal of the trust;

(4) if the trustee is a corporate fiduciary, the trustee serves without giving a bond; and

(5) the trustee, subject to the court's approval, is entitled to receive reasonable compensation for services that the trustee provided to the [~~ward or incapacitated~~] person for whom the trust is created as the [~~ward's or incapacitated~~] person's trustee that is:

(A) to be paid from the trust's income, principal, or both; and

(B) determined, paid, reduced, and eliminated in the same manner as compensation of a guardian [~~of an estate~~] under Section 665 of this code.

(b) The trust may provide that a trustee make a distribution, payment, use, or application of trust funds for the health, education, support, or maintenance of the [~~ward or incapacitated~~] person for whom the trust is created or of another person whom the [~~ward or incapacitated~~] person for whom the trust is created is legally obligated to support, as necessary and without the intervention of a guardian or other representative of the ward or of a representative of the incapacitated person or person who has only a physical disability, to:

(1) the ward's guardian;

(2) a person who has physical custody of the [~~ward or incapacitated~~] person for whom the trust is created or another person whom the [~~ward or incapacitated~~] person for whom the trust is created is legally obligated to support; or

(3) a person providing a good or service to the [~~ward or incapacitated~~] person for whom the trust is created or another person whom the [~~ward or incapacitated~~] person for whom the trust is created is legally obligated to support.

(c) [No change.]

(d) When creating or modifying a trust, the court may omit or modify terms required by Subsection (a)(1) or (2) of this section only if the court determines that the omission or modification:

(1) is necessary and appropriate for the [~~ward or incapacitated~~] person for whom the trust is created to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the [~~ward or incapacitated~~] person; and

(2) is in the [~~ward's or incapacitated person's~~] best interests of the person for whom the trust is created.

(e)—(f) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 867.

Sec. 868C. TRANSFER OF MANAGEMENT TRUST PROPERTY TO POOLED TRUST.

(a) If the court determines that it is in the [~~ward's or incapacitated person's~~] best interests of the person for whom a trust is created under Section 867 of this code, the court may order the transfer of all property in the [~~a management~~] trust [~~created under Section 867 of this code~~] to a subaccount of a pooled trust established in accordance with Subpart I, Part 5, of this chapter. The transfer of property from the management trust to the subaccount of the pooled trust shall be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C) or otherwise for purposes of the management trust beneficiary's [~~ward's or incapacitated person's~~] eligibility for medical assistance under Chapter 32, Human Resources Code.

(b) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 867.

Sec. 869. TRUST AMENDMENT, MODIFICATION, OR REVOCATION.

(a) [No change.]

(b) The following may not revoke the trust:

(1) the ward for whom the trust is created or the guardian of the ward's estate;

(2) [~~or~~] the incapacitated person for whom the trust is created; or

(3) the person who has only a physical disability for whom the trust is created[~~, as applicable, may not revoke the trust~~].

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 867.

Sec. 870. TERMINATION OF TRUST.

(a) If the [~~ward or incapacitated~~] person for whom a trust is created under Section 867 of this code is a minor, the trust terminates:

(1) on the person's death [~~of the ward or incapacitated person~~] or the [~~ward's or incapacitated~~] person's 18th birthday, whichever is earlier; or

(2) on the date provided by court order, which may not be later than the [~~ward's or incapacitated~~] person's 25th birthday.

(b) If the [~~ward or incapacitated~~] person for whom a trust is created under Section 867 of this code is not a minor, the trust terminates:

(1) according to the terms of the trust;

(2) on the date the court determines that continuing the trust is no longer in the [~~ward's or incapacitated~~] person's best interests, subject to Section 868C(b) of this code; [~~,~~] or

(3) on the person's death [~~of the ward or incapacitated person~~].

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 867.

Sec. 870A. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED.

(a) This section applies only to a trustee of a trust created under Section 867 of this code for a person

for whom a guardianship proceeding is pending on the date the trust is created.

(b) Not later than the 30th day after the date a trustee to which this section applies receives property into the trust, the trustee shall file with the court in which the guardianship proceeding is pending a report describing all property held in the trust on the date of the report and specifying the value of the property on that date.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 867.

Sec. 871. ANNUAL ACCOUNTING.

(a) Except as provided by Subsection (d) of this section, the [~~The~~] trustee shall prepare and file with the court an annual accounting of transactions in the trust in the same manner and form that is required of a guardian under this chapter.

(b)—(c) [No change.]

(d) The court may not require a trustee of a trust created for a person who has only a physical disability to prepare and file with the court the annual accounting as described by Subsection (a) of this section.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 867.

Sec. 873. DISTRIBUTION OF TRUST PROPERTY.

(a) Unless otherwise provided by the court and except as provided by Subsection (b) of this section, the trustee shall:

(1) prepare a final account in the same form and manner that is required of a guardian under Section 749 of this code; and

(2) on court approval, distribute the principal or any undistributed income of the trust:

(A) to the ward or incapacitated person when the trust terminates on its own terms;

(B) to the successor trustee on appointment of a successor trustee; or

(C) to the representative of the deceased ward's or incapacitated person's estate on the ward's or incapacitated person's death.

(b) The court may not require a trustee of a trust created for a person who has only a physical disability to prepare and file with the court a final account as described by Subsection (a)(1) of this section. The trustee shall distribute the principal and any undistributed income of the trust in the manner provided by Subsection (a)(2) of this section for a trust the beneficiary of which is a ward or incapacitated person.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 867.

Sec. 892. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP.

(a) A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court. The application must have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court.

(b)—(d) [No change.]

(e) The [~~On the court's own motion or on the motion of the ward or any interested person, the~~] court shall hold a hearing to:

(1) consider the application for receipt and acceptance of a foreign guardianship; and

(2) consider modifying the administrative procedures or requirements of the proposed transferred guardianship in accordance with local and state law.

(f) [No change.]

(f-1) At the time of granting an application for receipt and acceptance of a foreign guardianship, the court may also modify the administrative procedures or requirements of the transferred guardianship in accordance with local and state law.

(g)—(h) [No change.]

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. Section 66.10 of SB 1 provides: "The changes in law made by this article to Sections 892 and 893, Texas Probate Code, apply only to an application for receipt and acceptance of a foreign guardianship filed on or after the effective date of this article. An application for receipt and acceptance of a foreign guardianship filed before the effective date of this article is governed

by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose." See also transitional note following Section 612.

~~Sec. 893. REVIEW OF TRANSFERRED GUARDIANSHIP.~~

Repealed by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. Section 66.08 of SB 1 provides: "Section 893, Texas Probate Code, is repealed. See transitional note following Section 892.

Sec. 894. GUARDIANSHIP PROCEEDINGS FILED IN THIS STATE AND IN FOREIGN JURISDICTION.

(a) [No change.]

(b) A court that delays further action in a guardianship proceeding under Subsection (a) of this section shall determine whether venue of the proceeding is more suitable in that court or in the foreign court. In making that determination, the court may consider:

(1) the interests of justice;

(2) the best interests of the ward or proposed ward; [~~and~~]

(3) the convenience of the parties; and

(4) the preference of the ward or proposed ward, if the ward or proposed ward is 12 years of age or older.

(c)—(d) [No change.]

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. Section 66.11 of SB 1 provides: "Section 894, Texas Probate Code, as amended by this article, and Section 895, Texas Probate Code, as added by this article, apply only to a guardianship proceeding filed on or after the effective date of this article. A guardianship proceeding filed before the effective date of this article is governed by the law in effect on the date the proceeding was filed, and the former law is continued in effect for that purpose." See also transitional note following Section 612.

Sec. 895. DETERMINATION OF MOST APPROPRIATE FORUM FOR CERTAIN GUARDIANSHIP PROCEEDINGS.

(a) If at any time a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the ward or proposed ward or the protection of the ward's or proposed ward's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(A) the extent to which the ward or proposed ward and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) whether the court of this state is a more appropriate forum than the court of any other state after considering the factors described by Section 894(b) of this code; and

(C) whether the court of any other state would have jurisdiction under the factual circumstances of the matter.

(b) If a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because a party seeking to invoke the court's jurisdiction engaged in unjustifiable conduct, the court may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by other law.

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. See transitional note following Section 894.

Sec. 910. DEFINITIONS.

In this subpart:

(1) "Beneficiary" means a minor or other incapacitated person, an alleged incapacitated person, or a disabled person who is not an[~~, or any other~~] incapacitated person for whom a subaccount is established.

(2)—(4) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. Section 43(e) of SB 1196 provides: "(e) Sections 910 and 911, Texas Probate Code, as amended by this Act, apply only to an application for the creation of a pooled trust subaccount under Subpart I, Part 5, Chapter XIII, Texas Probate Code, that is filed on or after the effective date of this Act. An application described by this subsection that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose."

Sec. 911. APPLICATION.

The following persons [~~A person interested in the welfare of a minor, a disabled person, or any other incapacitated person~~] may apply to the court for the establishment of a subaccount for the benefit of a [~~the~~] minor[~~, disabled person,~~] or other incapacitated person, an alleged incapacitated person, or a disabled person who is not an incapacitated person:

(1) the guardian of the incapacitated person;

(2) a person who has filed an application for the appointment of a guardian for the alleged incapacitated person;

(3) an attorney ad litem or guardian ad litem appointed to represent:

(A) the incapacitated person who is a ward or that person's interests; or

(B) the alleged incapacitated person who does not have a guardian; or

(4) the disabled person [~~as the beneficiary~~].

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1196), effective September 1, 2011. See transitional note following Section 910.

Attachment 4 – 2011 Amendments to the Texas Probate Code (Other Provisions)

[The following excerpts reflect amendments made by S.B. 1198.]

Sec. 436. DEFINITIONS.

In this part:

(1)—(2) [No change.]

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

(3)—(6) [No change.]

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee, including a charitable organization, or beneficiary of a trust account is a party only after the account becomes payable to the P.O.D payee or beneficiary [~~him~~] by reason of the P.O.D payee or beneficiary [~~his~~] surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

(8)—(10) [No change.]

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

(12)—(15) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.43(g) of SB 1198 provides: "(g) The changes in law made by this article to Sections 436 and 439, Texas Probate Code, apply only to multiple-party accounts created or existing on or after the effective date of this Act and are intended to clarify existing law."

Sec. 439. RIGHT OF SURVIVORSHIP.

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties. Notwithstanding any other law, an agreement is sufficient to confer an absolute right of survivorship on parties to a joint account under this subsection if the agreement states in substantially the following form: "On the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate." A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 438 of this code augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, and the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies so provides.

(b)—(d) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 436.

Sec. 452. FORMALITIES.

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

(1) "with right of survivorship";

(2) "will become the property of the survivor";

(3) "will vest in and belong to the surviving spouse"; or

(4) "shall pass to the surviving spouse."

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.43(h) of SB 1198 provides: "(h) The changes in law made by this article to Section 452, Texas Probate Code, apply only to agreements created or existing on or after the effective date of this Act, and are intended to overturn the ruling of the Texas Supreme Court in Holmes v. Beatty, *290 S.W.3d 852 (Tex. 2009)."*

Sec. 471. DEFINITIONS.

In this chapter:

(1) [No change.]

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

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

(3) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. Section 1.43(c) of SB 1198 provides: "(c) The changes in law made by Sections 64, 67, 84, 128A, 143, 145, 146, 149C, 227, 250, 256, 260, 271, 286, 293, 385, 471, 472, and 473, Texas Probate Code, as amended by this article, and Sections 145A, 145B, and 145C, Texas Probate Code, as added by this article, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose."

Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS ON DISSOLUTION OF MARRIAGE.

(a) Except as otherwise provided by a court order, the express terms of a trust instrument executed by a divorced individual before the individual's marriage was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between a divorced individual and the individual's former spouse before, during, or after the marriage, the dissolution of the marriage revokes the following:

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

(2) a provision in a trust instrument executed by a divorced individual before the dissolution of the marriage that confers a general or special power of appointment on the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; and

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 471.

Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND PROPERTY.

(a) A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

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

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

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

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1198), effective September 1, 2011. See transitional note following Section 471.

Attachment 5 – 2011 Amendments to the Texas Trust Code

[The following excerpts reflect amendments made by S.B. 1197.]

Sec. 112.010. ACCEPTANCE OR DISCLAIMER BY OR ON BEHALF OF BENEFICIARY.

(a)—(c-2) [No change.]

(c-3) Notwithstanding the deadline prescribed by Subsection (c-2)(2) for delivering the memorandum required by that subsection, in the case of an interest in a trust created by reason of the death of a decedent who died after December 31, 2009, and before December 17, 2010, and to which Section 37A, Probate Code, does not apply, a memorandum delivered under Subsection (c-2)(2) is also effective to disclaim an interest in the trust if delivered not later than the date that is nine months after December 17, 2010. This subsection expires September 1, 2013.

(d)—(e) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1197), effective September 1, 2011. Sections 9(a) and (b) of SB 1197 provide: "(a) Except as otherwise expressly provided by the will, the trust, or this Act, the changes in law made by this Act apply to: (1) a trust existing or created on or after September 1, 2011; (2) the estate of a decedent who dies before September 1, 2011, if the probate or administration of the estate is pending as of September 1, 2011; and (3) the estate of a decedent who dies on or after September 1, 2011. (b) For a trust existing on September 1, 2011, that was created before that date, the changes in law made by this Act apply only to an act or omission relating to the trust that occurs on or after September 1, 2011."

Sec. 112.038. FORFEITURE CLAUSE.

A provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is unenforceable if:

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

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

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1197), effective September 1, 2011. Section 9(c) of SB 1197 provides: "(c) Sections 112.038, 115.002, and 115.011, Property Code, as amended by this Act, apply to a court action commenced on or after September 1, 2011. An action commenced before September 1, 2011, is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose."

Sec. 112.057. DIVISION AND COMBINATION OF TRUSTS.

(a)—(d) [No change.]

(e) A beneficiary to whom written notice is required to be given under this section may waive the notice requirement in a writing delivered to the trustee. If all beneficiaries to whom notice would otherwise be required to be given under this section waive the notice requirement, notice is not required.

(f) Notice required under this section shall be given to a guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary. A guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary may waive the notice requirement in accordance with this section on behalf of the minor or incapacitated beneficiary.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1197), effective September 1, 2011. See transitional note following Section 112.010.

Sec. 115.001. JURISDICTION.

(a)—(c) [No change.]

(d) The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on:

(1) a statutory probate court;

(2) a court that creates a trust under Section 867, Texas Probate Code;

(3) a court that creates a trust under Section 142.005;

(4) a justice court under Chapter 27, Government Code; [~~or~~]

(5) a small claims court under Chapter 28, Government Code; or

(6) a county court at law.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1197), effective September 1, 2011. Section 9(d) of SB 1197 provides: "(d) The amendment by this Act of Section 115.001, Property Code, is intended to clarify rather than change existing law."

Sec. 115.002. VENUE.

(a)—(c) [No change.]

(c-1) Notwithstanding Subsections (b) and (c), if the settlor is deceased and an administration of the settlor's estate is pending in this state, an action involving the interpretation and administration of an inter vivos trust created by the settlor or a testamentary trust created by the settlor's will may be brought:

(1) in a county in which venue is proper under Subsection (b) or (c); or

(2) in the county in which the administration of the settlor's estate is pending.

(d)—(f) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1197), effective September 1, 2011. See transitional note following Section 112.038.

Sec. 115.011. PARTIES.

(a) [No change.]

(b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001. The only necessary parties to such an action are:

(1) a beneficiary of the trust on whose act or obligation the action is predicated;

(2) a beneficiary of the trust designated by name, other than a beneficiary whose interest has been distributed, extinguished, terminated, or paid [~~in the instrument creating the trust~~];

(3) a person who is actually receiving distributions from the trust estate at the time the action is filed; and

(4) the trustee, if a trustee is serving at the time the action is filed.

(c)—(d) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1197), effective September 1, 2011. See transitional note following Section 112.038.

Sec. 116.005. TRUSTEE'S POWER TO ADJUST.

(a)—(c) [No change.]

(d) If Subsection (c)(4), (5) [~~(c)(5)~~], (6), or (7)[~~, or (8)~~] applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by Subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in Subsections (c)(1)-(5) [~~Subsection (c)(1)-(6)~~] or Subsection (c)(7) [~~(c)(8)~~] or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in Subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1197), effective September 1, 2011. See transitional note following Section 112.010.

Sec. 116.205. INCOME TAXES.

(a)—(b) [No change.]

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid [~~proportionately~~]:

(1) from income to the extent that receipts from the entity are allocated only to income; [~~and~~]

(2) from principal to the extent that[~~:~~

[~~(A)~~] receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both principal and income; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity [~~and~~

[~~(B) the trust's share of the entity's taxable income exceeds the total receipts described in Subdivisions (1) and (2)(A)~~].

(d) After applying the other provisions of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary [~~For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax~~].

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1197), effective September 1, 2011. See transitional note following Section 112.010.

Attachment 6 – 2011 Selected Amendments to the Texas Property Code (Other Than Trust Code)

[The following excerpts reflect amendments made by S.B. 587, S.B. 1368, and S.B. 1810.]

Sec. 42.021. ADDITIONAL EXEMPTION FOR CERTAIN SAVINGS PLANS.

(a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, annuity, deferred compensation, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, or a simplified employee pension plan, an individual retirement account or individual retirement annuity, including an inherited individual retirement account or individual retirement annuity, or a health savings account, and under any annuity or similar contract purchased with assets distributed from that type of plan or account, [~~and under any retirement annuity or account described by Section 403(b) or 408A of the Internal Revenue Code of 1986, and under any individual retirement account or any individual retirement annuity, including a simplified employee pension plan, and under any health savings account described by Section 223 of the Internal Revenue Code of 1986,~~] is exempt from attachment, execution, and seizure for the satisfaction of debts to the extent [~~unless~~] the plan, contract, annuity, or account is exempt from federal income tax, or to the extent federal income tax on the person's interest is deferred until actual payment of benefits to the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A, 457(b), or 501(a), Internal Revenue Code of 1986, including a government plan or church plan described by Section 414(d) or (e), [~~does not qualify under the applicable provisions of the~~] Internal Revenue Code of 1986. For purposes of this subsection, the interest of a person in a plan, annuity, account, or contract acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coannuitant, heir, or legatee, is exempt to the same extent that the interest of the person from whom the plan, annuity, account, or contract was acquired was exempt on the date of the person's death. [~~A person's right to the assets held in or to receive payments, whether vested or not, under a government or church plan or contract is also exempt unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974.~~] If this subsection is held invalid or preempted by federal law in whole or in part or in certain circumstances, the subsection remains in effect in all other respects to the maximum extent permitted by law.

(b) [No change.]

(c) Amounts distributed from a plan, annuity, account, or contract entitled to an [~~the~~] exemption under Subsection (a) are not subject to seizure for a creditor's claim for 60 days after the date of distribution if the amounts qualify as a nontaxable rollover contribution under Subsection (b).

(d) A participant or beneficiary of a [~~stock bonus, pension, profit-sharing, retirement~~] plan, annuity, account, or contract entitled to an exemption under Subsection (a), other than an individual retirement account or individual retirement annuity, [~~or government plan~~] is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the exempt plan, annuity, account, or contract to secure a loan to the participant or beneficiary from the exempt plan, annuity, account, or contract, and the right to the assets held in or to receive payments from the plan, annuity, account, or contract is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

(e)—(f) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1810), effective upon enactment. Sections 2 and 3 of SB 1810 provide: SECTION 2. Section 42.0021, Property Code, as amended by this Act, applies to an inherited individual retirement plan, annuity, account, or contract without regard to whether the plan, annuity, account, or contract was created before, on, or after the effective date of this Act. SECTION 3. The changes made by this Act are intended to clarify rather than change existing law.

CHAPTER 64. AUTHORITY OF CO-OWNER TO ENCUMBER RESIDENTIAL PROPERTY

Sec. 64.001. APPLICATION OF CHAPTER.

This chapter applies only to residential property:

(1) that has residential improvements primarily designed for not more than four families;

(2) that is not more than 10 acres of land;

(3) that is owned by more than one person; and

(4) for which at least one co-owner has received a residence homestead exemption under Section 11.13, Tax Code.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1368), effective upon enactment.

Sec. 64.002. CONDITIONS FOR AUTHORITY TO ACT AS AGENT FOR CO-OWNER.

A co-owner of residential property may act in the name of and on behalf of another co-owner, whether known or unknown, as the co-owner's statutory agent and attorney-in-fact for the purposes described by Section 64.004 if:

(1) the co-owner has occupied the property for more than five years;

(2) the co-owner has a residence homestead exemption for the property under Section 11.13, Tax Code;

(3) for the five years preceding the date the documents required by Section 64.003 are filed, the occupying co-owner has paid all assessed ad valorem taxes without delinquency and without contribution from the other co-owner; and

(4) the occupying co-owner files the documents required by Section 64.003.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1368), effective upon enactment.

Sec. 64.003. REQUIRED DOCUMENTATION.

The occupying co-owner may establish the authority to act as an agent and attorney-in-fact for another co-owner by filing in the office of the county clerk of the county in which the real property is located:

(1) an affidavit of the occupying co-owner affirming the facts described by Sections 64.002(1)-(3);

(2) the affidavits of two additional affiants personally familiar with the co-owner's occupancy of the real property corroborating the occupancy during the preceding five years; and

(3) a certificate of the tax assessor-collector for the county in which the real property is located affirming that the co-owner has paid all taxes assessed against the real property for the preceding five years without delinquency.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1368), effective upon enactment.

Sec. 64.004. SCOPE OF AUTHORITY.

(a) The authority of the occupying co-owner to act as an agent and attorney-in-fact is limited to the authority to enter into a contract giving rise to a mechanic's and materialman's lien and to execute a deed of trust for the purpose of preserving or improving the residential property. The occupying co-owner is the sole obligor of the debt incurred under the contract and secured by the deed of trust.

(b) A lien that arises under a contract entered into by an occupying co-owner under this section is not subject to repudiation or disaffirmance by another co-owner.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 1368), effective upon enactment.

Sec. 123.005. BREACH OF FIDUCIARY DUTY: VENUE; JURISDICTION.

(a) Venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust shall be a court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office. To the extent of a conflict between this subsection and any provision of the Texas Probate Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, this subsection controls.

(b) A statutory probate court of Travis County has concurrent jurisdiction with any other court on which jurisdiction is conferred by Section 4A, Texas Probate Code, in a proceeding brought by the attorney general alleging breach of a fiduciary duty with respect to a charitable trust created by a will that has been admitted to probate.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 587), effective upon enactment. Section 2 of SB 587 provides: "The change in law made by this Act applies only to a proceeding commenced on or after the effective date of this Act. A proceeding commenced before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose."

Attachment 7 – 2011 Selected Amendments to the Texas Family Code

[The following excerpts reflect amendments made by H.B. 908 and S.B. 482.]

Sec. 7.009. FRAUD ON THE COMMUNITY; DIVISION AND DISPOSITION OF RECONSTITUTED ESTATE.

(a) In this section, "reconstituted estate" means the total value of the community estate that would exist if an actual or constructive fraud on the community had not occurred.

(b) If the trier of fact determines that a spouse has committed actual or constructive fraud on the community, the court shall:

(1) calculate the value by which the community estate was depleted as a result of the fraud on the community and calculate the amount of the reconstituted estate; and

(2) divide the value of the reconstituted estate between the parties in a manner the court deems just and right.

(c) In making a just and right division of the reconstituted estate under Section 7.001, the court may grant any legal or equitable relief necessary to accomplish a just and right division, including:

(1) awarding to the wronged spouse an appropriate share of the community estate remaining after the actual or constructive fraud on the community;

(2) awarding a money judgment in favor of the wronged spouse against the spouse who committed the actual or constructive fraud on the community; or

(3) awarding to the wronged spouse both a money judgment and an appropriate share of the community estate.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 908), effective September 1, 2011. Section 2 of HB 908 provides: "The change in law made by this Act applies to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act."

Sec. 34.0015. DEFINITION.

In this chapter, "parent" has the meaning assigned by Section 101.024.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 482), effective September 1, 2011. Section 6(a) of SB 482 provides: "(a) Except as provided by Subsections (b) and (c) of this section, the changes in law made by this Act apply only to an authorization agreement executed on or after the effective date of this Act. An authorization agreement executed before that date is governed by the law in effect on the date the authorization agreement was executed, and the former law is continued in effect for that purpose."

Sec. 34.002. AUTHORIZATION AGREEMENT.

(a)—(c) [No change.]

(d) Only one authorization agreement may be in effect for a child at any time. An authorization agreement is void if it is executed while a prior authorization agreement remains in effect.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 482), effective September 1, 2011. Sections 6(b) and (c) of SB 482 provide: "(b) Subsection (d), Section 34.002, Family Code, as added by this Act, applies to an authorization agreement under Chapter 34, Family Code, regardless of whether the agreement was executed before, on, or after the effective date of this Act. (c) Notwithstanding Subsection (b) of this section, if, on the effective date of this Act, more than one valid authorization agreement is in effect for a child, each authorization agreement remains in effect, under the law as it existed immediately before the effective date of this Act, until August 31, 2012, or until the date the authorization agreement is terminated, whichever date is earlier. If, on September 1, 2012, more than one valid authorization agreement remains in effect for a child, the most recently executed authorization agreement controls, and all authorization agreements executed before that agreement are considered terminated."

Sec. 34.003. CONTENTS OF AUTHORIZATION AGREEMENT.

(a) The authorization agreement must contain:

(1) the following information from the relative of the child to whom the parent is giving authorization:

(A) the name and signature of the relative;

(B) the relative's relationship to the child; and

(C) the relative's current physical address and telephone number or the best way to contact the relative;

(2) the following information from the parent:

(A) the name and signature of the parent; and

(B) the parent's current address and telephone number or the best way to contact the parent;

(3) the information in Subdivision (2) with respect to the other parent, if applicable;

(4) a statement that the relative has been given authorization to perform the functions listed in Section 34.002(a) as a result of a voluntary action of the parent and that the relative has voluntarily assumed the responsibility of performing those functions;

(5) statements that neither the parent nor the relative has knowledge that a parent, guardian, custodian, licensed child-placing agency, or other authorized agency asserts any claim or authority inconsistent with the authorization agreement under this chapter with regard to actual physical possession or care, custody, or control of the child;

(6) statements that:

(A) to the best of the parent's and relative's knowledge:

(i) there is no court order or pending suit affecting the parent-child relationship concerning the child;

(ii) there is no pending litigation in any court concerning:

(a) custody, possession, or placement of the child; or

(b) access to or visitation with the child; and

(iii) the court does not have continuing jurisdiction concerning the child; or

(B) the court with continuing jurisdiction concerning the child has given written approval for the execution of the authorization agreement accompanied by the following information:

(i) the county in which the court is located;

(ii) the number of the court; and

(iii) the cause number in which the order was issued or the litigation is pending;

(7) a statement that to the best of the parent's and relative's knowledge there is no current, valid authorization agreement regarding the child;

(8) a statement that the authorization is made in conformance with this chapter;

(9) [~~(8)~~] a statement that the parent and the relative understand that each party to the authorization agreement is required by law to immediately provide to each other party information regarding any change in the party's address or contact information;

(10) [~~(9)~~] a statement by the parent that establishes the circumstances under which the authorization agreement expires, including that the authorization agreement:

(A) is valid until revoked;

(B) continues in effect after the death or during any incapacity of the parent; or

(C) expires on a date stated in the authorization agreement; and

(11) [~~(10)~~] space for the signature and seal of a notary public.

(b) The authorization agreement must contain the following warnings and disclosures:

(1) that the authorization agreement is an important legal document;

(2) that the parent and the relative must read all of the warnings and disclosures before signing the authorization agreement;

(3) that the persons signing the authorization agreement are not required to consult an attorney but are advised to do so;

(4) that the parent's rights as a parent may be adversely affected by placing or leaving the parent's child with another person;

(5) that the authorization agreement does not confer on the relative the rights of a managing or possessory conservator or legal guardian;

(6) that a parent who is a party to the authorization agreement may terminate the authorization agreement and resume custody, possession, care, and control of the child on demand and that at any time the parent may request the return of the child;

(7) that failure by the relative to return the child to the parent immediately on request may have criminal and civil consequences;

(8) that, under other applicable law, the relative may be liable for certain expenses relating to the child in the relative's care but that the parent still retains the parental obligation to support the child;

(9) that, in certain circumstances, the authorization agreement may not be entered into without written permission of the court;

(10) that the authorization agreement may be terminated by certain court orders affecting the child;

(11) that the authorization agreement does not supersede, invalidate, or terminate any prior authorization agreement regarding the child;

(12) that the authorization agreement is void if a prior authorization agreement regarding the child is in effect and has not expired or been terminated;

(13) that, except as provided by Section 34.005(a-1), the authorization agreement is void unless:

(A) the parties mail a copy of the authorization agreement by certified mail, return receipt requested, or international registered mail, return receipt requested, as applicable, to a parent who was not a party to the authorization agreement, if the parent is living and the parent's parental rights have not been terminated, not later than the 10th day after the date the authorization agreement is signed; and

(B) if the parties do not receive a response from the parent who is not a party to the authorization agreement before the 20th day after the date the copy of the authorization agreement is mailed under Paragraph (A), the parties mail a second copy of the authorization agreement by first class mail or international first class mail, as applicable, to the parent not later than the 45th day after the date the authorization agreement is signed; and

(14) [~~(12)~~] that the authorization agreement does not confer on a relative of the child the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 482), effective September 1, 2011. See transitional note following Section 34.0015.

Sec. 34.005. DUTIES OF PARTIES TO AUTHORIZATION AGREEMENT.

(a) If both parents did not sign the authorization agreement, the parties shall mail a copy of the executed authorization agreement by certified mail, return receipt requested, or international registered mail, return receipt requested, as applicable, to the parent who was not a party to the authorization agreement at the parent's last known address not later than the 10th day after the date the authorization agreement is executed if that parent is living and that parent's parental rights have not been terminated. If the parties do not receive a response from the parent who is not a party to the authorization agreement before the 20th day after the date the copy of the authorization agreement is mailed, the parties shall mail a second copy of the executed authorization agreement by first class mail or international first class mail, as applicable, to the parent at the same address not later than the 45th day after the date the authorization agreement is executed. An authorization agreement is void if the parties fail to comply with this subsection.

(a-1) Subsection (a) does not apply to an authorization agreement if the parent who was not a party to the authorization agreement:

(1) does not have court-ordered possession of or access to the child who is the subject of the authorization agreement; and

(2) has previously committed an act of family violence, as defined by Section 71.004, or assault against the parent who is a party to the authorization agreement, the child who is the subject of the authorization agreement, or another child of the parent who is a party to the authorization agreement, as documented by one or more of the following:

(A) the issuance of a protective order against the parent who was not a party to the authorization agreement as provided under Chapter 85 or under a similar law of another state; or

(B) the conviction of the parent who was not a party to the authorization agreement of an offense under Title 5, Penal Code, or of another criminal offense in this state or in another state an element of which involves a violent act or prohibited sexual conduct.

(b) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 482), effective September 1, 2011. See transitional note following Section 34.0015.

Sec. 34.008. TERMINATION OF AUTHORIZATION AGREEMENT.

(a)—(e) [No change.]

(f) Execution of a subsequent authorization agreement does not by itself supersede, invalidate, or terminate a prior authorization agreement.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (SB 482), effective September 1, 2011. See transitional note following Section 34.0015.

Attachment 8 – Other Selected 2011 Amendments

[The following excerpts reflect amendments made by H.B. 274 and H.B. 3573.]

CIVIL PRACTICE AND REMEDIES CODE:

Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO CERTAIN MOTIONS TO DISMISS.

In a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the supreme court under Section 22.004(g), Government Code, the court shall award costs and reasonable and necessary attorney's fees to the prevailing party. This section does not apply to actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 274), effective September 1, 2011. Section 6.01 of HB 274 provides: "The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose."

Sec. 33.004. DESIGNATION OF RESPONSIBLE THIRD PARTY.

(a)—(c) [No change.]

(d) A defendant may not designate a person as a responsible third party with respect to a claimant's cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure.

(e) [Repealed.]

(f)—(l) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 274), effective September 1, 2011. See transitional note following Section 30.021.

Sec. 42.001. DEFINITIONS.

In this chapter:

(1)—(4) [No change.]

(5) "Litigation costs" means money actually spent and obligations actually incurred that are directly related to the action [~~case~~] in which a settlement offer is made. The term includes:

(A) court costs;

(B) reasonable deposition costs;

(C) reasonable fees for not more than two testifying expert witnesses; and

(D) [~~(C)~~] reasonable attorney's fees.

(6) "Settlement offer" means an offer to settle or compromise a claim made in compliance with Section 42.003 [~~this chapter~~].

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 274), effective September 1, 2011. See transitional note following Section 30.021.

Sec. 42.002. APPLICABILITY AND EFFECT.

(a) [No change.]

(b) This chapter does not apply to:

(1) a class action;

(2) a shareholder's derivative action;

(3) an action by or against a governmental unit;

(4) an action brought under the Family Code;

(5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; or

(6) an action filed in a justice of the peace court or a small claims court.

(c) [No change.]

(d) This chapter does not limit or affect the ability of any person to:

(1) make an offer to settle or compromise a claim that does not comply with Section 42.003 [~~this chapter~~]; or

(2) offer to settle or compromise a claim in an action to which this chapter does not apply.

(e) An offer to settle or compromise that does not comply with Section 42.003 [~~is not made under this chapter~~] or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle any [~~the offering~~] party to recover litigation costs under this chapter.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 274), effective September 1, 2011. See transitional note following Section 30.021.

Sec. 42.003. MAKING SETTLEMENT OFFER.

(a) A settlement offer must:

(1) be in writing;

(2) state that it is made under this chapter;

(3) state the terms by which the claims may be settled;

(4) state a deadline by which the settlement offer must be accepted; and

(5) be served on all parties to whom the settlement offer is made.

(b) The parties are not required to file a settlement offer with the court.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 274), effective September 1, 2011. See transitional note following Section 30.021.

Sec. 42.004. AWARDING LITIGATION COSTS.

(a)—(c) [No change.]

(d) The litigation costs that may be awarded under this chapter to any party may not be greater than the total amount that the claimant recovers or would recover before adding an award of litigation costs under this chapter in favor of the claimant or subtracting as an offset an award of litigation costs under this chapter in favor of the defendant [~~an amount computed by:~~

[~~(1) determining the sum of~~:

[~~(A) 50 percent of the economic damages to be awarded to the claimant in the judgment~~;

[~~(B) 100 percent of the noneconomic damages to be awarded to the claimant in the judgment; and~~

[~~(C) 100 percent of the exemplary or additional damages to be awarded to the claimant in the judgment; and~~

[~~(2) subtracting from the amount determined under Subdivision (1) the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the claim~~].

(e)—(g) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 274), effective September 1, 2011. See transitional note following Section 30.021.

Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER.

(a)—(c) [No change.]

(d) On a party's motion or on its own initiative, a trial court in a civil action [~~A district court, county court at law, or county court~~] may, by [~~issue a~~] written order, permit an appeal from an order that is [~~for interlocutory appeal in a civil action~~] not otherwise appealable [~~under this section~~] if:

(1) [~~the parties agree that~~] the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation[~~; and~~

[~~(3) the parties agree to the order~~].

(d-1) Subsection (d) does not apply to an action brought under the Family Code.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:

(1) the parties agree to a stay; or

(2) [~~and~~] the trial or appellate court[~~, the court of appeals, or a judge of the court of appeals~~] orders a stay of the proceedings pending appeal.

(f) An appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). If the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 274), effective September 1, 2011. See transitional note following Section 30.021.

Sec. 132.001. UNSWORN [~~USE BY INMATES IN LIEU OF SWORN~~] DECLARATION.

(a) Except as provided by Subsection (b), an unsworn declaration [~~made as provided by this chapter by an inmate in the Texas Department of Criminal Justice or in a county jail~~] may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law.

(b) This section [~~chapter~~] does not apply to an oath of office or an oath required to be taken before a specified official other than a notary public.

(c) An unsworn declaration made under this section must be:

(1) in writing; and

(2) subscribed by the person making the declaration as true under penalty of perjury.

(d) Except as provided by Subsection (e), an unsworn declaration made under this section must include a jurat in substantially the following form:

"My name is _____ _____ _____ (First) (Middle) (Last), my date of birth is _____, and my address is _____, _____, _____ (Street) (City) (State) (Zip Code) and _____. (Country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, _____. (Month) (Year)

_____
Declarant"

(e) An unsworn declaration made under this section by an inmate must include a jurat in substantially the following form:

"My name is _____ _____ _____ (First) (Middle) (Last), my date of birth is _____, and my inmate identifying number, if any, is _____.

I am presently incarcerated in _____. (Corrections unit name) in _____, _____, _____ (Street) (City) (State) (Zip Code).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the _____ day of _____, _____. (Month) (Year)

_____
Declarant"

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 3674), effective September 1, 2011. Section 3 of HB 3674 provides: "Section 132.001, Civil Practice and Remedies Code, as amended by this Act, applies only to an unsworn declaration executed on or after the effective date of this Act. An unsworn declaration executed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose."

~~Sec. 132.002. REQUIREMENTS OF DECLARATION.~~

Repealed by Acts 2011, 82nd Legislature, Ch. ____ (HB 3674), effective September 1, 2011. Section 2 of HB 3674 provides: "Sections 132.002 and 132.003, Civil Practice and Remedies Code, are repealed."

~~Sec. 132.003. FORM OF DECLARATION.~~

Repealed by Acts 2011, 82nd Legislature, Ch. ____ (HB 3674), effective September 1, 2011. See transitional note following Section 132.002.

GOVERNMENT CODE:

Sec. 22.004. RULES OF CIVIL PROCEDURE.

(a)—(f) [No change.]

(g) The supreme court shall adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. The rules shall provide that the motion to dismiss shall be granted or denied within 45 days of the filing of the motion to dismiss. The rules shall not apply to actions under the Family Code.

(h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective

resolution of civil actions. The rules shall apply to civil actions in district courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed $100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with a provision of:

(1) Chapter 74, Civil Practice and Remedies Code;

(2) the Family Code;

(3) the Property Code; or

(4) the Tax Code.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 274), effective September 1, 2011. Section 6.01 of HB 274 provides: "The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose."

Sec. 22.225. EFFECT OF JUDGMENT IN CIVIL CASES.

(a)—(c) [No change.]

(d) A petition for review is allowed to the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3), (6), or (11), or (d), Civil Practice and Remedies Code.

(e) [No change.]

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 274), effective September 1, 2011. See transitional note following Section 22.004.

Sec. 2252.906. DISCLOSURE PROTECTIONS FOR CERTAIN CHARITABLE ORGANIZATIONS, CHARITABLE TRUSTS, AND PRIVATE FOUNDATIONS.

(a) In this section:

(1) "Charitable organization" means an organization that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization in Section 501(c) of that code. The term does not include a property owners' or homeowners' association.

(2) "Grant-making organization" means an organization that makes grants to charitable organizations but is not a private foundation, private foundation trust, or split interest trust.

(3) "Private foundation" has the meaning assigned by Section 509(a), Internal Revenue Code of 1986.

(4) "Split interest trust" means an irrevocable trust in which the income is first dispersed to the beneficiaries of the trust for a specified period and the remainder of the trust is donated to a designated charity.

(b) Unless the individual has given written consent to the disclosure, a governmental entity may not require a charitable organization, private foundation trust, split interest trust, or private foundation to disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of an employee, officer, director, trustee, or member of the organization, trust, or foundation.

(c) Unless the individual has given written consent to the disclosure, a governmental entity may not require a private foundation, private foundation trust, split interest trust, or grant-making organization to disclose the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of:

(1) a person who receives money or in-kind contributions from or contracts with the foundation, trust, or organization; or

(2) an employee, officer, director, trustee, member, or owner of an entity that receives money or in-kind contributions from or contracts with the foundation, trust, or organization.

(d) A governmental entity may not:

(1) require that the governing board or officers of a charitable organization, private foundation trust, split interest trust, or private foundation include an individual of any particular race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration;

(2) prohibit an individual from serving as a board member or officer of the organization, trust,

or foundation based on the individual's familial relationship to:

(A) another board member or officer of the organization, trust, or foundation; or

(B) a donor to the organization, trust, or foundation; or

(3) require the governing board or officers of the organization, trust, or foundation to include one or more individuals who do not share a familial relationship with the board members or officers or with a donor.

(e) Except as a condition on the expenditure of particular funds imposed by the donor of the funds, a governmental entity may not require a charitable organization, private foundation trust, split interest trust, or private foundation to distribute its funds to or contract with a person or entity based on the race, religion, gender, national origin, socioeconomic status, age, ethnicity, disability, marital status, sexual orientation, or political party registration of:

(1) the person or of an employee, officer, director, trustee, member, or owner of the entity; or

(2) the populations, locales, or communities served by the person or entity.

(f) This section does not limit the authority of the attorney general to investigate or enforce laws of this state in accordance with the attorney general's duty to protect the public interest in charity.

Amended by Acts 2011, 82nd Legislature, Ch. ____ (HB 3573), effective September 1, 2011. Section 2 of HB 3573 provides: "Section 2252.906, Government Code, as added by this Act, does not apply to or invalidate a contract in effect before the effective date of this Act."

Attachment 9 – Selected Bills that *DID NOT* Pass in 2011

1. Decedents' Estates.

1.1 The Hartnett/Herman/Ferchill "Omnibus" Decedents' Estates Bill. **H.B. 2899** (Hartnett) was an "omnibus" decedents' estates bill. It is the author's understanding that this bill, along with **H.B. 2900** (Hartnett) – an "omnibus" guardianship bill – contain miscellaneous proposals from Rep. Hartnett and Statutory Probate Judges Guy Herman (of Travis County) and Pat Ferchill (of Tarrant County) – and maybe one or two other probate judges. As noted in the discussion of the REPTL Decedents' Estates bill previously, after H.B. 2899 stalled in the Senate, an unsuccessful attempt was made to save its provisions by incorporating all but one in a conference report on the REPTL Decedents' Estates bill. But as time was running out in the House on the last day for passage, these provisions had to be jettisoned in order to save the main bill.

(a) Appeal Bonds of Personal Representatives (Section 29). Section 29 eliminates the requirement for a bond for an appeal taken by an executor or administrator, unless the appeal involves the representative personally.. The first thing **H.B. 2899** did is to repeal Section 29. The repeal of Section 29 is the one provision of H.B. 2899 that was **not** included in conference report of S.B. 1198, so Section 29 was going to be alive and well anyway, at least for the next two years. In the meantime, REPTL has agreed to study this provision and its guardianship counterpart, Section 656.

(b) Attorneys Ad Litem (Section 34A). Section 34A would have been amended to clarify that an attorney ad litem may be appointed in **any** probate proceeding; that an attorney ad litem may be appointed for a missing, not just an unknown, heir, and that an attorney ad litem may be appointed for an unknown or missing person for whom money is deposited into the court's registry upon final settlement of a decedent's estate (as provided in an amendment to Section 408 described below). In that case, the ad litem's compensation is to be paid from the funds deposited into the registry, and is limited to 10% of that amount.

(c) No Limitations Period for Heirship Proceedings (Section 48). New Section 48(d) would have clarified that the residual 4-year limitations period of Civil Practice & Remedies Code Section 16.051 **does not** apply to heirship proceedings.

(d) Unsecured Creditors May Initiate Heirship Proceedings (Section 49). Section 49(a) would have added **unsecured** creditors to the list of persons who may initiate an heirship proceeding.

(e) Use of Genetic Tests in Heirships (Section 53C). Sections 53A through 53E were enacted in 2007 and deal with the use of genetic tests. Section 53C specifically relates to an heirship proceeding in which an individual claims to be the biological child of the decedent, or claims inheritance through a biological child of the decedent, and the court has ordered genetic testing. These provisions would have been revised to make the presumption under Family Code Section 160.505 (for establishing a parent-child relationship from the results of genetic testing) applicable to the results of genetic testing under Section 53C.

(f) Removal of Independent Executor Without Notice (Section 149C). New Subsections 149C(a-1) and (a-2) would have allowed a court to remove an independent executor **after thirty days prior notice by certified mail but without the need for personal service** if the executor:

(1) Neglects to qualify within thirty days after the notice;

(2) Fails to file an inventory within thirty days after the notice;

(3) Cannot be served with notices or other processes because the executor's whereabouts are unknown, the executor is eluding service, or the executor is a nonresident without a resident agent; or

(4) Has misapplied, embezzled, or removed estate assets from this state (or is about to do so).

Removal under (4) requires clear and convincing evidence given under oath.

(g) Fine for Failure to Timely File Inventory (Section 254). New Section 254 would have adopted a procedure allowing a court to impose a fine of up to $1,000 for failure to file an inventory after being cited for failure to do so. (This would apply to independent executors, also.)

(h) Property Distributable to Unknown or Missing Person (Section 408). Upon final settlement of an estate, the court could order the representative to deposit funds payable to an unknown or missing person into the registry of the court. In addition, the court could order the representative to convert any

nonmonetary assets distributable to that person into cash to be deposited into the registry.

1.2 Convicted Felons as Independent Executors (Sections 78 & 78A). S.B. 960 (Wentworth) would have allowed a testator to waive in the will the potential disqualification of a person named as independent executor in the will because that person is a convicted felon – if the person is otherwise qualified to serve.

1.3 Beneficiary's Allowance for Defending Will (Section 243). Section 243 directs that if an executor or administrator, in good faith and with just cause, defends a will, with representative will be reimbursed for the costs of defense, **whether or not successful**. Reimbursement of these costs incurred by a beneficiary is discretionary, but otherwise requires satisfaction of the same conditions. H.B. 1934 (Wooley) would have required that beneficiaries be successful in their defense as a prerequisite to reimbursement.

1.4 Waiver of Inventories in Collin County (Section 250 – Sorta). H.B. 3330 (Paxton) would have allowed the judge of the statutory probate court in Collin County to waive the requirement that an inventory be filed on proof that there are no unpaid debts (other than debts "adequately secured" by liens) and receipt of sworn consents of each beneficiary. Proof that there are no unpaid debts may be established by the representative's affidavit, sworn testimony, or any other manner required by the judge. The judge may revoke the waiver, or a beneficiary may revoke his or her consent, at any time, in which event an inventory will be due in 90 days. Note that none of these changes would have been made to Probate Code Section 250 itself. Rather, the bill adds these provisions to Government Code Section 25.0453, which then trumps Probate Code Section 250 in Collin County.

1.5 Repayment of Reverse Mortgage on Borrower's Death. H.B. 2410 (Miles) would have added new Chapter 343A to the Finance Code, setting out procedures for repayment of a reverse mortgage loan on the death of the last surviving borrower.

1.6 Adverse Possession by Co-Tenant Heirs. We learn in law school that it is very difficult to adversely possess property against co-tenants, since all tenants have an equal right to possession of the property, and therefore, possession by any of them is not "adverse" to the others. S.B. 473 (West) would have changed this rule for co-tenancies created by intestacies. New Civil Practice and Remedies Code Section 16.0265 would provide that a cotenant heir may acquire the interests of other cotenant heirs by adverse possession if the possessing cotenant holds the property in peaceable and exclusive possession; uses the property; and pays all property taxes within two years of their due date; and no other cotenant has contributed to the property's maintenance or taxes; challenged the possessing cotenant's exclusive possession of the property; entered into a written agreement with the possessing cotenant regarding the use; asserted any other claim in connection with the property; or acted to preserve the cotenant's interest by filing notice of the cotenant's claimed interest in the deed records. A "cotenant heir" means one of several persons who simultaneously acquire identical undivided ownership interests in the same real property by virtue of an intestacy (or a successor to one of those persons). These conditions must exist for the 10-year period preceding the filing by the possessing cotenant of an affidavit of heirship (in the form prescribed by Probate Code Section 52A) in the deed records, along with an affidavit of adverse possession that includes meets the requirements of the statute. The possessing co-tenant must also publish notice in a newspaper and provide notice to the other co-tenants at their last known addresses. Other cotenants must file a controverting affidavit or bring suit to recover their interests within five years after the first affidavit of adverse possession is filed. If no controverting affidavit is filed or suit brought by that deadline, then title vests in the possessing cotenant. However, without a title instrument, peaceable and adverse possession is limited under this section to the greater of 160 acres or the number of acres actually enclosed. If the peaceable possession is held under a recorded deed or other memorandum of title that fixes the boundaries of the claim, those boundaries will control.

2. Guardianships.

2.1 The Hartnett/Herman/Ferchill/*Harris* "Omnibus" Guardianship Bill. As described previously, H.B. 2900 (Hartnett) was originally an "omnibus" guardianship bill accompanied by H.B. 2899 (Hartnett) – an "omnibus" decedents' estates bill, that the author understands contained miscellaneous proposals from Rep. Hartnett and Statutory Probate Judges Guy Herman (of Travis County) and Pat Ferchill (of Tarrant County) – and again, perhaps one or two other probate judges.

In addition, REPTL's original proposed guardianship bill included a change in the provisions relating to allocation of attorney's fees and costs in a guardianship proceeding, allowing these fees and costs to be assessed by the court in appropriate circumstances against any party in a guardianship proceeding (and not just against

the ward's estate). However, this provision was removed from the REPTL Guardianship Bill prior to filing since at least three other bills had already been filed dealing with this issue, including **S.B. 286** (Harris) that contained provisions similar to the REPTL proposal, and **H.B. 1325** (Hartnett), that took a different approach to the same problem, only allowing assessment of certain costs against an applicant if the ward's assets were insufficient and the applicant's family income exceeded 200% of the federal poverty level.

As the session progressed, H.B. 1325 stalled. However, Rep. Hartnett added his preferred approach to S.B. 286 when it made its way to the House, while Sen. Harris added his preference to H.B. 2900 when it made it to the Senate.

All of this led to a conference agreement on the last weekend of the session that included most of its original provisions, a compromise reached by the Rep. Hartnett and Sen. Harris on the fees and costs issue, plus some additional provisions from S.B 481 – another Harris bill that had already passed and been sent to the Governor. However, while the Senate adopted the conference report on the afternoon of Sunday, May 29th, the last possible day, the House was still four bills away from consideration of this bill on its calendar when the clock struck midnight. Therefore, this bill failed to pass.

As noted in the paper, many of the provisions of the original H.B. 2900 were resurrected in S.B. 1 in the special session. Here is a summary of the provisions from the final version of amalgamated H.B. 2900 that failed to make their way into any other bill that passed (we may still see some or all of these proposals in 2013):

(a) Limited Intervention in Guardianship Proceedings (Section 642). A person who is not otherwise entitled to notice of a guardianship application under Section 633(c) or (d) must obtain leave of court to appear and contest a guardianship proceeding or the appointment of a particular person. Even if the court grants leave, other parties may still challenge the intervenor's standing.

(b) Allocation of Attorney's Fees and Costs (Sections 665A, 665B, 665D, 669, and 875). First, Section 665A, dealing with costs, would have been repealed (these costs would now be dealt with in Section 669). Next, Section 665A, dealing with attorney's fees, was amended to provide that those fees should be determined by the "trier of fact, in amounts the court considers equitable and just." If the trier of fact determined that a party acted in bad faith or without just cause in prosecuting or objecting to an application, the court could require that party to pay any of the attorney's fees awarded under the section. Finally, Section 669 was amended to specifically apply to all other costs (in effect incorporating repealed Section 665A), and also contained the same permissive allocation of those costs against a bad-faith-without-just-cause party. While the court would have authority to authorize payment of costs by the county if the ward's assets are insufficient, the court could not authorize payment by the county unless the court was satisfied that the applicant's attorney was not receiving or seeking payment from another source. The last requirement would not apply to an attorney for a nonprofit or governmental agency, or an attorney acting pro bono.

2.2 The Lucio "Omnibus" Guardianship Bill. **H.B. 2744** (Lucio, III) would have made a number of guardianship changes.

(a) Duties of Court Investigator (Section 648A). When a guardianship application is filed or the court initiates guardianship proceedings, the court investigator would be required to meet in person with the proposed ward's spouse, parents, adult siblings, and adult children, or if none, each adult relative related within the third degree of consanguinity.

(b) Required Testimony (Section 683). At the guardianship hearing, the proposed ward's attorney **must** call any primary caretaker or mental or physical therapist to testify.

(c) Complaint Info Posting Requirement (Section 697C). Most private professional guardians, guardianship programs, and DADS offices would be required to post contact information for the Guardianship Certification Board (for filing complaints) near the entrance of the principal place of business and its website, if any.

(d) Removal of Guardian (Section 761). Abuse, neglect, or exploitation of a ward, as defined in Section 48.002 of the Human Resources Code, would be added as a specific ground for removal of a guardian.

(e) Required Notice for Removal of Guardian (Section 761). In addition to citing a guardian to appear at a removal hearing, the notice must be personally served on the ward's spouse and parents, and the clerk must mail a copy by certified

mail to each of the ward's adult siblings and adult children, or if none, each adult relative related within the third degree of consanguinity.

(f) Required Notice for Reinstatement of Guardian (Section 762). Similar notice requirements will apply to an application for reinstatement of a removed guardian.

(g) Temporary Appointment of Successor Guardian (Section 762A). Appointment of a successor guardian following removal of a guardian will only be temporary pending a full hearing with notice.

(h) Reinstatement of Removed Guardian Following Appointment of Non-Family Successor Guardian (Section 762B). After the permanent appointment of a private professional successor guardian following removal of a family member or friend as guardian (for certain not-so-bad violations), the removed guardian may seek reinstatement.

2.3 Provision of Legal Services by Guardian (Sections 665D & 773A). S.B. 1027 (Harris) would have repealed Section 665D, which was just added in 2009, and added new Section 773A, prohibiting an attorney serving as guardian from providing legal services in connection with the guardianship.

2.4 Temporary Admission of Certain Wards to Psychiatric Facilities (Section 770). Among other things, H.B. 3380 (Shelton) would have allowed the guardian of a person 16 years old or older whose primary incapacity is an intellectual disability and whose mental age is younger than 16 years to voluntarily admit the ward to an inpatient psychiatric facility for up to 14 days. The guardian and the facility administrator must immediately notify the court.

2.5 Kinship Caregivers. H.B. 1221 (Miles) would have used funds from a federal block grant to establish a "kinship care support program" providing financial assistance to "kinship caregivers." They are defined as a grandparent, aunt, uncle, or other adult relative within the 5th degree of consanguinity or affinity of a dependent child who resides in the person's household, but is not the person's child. The kinship caregiver must also be appointed conservator or guardian of the child within a year of initial receipt of financial assistance.

3. Trusts.

3.1 RAP Modification (Trust Code Section 112.036). H.B. 372 (Hartnett) and S.B. 261 (Carona) are companion bills proposed by TBA that would have modified the Rule Against Perpetuities found in Trust Code Section 112.036 to provide a flat 200-year perpetuities period, rather than the traditional "lives-in-being plus 21 years" test. TBA's position is that "[t]he current statute, adapted from English feudal law, is antiquated, hard to interpret by fiduciaries and estate planners and contrary to modern estate planning desires of Texas citizens. Life expectancies have increased dramatically and Texas citizens who wish to provide for future generations are forced to take advantage of estate planning services in a growing number of other states (23) where this rule already has been updated. This modest clarification and enhancement will assist fiduciaries and estate planners with a greater definition of terms and will benefit Texas citizens by enabling them to understand in plain English their access to estate planning options." The REPTL Council believes that there is no consensus either way among REPTL members, so REPTL took no position on this proposal.

3.2 Right of Contingent Beneficiary to Demand Accounting (Trust Code Section 113.151). As originally filed, H.B. 1813 (Phillips) would have modified the Trust Code definition of "beneficiary" and "interested person" found in Trust Code Section 111.004 to specifically include a contingent beneficiary without a currently-vested interest. The committee substitute merely clarified that a beneficiary, including a contingent beneficiary, has a right to demand an accounting. But keep in mind that in any suit to compel the accounting, the existing language of Section 113.151 would still require a court to find that the nature of the beneficiary's interest is sufficient to require an accounting. (The author is not aware of any case providing guidance as to just how remote or contingent a beneficiary's interest must be to defeat that right).

4. Charities.

4.1 Authority of AG to Make Inquiries of Charities. S.B. 342 (Carona) and H.B. 2921 (Lewis) were not companion bills as filed, but they are virtually identical. They would have expanded Section 12.151 of the Business Organizations Code, which already allows the AG's office to examine the records of charities. These bills would have allowed the AG's office to require an employee or agent of a charity to provide a sworn explanation of the facts and circumstances surrounding an act or practice the AG's office has reason to believe is unlawful, or to examine the employee or agent under oath. New Section 123.007 would be added to the Property Code

to provide similar powers with respect to charitable trusts subject to Chapter 123.

5. Court Administration.

5.1 Eligibility of Former Statutory Probate Court Judge for Assignment. H.B. 1424 (Garza) would have prohibited the assignment of a former statutory probate judge as a visiting statutory probate judge if the judge was defeated the last time the judge was a candidate for the court over which he or she most recently presided.

5.2 Replacement of Recused or Disqualified Statutory Probate Judge. In 2009, Government Code Section 25.00255 was revised provide that the presiding judge of an administrative judicial district was responsible for selecting a judge to replace a recused or disqualified statutory probate judge. H.B. 2372 (Hartnett) would have assigned this task to the presiding statutory probate judge, subject to certain restrictions.

6. Disability Documents.

6.1 The Patient and Family Treatment Choice Rights Act of 2011. H.B. 3520 (Hughes) called itself The Patient and Family Treatment Choice Rights Act of 2011. The stated purpose of the bill is to protect the right of patients and their families to decide whether and under what circumstances to choose or reject life-sustaining treatment. The bill would have amended the Advance Directives Act (Health and Safety Code Chapter 166) to ensure that if an attending physician is unwilling to comply with a patient's advance directive or a patient's or family's decision to choose the treatment necessary to prevent the patient's death, life-sustaining medical treatment will be provided until the patient can be transferred to a health care provider willing to honor the directive or treatment decision.

6.2 Revocation of DNR Orders. H.B. 2483 (Pena) and S.B. 1632 (Birdwell) were similar, though not identical, bills that would have allowed a legal guardian, "qualified relative," or the agent of a declarant under a medical power of attorney to revoke an out-of-hospital DNR order if that person has reason to believe that the order was not executed in accordance with the requirements of the Health & Safety Code. (Neither bill appears to include a method for a medical provider to question that person's basis for the belief.)

7. Selected Marital Issues.

7.1 Legal Separation. H.B. 547 and its enabling constitutional amendment, H.J.R 54 (Dutton), would have added a proceeding for a legal separation as an available remedy under the Family Code. Grounds for the legal separation would be the same as a divorce. The court could make temporary orders as in a divorce, could partition and award marital property, award maintenance, provide that future earnings and accumulations would remain separate property, and make child custody decisions. But the spouses would not be divorced, so presumably their intestacy and exempt property rights would remain.

7.2 Premarital Education. H.B. 2637 (Chisum) and S.B. 1867 (Lucio) directed the Health and Human Services Commission to enter into a contract with a nonprofit organization to administer and coordinate premarital education courses offered under Family Code Section 2.013.

7.3 Marriage Restoration Education. If a spouse files for divorce based on insupportability and the household is the primary residence of a child under 18, H.B. 2855 (Howard, Charlie) would have required the completion of a marriage education course focusing on restoration of the marriage. The course must be completed **not less than one year, but not more than two years**, prior to the filing.

7.4 Or Extended Waiting Period for Certain Divorces. If a spouse files for divorce based on insupportability, the household of either spouse is the primary residence of a child under 18 born of that marriage, and the other spouse does not consent to the divorce, H.B. 3707 (Christian) would have prohibited a court from granting the divorce until the first anniversary of the date suit was filed.

7.5 Same-Sex Marriages? H.J.R 102 (Coleman) was a proposed constitutional amendment that would have repealed Section 32 of Article I of the Texas Constitution. That is the constitutional provision that defines marriage as "the union of one man and one woman" and prohibits the state or any political subdivision from creating or recognizing any legal status identical or similar to marriage.

7.6 Not So Fast! On February 10th of 2010, a Travis County District Court granted a divorce to a same-sex couple who had been married in 2004 in Massachusetts. After learning of this, the next day, the Attorney General's office attempted to intervene, arguing that since same-sex couples cannot marry in Texas, a Texas court has no authority to grant them a divorce. On January 7th of 2011, the 3rd Court of Appeals (Austin) ruled that the Attorney General's office lacked standing to intervene after the divorce was granted (State of Texas v. Naylor, No. 03-10-

00237-CV). **H.B. 2638** (Chisum) would have amended Family Code Section 6.204 to allow the AG to intervene in a suit involving a right or claim asserted as a result of a same-sex marriage or civil union up to 90 days after the judgment is entered.

Attachment 10 – Form for "One-Step" Method of Will Execution

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

_____
Testator

The undersigned, _____ and _____, each being above fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this _____ day of _____, 20___.

_____
Witness

_____
Witness

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

Signed:_____
(Official Capacity of Officer)

(SEAL)

Attachment 11 – Form for Affidavit of Notice Under Section 128A(g)

NO. C-1-PB-11-000001

IN THE ESTATE OF	§	IN THE PROBATE COURT
SAM HOUSTON,	§	NO. 1 OF
DECEASED	§	TRAVIS COUNTY, TEXAS

AFFIDAVIT OF NOTICE TO BENEFICIARIES
UNDER SECTION 128A OF THE TEXAS PROBATE CODE

Affiant, Dallas Houston, Independent Executor of the Estate of Sam Houston, Deceased (the "Estate"), respectfully shows the Court:

1. **Introduction**. I, Dallas Houston, am the Independent Executor of the Estate of Sam Houston, Deceased. Sam Houston (the "Decedent") died _____, 20___. Decedent's will dated _____, 20___, was admitted to probate and Dallas Houston qualified as Independent Executor of the Decedent's estate on _____, 20___. The purpose of this affidavit is to comply with the requirements of Section 128A of the Texas Probate Code.

2. **Description of Decedent's Family and Beneficiaries**. The Decedent was unmarried at the time of death. The Decedent previously was married to _____, who predeceased the Decedent. The Decedent had four children: [Child 1 Name], [Child 2 Name], [Child 3 Name] and [Child 3 Name]. These four children all survived the Decedent. These four children are the only beneficiaries named in the Decedent's will.

3. **Notices Given**. I gave notices that complied with Section 128A of the Texas Probate Code to the following persons at the following addresses by certified mail, return receipt requested:

Name	**Address**

4. **Notices Not Required to Be Given**. I did not give notice to the following persons at the following addresses because I was not required to do so by Section 128A of the Texas Probate Code:

a. **Persons Who Appeared in Probate Proceeding**. The following persons appeared in this proceeding prior to the probate of the will:

Name	**Address**

b. **Persons Receiving Nominal Gifts**. The following persons are each entitled to receive aggregate gifts under the will with an estimated value of $2,000 or less:

Name	**Address**

c. **Persons Whose Gifts Have Been Satisfied**. The following persons received all gifts to which they are entitled under the will not later than the 60th day after the date of the order admitting the will to probate:

Name	**Address**

d. **Persons Waiving Notice**. The following persons have received a copy of the will or a written summary of the gifts to the person and have waived the right to receive notice:

Name	**Address**

5. **Notices Unable to Be Given**. I was unable to give notice to the following beneficiaries or possible beneficiaries under the will because I could not identify them or determine their whereabouts after the exercise of reasonable diligence. I do not intend to actively continue to try to locate these persons after the date hereof because of the cost and expense to the Estate unless ordered to do so by the Court. However, if I locate any of these persons after the making and filing of this affidavit, I will send them a notice under Section 128A:

Name	**Address**

6. I believe that I have complied with the requirements imposed on me by Section 128A.

_____
Dallas Houston

Subscribed and sworn to before me by the said Dallas Houston this _____ day of _____, 20___.

Signed:_____
(Official Capacity of Officer)

(SEAL)

Attachment 12 – Form for Notice of Closing Estate Under Section 151(b)

NO. C-1-PB-11-000001

IN THE ESTATE OF	§	IN THE PROBATE COURT
SAM HOUSTON,	§	NO. 1 OF
DECEASED	§	TRAVIS COUNTY, TEXAS

NOTICE OF CLOSING ESTATE
UNDER SECTION 151(B) OF THE TEXAS PROBATE CODE

Affiant, Dallas Houston, Independent Executor of the Estate of Sam Houston, Deceased (the "Estate"), respectfully shows the Court:

1. Affiant was appointed Independent Executor of the Estate by Order Granting Letters Testamentary dated December 1, 2011. Affiant qualified as Independent Executor by filing Affiant's Oath on that day.

2. All of the debts known to exist against the Estate have been paid, or have been paid to the extent permitted by the assets in Affiant's possession.

3. All remaining assets of the Estate, if any, have been distributed.

4. The names and addresses of the distributees to whom the property of the Estate, if any, remaining on hand after payment of debts has been distributed are:

Dallas Houston
1234 Veryrich Way
Austin, Texas 78701

Antonio Houston
9876 Notsorich Lane
Austin, Texas 78702

Tyler Houston
555 Doincomfortable Drive
Austin, Texas 78704

Marshall Houston
666 Poorhouse Plaza
Austin, Texas 78705

5. Attached to this Affidavit are signed receipts of each distributee acknowledging that all distributees have received a copy of this notice, or other proof that all distributees have received a copy of this notice.

_____
Dallas Houston

Subscribed and sworn to before me by the said Dallas Houston this _____ day of _____, 20___.

Signed:_____
(Official Capacity of Officer)

(SEAL)

Attachment 13 – Form for Affidavit in Lieu of Inventory Under Section 250(c)

NO. C-1-PB-11-000001

IN THE ESTATE OF	§	IN THE PROBATE COURT
SAM HOUSTON,	§	NO. 1 OF
DECEASED	§	TRAVIS COUNTY, TEXAS

AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS UNDER SECTION 250(C) OF THE TEXAS PROBATE CODE

Affiant, Dallas Houston, Independent Executor of the Estate of Sam Houston, Deceased (the "Estate"), respectfully shows the Court:

1. Affiant was appointed Independent Executor of the Estate by Order Granting Letters Testamentary dated December 1, 2011. Affiant qualified as Independent Executor by filing Affiant's Oath on that day.

2. There are no unpaid debts, except for secured debts, taxes, and administration expenses, existing against the Estate.

3. All beneficiaries of the Estate, as defined in Texas Probate Code Section 251(d), have received a verified, full, and detailed inventory, appraisement, and list of claims of the Estate.

_____
Dallas Houston

Subscribed and sworn to before me by the said Dallas Houston this _____ day of _____, 20___.

Signed:_____
(Official Capacity of Officer)

(SEAL)

Attachment 14 – Conspicuous Statement to be Included in Notice to Interested Persons Under Section 633

"You are hereby notified that you have the right under Texas Probate Code Section 632(j) to file with the clerk a written request that you be notified on any or all specifically designated motions, application, or pleadings filed by any person, or by a person specifically designated in your request, related to the application for guardianship that has been filed, or any subsequent guardianship proceeding involving the ward, or the proposed ward, after the guardianship is created, if any. If you make such a request, you are responsible for the fees and costs associated with the documents specified in the request. The clerk may require a deposit to cover the estimated costs of furnishing you with the requested notice."